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THE
LEGISLATIVE ASSEMBLY DEBATES
(Official Report)

VOL. III.

(15th January, 1923 to 31st January, 1923.)

THIRD SESSION
OF THE
LEGISLATIVE ASSEMBLY, 1923.



SIMLA
GOVERNMENT CENTRAL PRESS
1923.

Legislative Assembly.

The President :

THE HONOURABLE SIR FREDERICK WHYTE, KT.

Deputy President :

SIR JAMSETJEE JEEJEEBHoy, BART., K.C.S.I., M.L.A.

Panel of Chairmen :

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SARDAR BAHADUR GAJJAN SINGH, M.L.A.

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. THE
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LEGISLATIVE ASSEMBLY.

Monday, 15th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock

Secretary of the Assembly: I have to acquaint this House of the unavoidable absence of Mr. President on this day's sitting.

Mr. Deputy President (Sir JAMSETTEE JEEJEEBOY, Bart., K.C.S.I.) then took the Chair.

MEMBERS SWORN

The Honourable Sir Basil Phillott Blackett, K.C.B. (Finance Member); Sir Henry Monieroff Smith, Kt. C.I.E., M.L.A. (Secretary, Legislative Department); Mr. Arthur Herbert Leys, C.I.E., M.L.A. (Industries Secretary); Mr. Clement Daniel Murgs Hindley, M.L.A. (Chief Commissioner, Railways); Mr. Harry Jenkins, C.I.E., M.L.A. (Home Department); Nominated Official; Mr. Ayendur Vaidanala Venkatarumana Aloor, C.I.E., M.L.A. (Finance Department); Nominated Official; Mr. Walter Stuart James Willson, M.L.A. (Bengal Europeans); Colonel Sir Henry John Lambton Stanvon, Kt. V.D., C.I.E., M.L.A. (United Provinces); Europeans; Mr. J. N. Basu, M.L.A. (Borneo, Non-European); Mr. Rustagi Farooqi, M.L.A. (Central Provinces); Nominated Official; Mr. William Henry Lawson Cabell, M.L.A. (Borneo, Nominated Official); Mr. Percy James Hugh, M.L.A. (Bombay); Nominated Official; Mr. Henry Edward Holmes, M.L.A. (United Provinces); Nominated Official.

The Honourable Sir Malcolm Hailey: Before the House proceeds to business, Sir, I hope you will allow me, with the permission of the House, to express on behalf of the House, as I am sure I may do, our deep sympathy with the Honourable the President in his illness and to express also the hope of the House that he may speedily return to those labours in the performance of which he has earned, if I may say so, with all respect, both the admiration and the affection of this House.

Mr. Deputy President: Honourable Members of the Assembly, in the regrettable absence of the Honourable the President, through ill-health, it has fallen to me to preside over the Assembly and to welcome the Honourable Members of this House. The Honourable Sir Frederick Whyte, you will be glad to learn, is making steady progress towards recovery, and I am sure every one of us will wish him completely to recover before long and to be able to take the Chair in the course of the next few days. I trust I am voicing the feelings of this House in welcoming amongst us the Honourable Sir Basil Blackett as our colleague. He comes to us as Finance Member of the Government of India, the portfolio of which high office was until quite recently in the capable hands of the Honourable Sir Malcolm Hailey, whose indefatigable energy and high talents are now transferred to the Home Department. Sir Basil comes to us with a great reputation in finance, both on its theoretical and on its practical side. I am confident that this House will extend to him the assistance and co-operation which

his wide experience and knowledge entitle him to claim for himself in the discharge of his new duties.

In conclusion I may be permitted to refer to a personal matter. Honourable Members are well aware that we have long and arduous work before us in this Session. I feel assured, however, that, in view of the traditions which the Assembly has to its credit established in the past two years, we shall be able to go through it in a spirit of harmony and useful good-will. I am certain that I can with confidence rely on Honourable Members for help and support in the discharge of the duties of the Chair in the same measure in which they have vouchsafed them to me ungrudgingly and unstintedly in the past.

***Sir Deva Prasad Sarvadhikary:** On behalf of my friends I desire to associate myself, and I am sure every non-official Member of the Assembly does so, with the expression of regret which has fallen from the Leader of the House and you (Mr. Deputy President) in connection with the illness of the President. His has been very strenuous work, not confined to Delhi and Simla by any means, but all over the country, and I am afraid he is paying the penalty. We all hope that he may soon recover and come back to us. In welcoming you to the Chair in the President's absence, we promise you all the support and assistance that you require in the difficult work before you. And, Sir, I desire to convey to you the congratulations of my friends and I am sure of the whole House, on the high honour that was conferred upon you while you were away from us. You have been away for some time and I am sure you have brought back knowledge and traditions that will be helpful in carrying on the work of this House. There has been a re-arrangement in the Front Bench and we hope it will be all for the good and for advancement of work. In Sir Malcolm Hailey we have a leader, not new by any means. He led the House when it was first started and has come back to the leadership. Sir Muhammad Shafi is now Vice-President of the Executive Council and has taken over the Law portfolio. I am sure that from Sir Malcolm Hailey and from Sir Muhammad Shafi we shall have all the consideration we had before and a little more.

Sir Basil Blackett we all welcome. I hope he will put our names right and that there will be no reason for us to quarrel with him in the same way as we have sometimes quarrelled with his predecessors.

I am sure, Sir, that the House would like also to express its appreciation of the honour which has been conferred upon its Secretary, upon Sir D. Waghorn, Sir Campbell Rhodes and others. They have all well earned them, and not the least by their work in this Assembly.

Mr. Deputy President: I thank the Honourable Member—Sir Deva Prasad Sarvadhikary especially—for his kind reference to me.

STATEMENT LAID ON THE TABLE.

The Honourable Sir Malcolm Hailey: Sir, I have to lay on the table a statement showing the number of Muslims, Hindus, etc., employed in the Government of India Secretariat, promised in reply* to questions by Sardar Bahadur Gajjan Singh, Mr K. Ahmed and Maulvi Miyan Asjad-ul-lah, asked on the 11th and 15th September, 1922.

* Vide Legislative Assembly Debates, Volume III, pages 347, 356 and 577. *

Statement showing the number of Europeans, Anglo-Indians, etc., employed in the Government of India Secretariat on the 1st September, 1922.

(a) (i) 1 Officers holding posts above the grade of Superintendent.

Department.	EUROPEANS.		ANGLO-INDIANS.		HINDUS.		MUHAMMADANS.		SIKHS.		INDIAN CHRISTIANS.		OTHERS.		TOTAL.		REMARKS.
	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	
Home	6	2													6	2	
Foreign and Political Department.	2						1								2		
Finance	3	2													3	2	
Legislative	4														4		
Army	3	2	1												3	2	
Public Works	3		1												4		
Revenue and Agriculture	4	1	1												6	1	
Education and Health	1				1						1				3		
Commerce	5	1													5	1	
Industries	3														3		
Railway Board	11														11		
Office of Financial Adviser (Military Finance)	10	2			1										11	2	

*Excluding officiating officers.

(2) Superintendents.

Department.	EURO-PEANS.		ANGLO-INDIANS.		HINDUS.		MUHAMMADANS.		SIKHS.		INDIAN-CHRISTIANS.		OTHER.		TOTAL.		REMARKS.
	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	
Home . . . . .	..	..	3	1	3	..	..	..	..	..	..	..	..	..	6	1	
Foreign and Political	6	..	3	..	..	..	..	..	..	..	..	..	..	..	9	..	
Finance	1	..	..	..	3	..	1	..	1	..	..	..	..	..	6	..	
Legislative	2	..	..	1	1	1	..	..	..	..	..	..	..	..	3	2	
Army	1	..	3	1	2	1	..	..	..	..	..	..	..	..	5	2	
Public Works	1	..	3	..	1	..	..	..	..	..	..	..	..	..	5	..	
Revenue and Agriculture	1	..	..	..	..	..	..	..	..	..	..	..	..	..	4	..	
Education and Health . . . . .	..	..	1	..	2	..	..	..	..	..	..	..	..	..	3	..	
Commerce	1	..	..	..	1	..	2	..	..	..	..	..	..	..	4	..	
Industries	2	..	1	..	3	1	..	..	..	..	..	..	..	..	6	1	
Railway Board . . . . .	..	..	4	..	1	..	1	..	..	..	1	..	..	..	7	..	
Office of Financial Adviser (Military Finance).	1	..	..	..	4	..	..	..	..	..	..	..	..	..	5	..	

* Excluding officiating officers.

(3) Assistants.

Department.	EUROPEANS.			ANGLO-INDIANS.			HINDU.			MUHAMMADANS.			SIKH.			ISLAM-CHRISTIAN.			OTHERS.			TOTAL.	PER-CENTAGE OF MUHAMMADANS TO NON-MUHAMMADANS.			REMARKS.			
	Permanent.	Temporary.		Permanent.	Temporary.		Permanent.	Temporary.		Permanent.	Temporary.		Permanent.	Temporary.		Permanent.	Temporary.		Permanent.	Temporary.			Permanent.	Temporary.					
Home.	1			3			7	1		1	1		1	1		1	1		1	1		20	37		Nd	Temporary.			
Foreign and Political.	16			1			6	1		1	1		1	1		1	1		1	1		37	13		11	11		Nd	Temporary.
Finance.	3	1		1	6		12	1		1	1		1	1		1	1		1	1		23	1		95	95		Nd	Temporary.
Legis. active.	3			6	6		10	13		1	1		1	1		1	1		1	1		23	8		95	95		Nd	Temporary.
Army.	2			6	6		10	13		1	1		1	1		1	1		1	1		18	23		100	100		Nd	Temporary.
Public Works.	1			8	8		10	1		1	1		1	1		1	1		1	1		18	4		105	105		Nd	Temporary.
Revenue and Agriculture.	8			2	2		8	1		1	1		1	1		1	1		1	1		21	21		105	105		Nd	Temporary.
Education and Health.	1			3	3		6	1		1	1		1	1		1	1		1	1		14	14		27	27		Nd	Temporary.
Commerce.	1			5	5		6	1		1	1		1	1		1	1		1	1		13	13		9	9		Nd	Temporary.
Industries.	1			3	3		6	2		1	1		1	1		1	1		1	1		18	2		195	195		Nd	Temporary.
Railway Board.	1			12	12		12	1		1	1		1	1		1	1		1	1		30	2		3	3		100	Temporary.
Office of Financial Adviser (Military Finance).	1			3	3		15	6		1	1		1	1		1	1		1	1		24	6		Nd	Nd		Nd	Temporary.

* Excluding officiating officers.

(a) American.
(b) Including
1 Sikh Head
draftsman.

(4) Clerks.

Department.	EUROPEANS.		ANGLO-INDIANS.		HINDUS.		MUHAMMADANS.		SIKHS.	INDIAN CHRISTIANS.	OFFICERS.		TOTAL.	REMARKS.
	Permanent.	* Temporary.	Permanent.	* Temporary.	Permanent.	* Temporary.	Permanent.	* Temporary.	Permanent.	* Temporary.	Permanent.	* Temporary.		
Home	...	...	5	6	19	47	8	...	2	1	...	...	34	14 † Excludes Hindu photographer in the office of the Director, Central Bureau of Information.
Foreign and Political	3	...	5	2	26	9	6	5	2	1	...	...	46	17
Finance	...	...	...	...	28	3	1	...	...	...	...	...	34	4
Legislative	1	...	...	1	18	6	9	2	1	...	1	...	30	9
Army	...	...	8	11	22	52	2	7	2	...	...	...	29	71
Public Works	1	...	2	...	18	4	6	...	...	1	...	...	27	5
Revenue and Agriculture	...	...	2	...	15	2	19	...	4	...	...	...	31	2
Education and Health	...	...	1	...	11	† 1	6	...	1	...	...	...	19	1 † In Calcutta office.
Commerce	...	...	2	...	24	7	3	2	...	2	...	...	29	11
Industries	...	...	1	...	19	2	8	...	...	3	...	...	31	4
Railway Board	...	...	5	2	36	8	10	3	5	...	...	...	(a) 57 (a) 13	(a) Including 13 draftsmen, i.e., 3 Hindus, 7 Muhammadans and 3 Sikhs.
Office of Financial Adviser (Military Finance).	1	1	...	...	20	4	5	1	1	...	...	...	37	6

* Excluding officiating officers.

(5) Stenographers.

Department.	EUROPEANS.		ANGLO-INDIANS.		HINDUS.		MUHAMMADANS.		SIKHS.		INDIAN-CHRISTIANS.		OTHERS.		TOTAL.		REMARKS.
	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	Permanent.	Temporary.	
Home	3	..	2	2	..	..	..	..	..	..	..	..	5	3	
Foreign and Political	1	..	3	..	..	..	..	..	..	..	..	..	4	..	
Finance	1	..	5	..	..	..	..	..	..	..	..	..	6	1	
Legislative	(a) 1	..	2	..	(a) 6	1	..	..	..	..	..	..	(b) 3	..	15	1	(a) Council Porters. (b) Jews.
Army	1	..	1	1	..	..	..	..	..	..	..	..	2	1	
Public Works	1	2	..	..	..	..	..	..	..	..	3	..	
Revenue and Agriculture	3	3	..	..	..	..	..	..	..	..	3	..	
Education and Health	1	..	..	..	..	..	(c) 2	..	3	..	(c) One Parsee and one Jew.
Commerce	4	1	..	..	..	..	..	..	..	..	4	1	
Industries	6	..	..	..	..	..	..	..	..	..	6	..	
Railway Board	5	1	..	..	..	..	..	..	..	..	5	1	
Office of Financial Adviser.	6	..	..	..	..	..	..	..	..	..	6	..	
Military Finance.	

* Excluding officiating officers.

(ii) Proportion of Muslims to non-Muslims in each Department (including temporary appointments).

Home	..	..	13 per cent.	Revenue and Agriculture	..	..	21 per cent.
Foreign and Political	..	..	12 "	Education and Health	..	..	36 "
Finance	..	..	11 "	Commerce	..	..	18 "
Legislative	..	..	15 "	Industries	..	..	15 "
Army	..	..	7 "	Railway Department (Railway Board)	..	..	15 "
Public Works	..	..	14 "	Office of Financial Adviser	..	..	7 "
(iii) Total proportion of Muslims to non-Muslims in all the Departments of the Government of India.				Office of Military Finance	..	..	7 "

About 13 per cent.

(b) Total number of permanent assistants in the Railway Department (Railway Board) is 20 and not "about 10."

QUESTIONS AND ANSWERS.

ALLEGED ABUSE OF LALLA GULZARI LALL BY COLONEL CROFTON, NEEMUCH.

1. ***Mr. Pyari Lal:** (a) Has the attention of the Government been drawn to an article published in the *Cantonment Advocate* of 30th June, 1922, under the heading "Alleged abusing of a member of Cantonment Committee at Neemuch"?

(b) Is it a fact that Lieut.-Colonel Crofton, the President, Neemuch Cantonment Committee, insulted and abused Lalla Gulzari Lal, a member of the Cantonment Committee, Neemuch, in a meeting of that Committee for his having signed a public Memorial for the postponement of the transfer of a local Doctor?

(c) Is the Government aware that as a protest against his "abusing" Lalla Gulzari Lal tendered his resignation of the membership of the Cantonment Committee and this resignation was accepted by the Secretary, Cantonment Committee?

(d) If the reply to the above be in the affirmative, will the Government be pleased to quote the "law" under which a Secretary of the Cantonment Committee is authorised to accept the resignation of a member?

(e) Is the Government aware that the Central Provinces District Headquarters, Mhow, in their letter No. 978-B-Q-3, dated 3rd May, 1922, wrote to Lalla Gulzari Lal that Colonel Crofton will see him and come to an understanding?

(f) Will the Government be pleased to state if Colonel Crofton has since come to an understanding with Mr. Gulzari Lal?

(g) If not, will the Government state what action it has taken or it proposes to take in the matter?

Mr. E. Burdon: (a) Yes.

(b) The Government of India have received conflicting versions of the affair, but it is clear that on a certain occasion Lieutenant-Colonel Crofton made use of forcible language to Lala Gulzari Lal, and that the latter resented it.

(c) Yes.

(d) The action of the Cantonment Committee in accepting the resignation tendered by Lala Gulzari Lal was *ultra vires*, and orders have been issued directing that the acceptance of the resignation should be regularised.

(e) Yes.

(f) and (g). While not admitting that he insulted Lala Gulzari Lal, Lieutenant-Colonel Crofton has expressed his willingness to apologise, and he has been directed by Government to do so.

SALE OF LAND IN AMBALA TO PANDIT S. RAMLALL.

2. ***Mr. Pyari Lal:** (a) Is the Government aware that a large open piece of land used by the milk-sellers (*Ghosis*) of Ambala, ever since the establishment of the Cantonment, was recently given to one Bipat Ramlal on lease, for construction of quarters for the cantonment syees?

(b) Is it a fact that on the day the lease was registered, the transfer of this land, for a consideration of Rs. 7,000 was effected under a separate Deed, registered by the then Cantonment Magistrate, to one Pandit Sompatt Ramlal, a relative of the Head Clerk of the Cantonment?

(c) Is the Government aware that Mr. Ramlall Somdatt has made a formal agreement with Bipat Ram in case of Government making any claim for recovery of Rs. 7,000?

(d) Is it a fact that on the land thus secured by Ram Lall, a large number of residential houses are being constructed and that the land and buildings really represent the interests of the Head Clerk of the Cantonment Committee, Ambala?

(e) Is the Government aware that by leasing this plot of land the Cantonment fund has lost a substantial amount in rent?

(f) Is the Government aware that there is considerable discontent among the milk-sellers on account of their being deprived of this piece of land? If so, how does the Government propose to satisfy the grievance of the milk-sellers?

(g) Is the Government aware that Mr. Bipat Ram in his written statement, a copy of which has been sent to the Cantonment Magistrate, denies having received the sum of Rs. 7,000?

(h) Will the Government enquire into the truth or otherwise of this statement?

(i) Will the Government be pleased to state if the quarters now built are used as a syce line?

Mr. E. Burdon: The Government have ascertained that a piece of land in the Ambala Cantonment was recently granted on lease to Mr. Bipat Ram. The land in question had been used for many years by the milk-sellers of the place. Mr. Bipat Ram is said to have intended to use the site for the construction of houses for syces but this was not actually stated in his application for the lease.

(a) The answer is in the affirmative except that Government do not know whether Pandit Somdatt Ram Lall is related or not to the Head Clerk of the Cantonment Office.

(b) Government have received a document which purports to be a copy of the agreement mentioned. They cannot say whether such an agreement was actually made or not.

(c) It is reported that houses are being constructed on the site in question. The allegation that the land and buildings represent the interest of the Head Clerk has been made but so far as Government are aware has not been substantiated.

(d) The loss in rent is said to be Rs. 30 per annum.

(e) The milk-sellers have submitted petitions on the subject to the local authorities and they have been offered an adjoining piece of land for their use. Government do not propose to take any further action in the matter. The terms on which the milk-sellers previously occupied the site transferred to Mr. Bipat Ram required them to vacate it immediately on receipt of notice.

(f) Government have been informed that Mr. Bipat Ram has made such a statement.

(g) Enquiries have already been made by the Cantonment Magistrate who reports that the money was paid to Mr. Bipat Ram in the presence of the Sub-Registrar.

(i) No.

STANDING ARMY IN INDIA—AUTHORITY FOR.

3. ***Mr. P. P. Ginwala:** Will the Government be pleased to state under what statutory or other authority the Governor General in Council maintains a Standing Army in India, especially in peace times?

Mr. E. Burdon: The right of the East India Company to maintain permanent forces was recognised in the Charter of 1698 and again in the East India Mutiny Act, 1754, and the Government of India Act, 1833. By section 56 of the Government of India Act, 1858, the forces of the Company and the right to maintain them were transferred to the Crown.

Mr. K. Ahmed: Are the Government of India aware that His Highness the Agha Khan said the other day, before he had started from England to India and landed at Bombay, that the major portions of the revenue of India are spent for the upkeep of the Army in India, and for the utilization of the Army outside India, just as it was a few years ago in France and other places, and also in South Africa some time ago, and its object is to keep India under the control of Britain rightly or wrongly?

Mr. E. Burdon: I should like notice of that question.

Mr. K. Ahmed: Is not that a matter in issue, to elicit further facts?

Mr. Deputy President: The Member in charge wants notice from the Honourable Member.

Mr. K. Ahmed: According to the rules, is that not a matter in issue to elicit further facts on the subject?

Mr. Deputy President: No.

STANDING ARMY IN INDIA—PURPOSE OF.

4. ***Mr. P. P. Ginwala:** (i) Will the Government be pleased to state whether the Standing Army in India is maintained (a) for the purpose of preserving internal peace and order, (b) for the defence of India against external aggression?

(ii) If the answer to part (i) is in the affirmative, will the Government be pleased to state the strength, and cost of the field and covering troops, maintained under heads (a) and (b)?

Mr. E. Burdon: (i) The Standing Army in India is maintained both for the purpose of preserving internal peace and order and also for the defence of India against external aggression.

(ii) The proportion of the army detailed as field and covering troops and for the maintenance of internal peace and security is constantly changing. Any part of the Standing Army in India may be employed either for one purpose or the other.

As regards the cost of the Army in India, I would refer the Honourable Member to the Budget estimates for 1922-23.

Mr. K. Ahmed: 60 per cent. of the revenue is spent on the upkeep of the Army and you neglect sanitation, health and education?

EAST INDIAN RAILWAY—APPOINTMENT OF ANGLO-INDIANS AND DOMICILED EUROPEANS TO.

5. ***Sir D. P. Sarvadhikary:** (a) Would the Government please state whether its attention has been called to statements in the correspondence

column of some of the newspapers to the effect that the authorities of the East Indian Railway have received instructions that the Anglo-Indians and Domiciled Europeans who came to the rescue during the strike on the East Indian Railway while His Royal Highness the Prince of Wales was in India, but who were sent adrift as soon as the strike was over, are to have special consideration as vacancies occur and that a list of them is in the office of the Headquarters of the East Indian Railway?

(b) Would the Government please state whether there is any and, if so, what truth in the above statements?

(c) Would the Government please state whether the Government has sanctioned or countenanced such instructions?

Mr. O. D. M. Hindley: (a) The reply is in the affirmative.

(b) The facts of the case are that the Agent, East Indian Railway, has decided that, other considerations being equal, when vacancies occur in posts occupied by Europeans, Anglo-Indians or Indians preference should be given to those who worked during the strike whatever their nationality.

(c) The matter is not one with which Government has any concern. The employes are the Company's servants.

REDUCTIONS IN GARRISON IN INDIA AND HEADQUARTERS COMMAND.

6. ***Sri D. P. Sarvadhikary:** (a) Would the Government please state whether its attention has been called to statements appearing in a London telegram published in some of the newspapers to the effect that the Sub-Committee of the Imperial Defence Committee does not favour substantial reduction of the garrison in India beyond those now being carried out, while the Military Requirements Committee recommends the elimination of certain British units, and that the Whitehall Committee points out methods of reducing expenditure by substantial reductions in the Headquarters Command and staffs which are now reducible to the normal level?

(b) Would the Government please state whether it has received any information to the above effect?

(c) Would the Government please state the amount of the total expenditure of the staffs mentioned in the above statement and what the total expenditure would be when reduced to the normal level?

Mr. E. Burdon: (a) Yes.

(b) The Government are at present unable to make any announcement as regards the findings of the Military Requirements Committee or the decisions to be taken thereon.

(c) The cost of the staff employed at Army Headquarters, as fixed for the current financial year, will be found in the Budget estimates under head IV— "Army Headquarters staff of Commands, etc." The strength of the Headquarters staff, as so provided for, is that which was originally accepted as necessary in the scheme for the post-war reorganization of the army in India. Recently, however, owing to the need for retrenchment, the possibility of reducing the Headquarters establishments has been carefully investigated by a Committee presided over by the Honourable Commerce Member, and the same subject has engaged the attention of the Retrenchment Committee. In the result, certain curtailments have already been decided upon and others are contemplated. The amount of savings to be affected by reductions cannot yet be exactly stated.

Mr. K. C. Neogy: Is it a fact that the reduction of British units, stated to have been already carried out, has been made up by a recent accession of strength of troops from England and Ireland?

Mr. E. Burdon: I am afraid I do not understand the Honourable Member's question. What reduction of British units is referred to?

Mr. K. C. Neogy: The Honourable Member will see that it is stated in this question that the Defence Committee did not favour a substantial reduction of the garrison in India beyond that which was then being carried out. My question relates to this portion of the question, and it is this. Has the portion of the British garrison, stated to have been reduced while the Committee was considering the matter, been made up by a recent accession of strength from England and Ireland?

The Honourable Sir Malcolm Hailey: The Honourable Member will see that he is first of all asking us to disclose the recommendations of the Military Requirements Committee. He is then asking us to state how far those recommendations have been carried out or other measures taken in place of them. My Honourable friend behind me informed him that he was not prepared at present to state what were the recommendations of the Military Requirements Committee nor the attitude of the Home Government in respect of them and we must maintain that reply. But I can inform my Honourable friend, in regard to the suggestion in the latter part of his question, that such replacements as have taken place have been purely in the ordinary course of sending out drafts to fill shortage in existing units.

PURCHASE OF SLEEPERS BY NORTH-WESTERN RAILWAY.

7. ***Dr. Nand Lal:** Is Government aware:

- (a) that the North Western Railway has advertised, inviting tenders for the supply of a large number of sleepers, to be supplied in five years, and purporting to say that the tender should be for the whole supply;
- (b) that there are many Indian timber and sleeper contractors, who individually cannot afford to undertake to make the entire supply;
- (c) that this advertisement and the conditions laid down therein have given rise to feelings of a great grievance amongst the Indian timber merchants against the character and terms of the advertisement and the contract;
- (d) is Government prepared to see that the terms and condition in regard to the character of tenders and contract be altered?

Mr. C. D. M. Hindley: (a) In their original call, the North Western Railway invited tenders for 10 lakhs of sleepers in whole and not in part, but subsequently modified this so as to permit of the submission of part tenders.

- (b) The answer is in the affirmative.
- (c) The modification in the call for tenders was made to meet the circumstances of the smaller timber merchants.
- (d) Under the circumstances, Government have no grounds for taking the action suggested.

STAFF SELECTION BOARD CANDIDATES—APPOINTMENT TO VACANCIES.

8. ***Mr. B. N. Misra:** (a) Is it a fact that the passed candidates of the Staff Selection Board are appointed in various departments of the Government of India in leave and other vacancies for long or short periods and are spared on the expiry of their term, if there is no other vacancy available in that department?

(b) Is it also a fact that even when they get a vacancy in some other department of the Government of India without any break of service, their previous service is not taken into account in determining their position among similar temporary men already working in that department?

(c) Is it also a fact that temporary men have got no service book of any kind in which to keep a record of their services as long as they are temporary?

(d) Do the Government propose to prescribe a brief service book or open sheet which should remain in the possession of every passed candidate of the Staff Selection Board, moving as a temporary hand from one department to another?

The Honourable Sir Malcolm Hailey: (a) The answer is in the affirmative.

(b) This is the ordinary practice but there is no actual bar to the placing of a particular person above the temporary hands already working in a department if such person has superior qualifications.

(c) The answer is in the affirmative.

(d) The Government of India will adopt the suggestion made by the Honourable Member.

Sir Deva Prasad Sarvadhikary: Having regard to the large retrenchments that are going on and must go on, is it advisable to make these temporary appointments now; and if they have to be made, should they not be made from amongst those whose services are being dispensed with?

The Honourable Sir Malcolm Hailey: We are endeavouring to make as few temporary appointments as possible, and I think that the consideration which has been put forward by the Honourable Member is the only means of effecting any temporary replacements of those hands.

Sir Deva Prasad Sarvadhikary: Having regard to the answer of the Honourable the Leader of the House, is it necessary or desirable to keep up the Staff Selection Board and hold examinations which bring so much disappointment to those who sit for these examinations and do not have any chance of obtaining employment.

The Honourable Sir Malcolm Hailey: We have under consideration the question of holding further examinations. I shall subsequently be able to make an explanation to the Honourable Member in that respect.

INDIAN SUPERVISORS OF MILITARY DAIRY FARMS.

9. ***Mr. B. N. Misra:** (a) Will the Government be pleased to state what is the total number of candidates approved by the Controller of Farms for probation as Indian Supervisors of Military Dairy Farms and how many of them have passed the Matriculation Examination?

(b) Will the Government also say how many of the Matriculation passed candidates have been tried and with what results?

(c) What is the pay and future prospects of the posts?

(d) What minimum educational qualification was fixed for selection of candidates for the posts?

(e) Do the Government propose to instruct the officer in charge of the Department that as far as possible only those should be appointed who have passed at least the Matriculation Examination?

Mr. E. Burdon: (a) 310. Of these, 225 have passed the Matriculation examination.

(b) 53 of the candidates who had passed the Matriculation examination were tried, and out of this number 11 candidates either resigned, or did not join, or left the department without giving notice; 5 were considered unsuitable and were discharged. The remainder have only been employed for a few months and up to date their service has been satisfactory.

(c) A statement giving details of the scheme is laid on the table.

(d) and (e) The minimum standard of education generally insisted upon has been that the candidate should have passed the matriculation examination. For special reasons, exceptions have, in the public interest, been made. It has now been definitely laid down for the future that, so far as possible only those should be appointed who have passed at least the matriculation examination or its equivalent.

Details of Scheme.

(a) Candidates within the age limits prescribed in the Civil Service Regulations will be entertained as probationers on a salary of Rs. 60 a month and will be placed under instructions for a period not exceeding one year. They will then undergo a departmental examination, and those who pass it and are otherwise satisfactory will be appointed overseers on probation on a salary of Rs. 100 a month, rising by biennial increments of Rs. 10 to Rs. 160 a month, the first increment being given after 3 years' total service, inclusive of the period of training.

(b) After two years' service on the maximum pay of this grade, that is Rs. 160 a month, they will be granted a further increment of Rs. 15 a month, and this increment will be continued biennially until a maximum of Rs. 250 is reached. There will be an efficiency bar at Rs. 150 and another at Rs. 190. Men employed as stock-yard overseers will receive an allowance of Rs. 20 a month. These men will have the charge of extremely valuable cattle and will have to attend not only to the general work of the cattle-yard but also to the breeding management and rearing of stock. The duties of a stock-overseer require special aptitude, which only a small proportion of the men are likely to possess.

(c) On completion of four years' service from the date of their first engagement, men who have proved satisfactory will be confirmed in their appointments and those found not to be satisfactory will be discharged without delay.

(d) Men who after completing four years' service, have been confirmed in their appointment and, in addition, have been specially selected, will undergo a further course of higher training for one year, and at the close of that year will be examined to see whether they are fit for admission to the higher appointments of managers. Appointments to this grade will be made as vacancies occur.

(e) The pay of the managers will be fixed according to their length of service. They will start on Rs. 200 (not sooner than their 6th year of service) and will receive biennial increments of Rs. 30, rising to a maximum of Rs. 500. There will be efficiency bars at Rs. 290 and Rs. 410.

(f) For the purposes of pension, leave and allowances, the whole establishment will be subject to the Civil Service Regulations and will be allowed to subscribe to the General Provident Fund.

DOUBLE JOURNEYS BY REGISTRARS AND CASHIERS.

10. ***Mr. B. N. Misra:** (a) Is it a fact that the Registrars and Cashiers of the Secretariat accompanied by a clerk or menial go from Simla to Delhi or *vice versa* a few days before the move of their Department and come back after a couple of days' stay to go again with the Department?

(b) Are the Government aware that it costs a large amount twice every year on account of the travelling, daily and other allowances of these officers in addition to the loss suffered by the Departments owing to their absence from duty?

(c) Do the Government propose to consider this question with a view to economy and see whether only one junior man going in advance of the Department would be quite sufficient for the purpose?

The Honourable Sir Malcolm Hailey: (a) The practice referred to by the Honourable Member is followed in only a few of the Departments of the Government of India.

(b) The cost in travelling and other allowances is not very appreciable.

(c) This is already the practice in most departments, and those Departments which follow the practice referred to in part (a) of the question will now consider whether it is possible to adopt this suggestion in lieu of their existing practice.

STAFF SELECTION BOARD—EXTENSION OF SCOPE.

11. ***Mr. B. N. Misra:** (a) Do the Government propose to consider the advisability of extending the scope of the Staff Selection Board to the Accounts and other offices under the Government of India?

(b) Will the Government be pleased to lay on the table a list of offices subordinate to the various Departments of the Government of India?

The Honourable Sir Malcolm Hailey: (a) No.

(b) A statement is being sent to the Honourable Member.

STAFF SELECTION BOARD—STATISTICS OF EXAMINATIONS.

12. ***Mr. B. N. Misra:** (a) Will the Government please lay on the table information on the following points regarding the last examination of the Staff Selection Board for outside candidates?

(1) Total number of candidates who applied with necessary fees.

(2) Total number of candidates who were allowed to appear.

(3) Number of candidates for the upper division of the attached offices.

(4) How many out of (3) are to be called for interview.

(5) How many out of (3) are to be declared successful.

(b) Will the Government please state if Army Headquarters is regarded by the Staff Selection Board as an attached or Secretariat office?

(c) Is it a fact that Army Headquarters is not in receipt of Secretariat pay and allowances?

The Honourable Sir Malcolm Hailey: (a) 1. The total number of candidates who submitted applications accompanied by the necessary fees was 1,012.

2. The total number of candidates who were allowed to appear for the examination was 883.

3. The number of candidates for the Upper Division of Attached Offices was 440.

A very large number of these candidates applied also to be registered for other posts, *e.g.*, in the Lower Division of the Secretariat and as clerks in Attached offices, etc.

4. Of the 440 who applied for posts as Assistants in Attached offices 55 qualified at the written examination and were called up for interview in order to qualify in that capacity. Many others were called up for interview in connection with other appointments for which they had qualified at the written examination.

5. Of the 55 interviewed for Assistantships 48 were declared successful.

(b) The Army Headquarters are treated as a Secretariat office for this purpose.

(c) Yes.

STAFF SELECTION BOARD—METHOD OF MARKING.

13. ***Mr. B. N. Misra:** (a) Will the Government please state how the marks were allotted under each head by the Staff Selection Board for each of the following at their last examination held in July, 1922, for outside candidates?

(1) Written examination, (2) War services, (3) Special qualifications and experience, (4) Interview.

(b) Will the Government please state if any limit has been fixed by the Board for the number to be passed? If so, is the examination intended to be more a competitive than a qualifying test?

The Honourable Sir Malcolm Hailey: (a) A maximum of 300 marks were allotted for the written examination and 50 marks at the interview. The marks allotted at the interview were divided under three heads, *viz.*, up to 10 for "Appearance," up to 10 for "Service" and up to 30 for "Intelligence." For active war service the maximum number of marks under "Service" was granted, *viz.*, 10 marks. For other classes of war service marks were granted according to the length of such service. No marks were allotted for special qualifications as such, since no special qualifications were called for, but those who had special qualifications or experience secured marks either under Intelligence or Service.

(b) The examination is a qualifying one, and no limit as to the number of candidates to be passed was fixed.

STAFF SELECTION BOARD—EMPLOYMENT OF PASSED AND UNPASSED MEN.

14. ***Mr. B. N. Misra:** (a) Will the Government please refer to the reply given to unstarred question No. 350 on the 28th March, 1922, regarding the unpassed men in the Secretariat and attached offices being replaced by passed candidates of the Staff Selection Board and state how far the promise made therein has been carried out?

(b) Will the Government please lay on the table a statement showing the number of unpassed candidates (including those who have appeared at the recent examination) employed in the Upper and Lower divisions of all the Departments of the Secretariat and the attached offices?

(c) What was the total number of outside candidates passed by the Staff Selection Board in 1921, and how many of them were employed on 1st September, 1922?

(d) How many of the passed candidates were not in service on 1st September, 1922, and how many unpassed candidates were in service on the same date?

(e) What steps do the Government propose to take with a view to replace unpassed men by passed men?

(f) Will the Government please call for a list of all unpassed men in service in the various Departments of the Secretariat and the attached offices and state the definite dates by which they will be replaced by passed candidates?

The Honourable Sir Malcolm Hailey: The information is being collected and will be laid on the table when ready.

PROBATIONARY SERVICE IN SECRETARIAT.

15. ***Mr. P. L. Misra:** Will Government be pleased to state the ordinary probationary period for clerks and assistants in the Government of India Secretariats?

The Honourable Sir Malcolm Hailey: The ordinary probationary period is one year.

CLERKS IN SECRETARIAT.

16. ***Mr. P. L. Misra:** Will Government be pleased to lay on the table a statement showing the number of clerks and assistants—officiating and temporary—serving in the Government of India Secretariats together with their length of service?

The Honourable Sir Malcolm Hailey: A statement giving the information required has been prepared and I will send it to the Honourable Member.

PROBATIONARY CLERKS IN SECRETARIAT.

17. ***Mr. P. L. Misra:** (a) Is it a fact that some clerks have been serving for the last several years, but have only been drawing probationary pay?

(b) Why have the Government not given them annual increments?

(c) Do Government propose to confirm the clerks and assistants mentioned in (a) and give them annual increments according to time-scale?

The Honourable Sir Malcolm Hailey: (a) The answer is in the affirmative.

(b) Under paragraph 2 (i) of the Home Department Resolution No. 1062, dated the 27th May 1920, a copy of which will be supplied to the Honourable Member, the regular minima and increments are given only on confirmation.

(c) The temporary clerks and assistants cannot be made permanent unless and until there is an increase in the permanent sanctioned strength.

COMPENSATION TO VILLAGERS IN BANNU.

***18. *Mr. P. L. Misra:** (a) Is it a fact that the Government had promised to compensate the villagers in the Bannu District, who were raided during the past 2 years, out of the allowances paid to the Wazirs?

(b) If so, have the villagers been paid?

(c) If not, why not?

Mr. Denys Bray: (a) No.

(b) and (c) therefore do not arise.

RAIDS IN NORTH-WEST FRONTIER PROVINCE.

19. *Mr. P. L. Misra: Has the attention of Government been drawn to a letter dated 26th July, 1922, printed at page 8 of the *Tribune* news paper headed "Raids in the North-West Frontier Province"? If so, will Government be pleased to state:—

(a) The composition of the gang that committed the dacoity;

(b) The particular section it belonged to;

(c) If the Political Agent or the Resident took any active steps to obtain release of Mussamat Maksudi, wife of Baksha Keja, who has been kidnapped by the gang; or

(d) The restoration of about 80 cattle, including agricultural stock;

(e) If the redress or reparation has not been made, have any reprisals been resorted to, to punish the offenders;

(f) Does this gang also trade in British India;

(g) If so, why has a blockade not been enforced against it?

Mr. Denys Bray: Yes.

(a) and (b) The gang responsible for the Kot Walidad raid on the 30th June last was 24 strong and composed partly of outlaws from British territory under the leadership of Baksha of Kulachi, and partly of Abdur Rahman Khel Mahsuds under the leadership of Tarmacha, a Jalal Khel living with the Abdur Rahman Khels.

(c) The Political Agent and the Resident made all possible enquiries regarding the whereabouts of Mussamat Maksudi, and her relations effected her release by a payment of Rs. 100 to the outlaw Baksha.

(d) The cattle were not restored.

(e) Reprisals against the Abdur Rahman Khels were resorted to in the following August, and consisted of continuous and intensive bombing until that section came to terms and effected a settlement with Government.

(f) As the Abdur Rahman Khels were in open hostility at the time, they did not trade with British India.

(g) The Abdur Rahman Khels were under blockade from 1919 up to the date of their making a settlement with Government.

KOT-WALIDAD KHAN.

20. *Mr. P. L. Misra: (a) Is it a fact that the village Kot-Walidat Khan is an exposed one on the border?

(b) Is it also a fact that the villagers submitted petitions to the Deputy Commissioner for grant of Government rifles on their furnishing proper security for safe custody, and that these petitions were supported by Police and Constabulary officials?

(c) If so, will Government be pleased to state reasons for not granting their prayers?

Mr. Denys Bray: (a) Yes.

(b) No such petitions were received till after the raid of the 30th June last, when the villagers were allotted fifteen Government rifles.

(c) Does not arise.

ARTICLE IN "TRIBUNE" ON N.-W. F. PROVINCE.

21. *Mr. P. L. Misra: (a) Has the attention of Government been drawn to a letter printed in the *Tribune* of the 28th July, 1922, headed "Raids in the North-West Frontier Province"?

(b) If so, what action have the Government taken to remove the grievances stated therein?

Mr. Denys Bray: (a) Yes. The letter in question deals with four cases of kidnapping of Hindus and is inaccurate in many details. All kidnapped persons concerned, except one who was shot dead while attempting to escape, were returned by their captors to British territory without payment of ransom.

(b) It is for the protection of British subjects in the settled districts against such dastardly outrages that the Mahsud Operations were undertaken. The trans-frontier tribesmen responsible for these particular raids were Jalalkhel Mahsuds working in collusion with bad characters from within the Dera Ismail Khan border. This section have been under blockade since 1919. Owing to the inaccessibility of their country effective action against them is difficult but they have been severely punished from the air. In addition to operations within Waziristan the Police and Constabulary in the Dera Ismail Khan District were increased in last July by 410 rifles and 300 Government rifles have been issued for village defence. By these measures a series of successful encounters with trans-frontier raids has been brought off in which captives have been rescued, stolen property recovered, and several raiders killed and wounded.

RANSOMS PAID IN N.-W. F. PROVINCE.

22. *Mr. P. L. Misra: (a) Is it a fact that the following "Force Routine Order", dated Dera Ismail Khan, the 19th April, 1922, was issued

by Major-General T. G. Matheson, C.B., C.M.G., Commanding Waziristan Force:

"The Field Cashier, Dera Ismail Khan, is authorised to pay to the Resident in Waziristan the sum of Rs. 10,000, being the amount of ransom paid to tribesmen for rescuing two aviators who had a forced landing at Wana on 7th April, 1922?"

(b) Will Government be pleased to state the names of the two aviators and the tribesmen who rescued them?

(c) Will Government be also pleased to state the total amount of ransom paid to tribesmen during the last 2 years, in case of Indians who were kidnapped during these 2 years?

Mr. Denys Bray: (a) Yes.

(b) The names of the two aviators are:

Flying Officer Brown.

Flying Officer Jackson.

The names of the principal rescuers are:

Asmat

Sher Ghanni

Bat

Watakai

(c) Nothing has been paid by Government. Amounts paid by private persons are not known.

DEPARTMENTAL EXAMINATIONS IN POLITICAL DEPARTMENT.

23. ***Mr. P. L. Misra:** (a) Will Government be pleased to state if the following officers of the Political Department have passed any Departmental Examination:

- (1) Captain P. Gaisford,
- (2) Major R. G. Hind,
- (3) Captain C. G. N. Edwards,
- (4) Captain G. L. Mallam,
- (5) Captain C. S. I. Berkeley,
- (6) Captain G. Kirkbride, and
- (7) Captain I. Brookman?

(b) If so, when and what examinations have they passed?

(c) Is it a fact that all these officers have been exercising first class and summary powers?

(d) If the answer to (b) be in the negative and to (c) in the affirmative will Government be pleased to state why these officers have been invested with such high powers?

Mr. Denys Bray: (a) No.

(b) Does not arise.

(c) Two of the officers have exercised first class and summary powers. Three have exercised first class powers, but not summary powers. The other two have exercised neither.

(d) Owing to the shortage of officers due to the War, arrangements are now being made to withdraw junior officers for the usual training in a major province.

RAILWAY SALOON CARRIAGES.

24. ***Mr. P. L. Misra:** Will Government be pleased to give a statement showing:

- (a) The number of Saloon Carriages especially built during the last 3 years for the use of Railway Officials;
- (b) The total cost of Saloons so built;
- (c) The rank and position of Railway Officials who use these Saloons; and
- (d) To what head has this expenditure been charged?

Mr. C. D. M. Hindley: (a) The number of saloon carriages built during the last three years for the use, or part use, of railway officials is 40.

(b) The total cost of these saloons is Rs. 7,42,529.

(c) Six are for officers of the rank of Agent, Head of a department or Government Inspector, 21 are for the use of District officers or Assistant officers, 8 are for inspecting subordinate officers and 5 are of the type used by District officers but are not exclusively reserved for railway officials.

(d) Rs. 4,03,587 have been charged to Capital, and Rs. 3,38,942 to Revenue. Seventeen of these saloon carriages have been built on renewal account, i.e., in replacement of a similar number removed from service.

Mr. B. S. Kamat: Were there any special saloon carriages built during this period for officials other than railway officials?

Mr. C. D. M. Hindley: I should like to have notice of that question.

RAILWAY QUARTERS.

25. ***Mr. P. L. Misra:** Will Government be pleased to lay on the table a statement showing:

- (a) The number and cost of quarters under construction for the use of Railway Officials; both European and Anglo-Indian?
- (b) The designation of Railway Officials for whom these quarters are being built or have already been built?
- (c) How were these officials housed before the construction of these new buildings?
- (d) How will the old buildings be utilised?
- (e) Are any new quarters under construction for the use of Indian officials? If so, will Government be pleased to state their cost and number?

Mr. C. D. M. Hindley: Government are not prepared to ask railway administrations for the information required for the statement as they consider that the labour involved in the preparation of the statement will be out of all proportion to its value.

SWIMMING BATH IN AJMER.

26. ***Mr. P. L. Misra:** (a) Is it a fact that the Loco Department at Ajmer has provided or is about to provide a swimming bath for the use of European employees?

(b) If so, will Government be pleased to state the cost of the swimming bath?

(c) To what head has this expenditure been charged?

Mr. C. D. M. Hindley: (a) The reply is in the negative.

(b) and (c) Do not arise.

B. N. RAILWAY—CONSTRUCTION OF TALCHER RAILWAY.

27. ***Mr. P. L. Misra:** (a) Has the attention of Government been drawn to the telegram in the *Pioneer*, dated 15th September, 1922, from its Calcutta Correspondent, stating that the Bengal Nagpur Railway Company have already commenced the construction of the Talcher Railway?

(b) If so, what sum is the Bengal Nagpur Railway Company going to devote to the work during the current year, and from what source is it to be derived?

(c) Was the Central Advisory Council invited to express their opinion on the construction of the Talcher Railway by the Bengal Nagpur Railway? If so, when and what opinion did they express?

(d) Have the Central Railway Advisory Council approved of any proposal to devote any portion of the Thirty Crore Railway allotment of the present year, to purposes other than rehabilitation and betterment of the existing railways? If so, in what cases and for what reasons?

Mr. C. D. M. Hindley: (a) Yes.

(b) Rs. 6 lakhs from Railway Programme funds.

(c) and (d) The reply is in the negative, but the Honourable Member's attention is invited to paragraph 13 of the report of the Railway Finance Committee.

Sir Deva Prasad Sarvadhikary: May I ask a Supplementary question, Sir? When an allocation has been made to a particular Company, is it necessary or obligatory for it to come up for sanction regarding detailed expenditure either to the Advisory Board or the Assembly or is it free to appropriate or re-appropriate as it chooses?

Mr. C. D. M. Hindley: Do I understand this is in connection with this particular question or is it a general question?

Sir Deva Prasad Sarvadhikary: Generally.

Mr. C. D. M. Hindley: I should like to have notice.

REPORT OF PRESS ACT COMMITTEE.

28. ***Mr. K. C. Neogy:** (a) Was the report of the Press Act Committee of 1921 forwarded to the Secretary of State with a covering despatch from the Government of India? If so, when?

(b) Was any reply received from the Secretary of State to the said despatch? If so, when?

(c) Will Government be pleased to lay on the table the despatches, if any, that passed between the Secretary of State and the Government of India in this connexion?

The Honourable Sir Malcolm Hailey: (a) The report was forwarded to the Secretary of State under cover of a letter dated the 30th June 1922.

(b) and (c) It would be contrary to Standing Orders of the Secretary of State to publish the correspondence referred to.

PRESS LAW REPEAL AND AMENDMENT ACT.

20. ***Mr. K. O. Neogy:** (a) Will Government be pleased to state whether the Press Law Repeal and Amendment Act of 1922 was forwarded to the Secretary of State under section 69 of the Government of India Act? If so, when?

(b) Is it a fact that the Secretary of State viewed with disfavour certain aspects of the Press Law Repeal and Amendment Act of 1922? If so, on what grounds?

(c) Is it a fact that the Secretary of State made a definite suggestion for the enactment of a legislative measure giving protection to the Indian Princes and Chiefs against seditious attacks in the Press in British India?

(d) Is it also a fact that the Secretary of State intimated the possibility of His Majesty in Council signifying his disallowance of the Press Law Repeal and Amendment Act of 1922, under section 69 of the Government of India Act, if a legislative measure giving protection to the Indian Princes and Chiefs against seditious attacks in the Press were not enacted?

Mr. Denys Bray: (a) Yes, on the 22nd September, 1921. As regards (b), (c) and (d), the Honourable Member is referred to the correspondence published in the Gazette of India Extraordinary of the 25th November, 1922, which gives an account of the genesis of the Bill. The Government of India do not propose to ask permission to publish any further correspondence between the Secretary of State and themselves on the subject.

INDIAN STATES (PROTECTION AGAINST DISAFFECTION) ACT.

30. ***Mr. K. O. Neogy:** Will Government be pleased to lay on the table the correspondence that may have passed between the Secretary of State and the Government of India, regarding the legislative enactment giving protection to the Indian Princes and Chiefs against seditious attacks in the Press in British India?

Mr. Denys Bray: The Honourable Member is referred to the answer to his question No. 29.

RESPONSIBILITY TO PASSENGERS BY THE BRITISH INDIA STEAM NAVIGATION COMPANY.

31. ***Mr. Jamnadas Dwarkadas:** (a) Will Government be pleased to state whether attention of the Government has been drawn to the fact that in the Notice to Passengers issued by the British India Steam Navigation Company there is a clause as follows:

"The Company will not be responsible for and shall be exempt from all liability in respect of any detention, loss, damage or injury, whether fatal or otherwise, if or to the holders of tickets issued by this Company or their Agents, his property or effects

belonging to or carried by or with him, whether the same shall arise from, or be occasioned by the act of God, the King's enemies, dangers of the seas, rivers or navigation, collision, fire, thefts or robberies, whether by a person in the employment of the Company or by others, accidents to or by machinery, boilers or steam, accidents by sea or by land, unskilful, improper or careless navigation, or any other acts, defaults or negligences of the Company's Agents, servants or employers of any kind whatsoever, etc."?

(b) If so, is the Government aware that great harm is done to Indian commercial interests from the operation of such clause and what action do the Government intend to take about this?

The Honourable Mr. C. A. Innes: (a) Yes.

(b) It is understood that the clause referred to, or an adaptation thereof, appears in all notices to passengers issued by Steam Navigation Companies in India and as there is nothing to show that harm is caused to commercial interests thereby the Government of India do not intend to take any action in the matter.

Mr. K. Ahmed: May I ask a Supplementary question, Sir? Is it not derogatory to the principle of legislation in this country?

The Honourable Mr. C. A. Innes: That is a matter of opinion.

EMPLOYEES IN THE OFFICE OF THE HIGH COMMISSIONER FOR INDIA.

32. ***Mr. Manmohandas Ramji:** Will the Government be pleased to inform:

(1) how many persons are employed under the High Commissioner for India in London; and

(2) their pay, allowance, nationality and educational qualifications?

The Honourable Mr. C. A. Innes: (1) The staff under the High Commissioner in London, including therein all messengers, labourers, etc., and all departments numbered 567 on September 21st, 1922.

(2) The Government has no detailed information about the educational qualifications of the each individual, but the clerical staff is required to be of the same educational standard in each grade as that fixed for employment in the corresponding grade in the Home Civil Service. The Government would be pleased to show to the Honourable Member the High Commissioner's establishment list, in which the other particulars asked for are given, but do not consider the expense of printing it to be necessary.

RESOLUTIONS IN THE ASSEMBLY.

33. ***Mr. B. N. Misra:** Will the Government be pleased to state the number of:

(a) Resolutions sent by (i) Official, (ii) Non-official Members of the Assembly during 1921 and 1922, respectively?

(b) The number of the Resolutions admitted by the Hon'ble the President?

(c) The number of (i) Official, (ii) Non-official Resolutions that came up for discussion before the Assembly during each year?

Sir Henry Moncrieff Smith: A statement is laid on the table which gives the information asked for by the Honourable Member.

Statement showing the number of resolutions (official and non-official) received, admitted and actually moved in the Legislative Assembly since its inauguration in 1921.

Session.	TOTAL NUMBER OF RESOLUTIONS OF WHICH NOTICE RECEIVED.		Total number of resolutions admitted. (Official and non-official).	TOTAL NUMBER OF RESOLUTIONS ACTUALLY MOVED.	
	Official.	Non-official.		Official.	Non-official.
Delhi session, 1921	9	185	129	8	25
Simla session, 1921	9	220	104	8	20
Delhi session, 1922	3	204	224	3	35
Simla session, 1922	7	255	236	6	9

N.B.—In cases where several Members gave notice of the same Resolution the notice by each Member has been counted as a separate Resolution.

RESOLUTIONS NOT DISCUSSED IN THE ASSEMBLY.

34. ***Mr. B. N. Misra:** (a) Will the Government be pleased to state how many of the admitted Resolutions could not come up for discussion before the House and the reason why they could not be reached?

(b) If for want of time the Resolutions could not come up before the House for discussion, will the Government be pleased to allow sufficient time this Session so that all the Resolutions may come up and be discussed before the House?

Sir Henry Moncrieff Smith: (a) The number of admitted Resolutions which did not come up for discussion can be ascertained from the Statement which I have just laid on the table in answer to the preceding question. The figures are as follows:—

1921	{ Delhi term	95 Resolutions.
	{ Simla term	176 "
1922	{ Delhi term	186 "
	{ Simla term	221 "

It is obvious that the reason why these Resolutions did not come up for discussion is that there was not possible to allot sufficient time for the discussion of so many Resolutions.

(b) Under rule 6 of the Indian Legislative Rules the power to allot time for the discussion of non-official Resolutions is vested in His Excellency the Governor General and not in the Government of India, and I would invite the Honourable Member's attention to the instructions contained in rule 6 for the exercise of that power. I may also state for the Honourable Member's information that there are now more than 250 admitted Resolutions undisposed of.

Mr. W. M. Hussainally: May I ask a supplementary question, Sir? Is it contemplated by the Government to extend the time for non-official business?

Sir Henry Moncrieff Smith: The Governor General—the power is not in the Government, but in the Governor General—has to have regard to the public interests in allotting time. I have just told the House that there are 250 Resolutions waiting to be disposed of. If three days a week were allotted for the disposal of Resolutions, those 250 Resolutions would take the House 30 weeks of continuous sittings to dispose of. I think the Honourable Member will therefore see that it is impossible to provide that all Resolutions of which notice is received should come up for discussion.

Mr. K. Ahmed: Is not this House specially meant for the benefit of this country and its representatives to bring forward Resolutions, and is it not the duty of the Government to allot more days for non-official Resolutions in preference to Government business for the benefit of the Government?

Sir Henry Moncrieff Smith: I was not aware that this House was created as solely a Debating Society.

Mr. K. Ahmed: Did I say, Sir, that it was a Debating Society? My question is whether in a week's time or taking all the working days of the Assembly together, the major portion of it is meant for official business only or for non-official business affecting the country and its representatives?

Rao Bahadur T. Rangachariar: Is the President of this Assembly consulted in allotting days for non-official business?

Sir Henry Moncrieff Smith: The President is invariably consulted in regard to the allotment of days for non-official business before the Governor General's orders are taken.

INDIANS IN THE INDIAN MEDICAL SERVICE.

35. ***Rai Bahadur Bakshi Sohan Lal:** (a) Is the Government aware that a large number of qualified Indian Medical men are still in temporary Indian Medical Service waiting for appointment by nomination to the permanent cadre of Indian Medical Service?

(b) Will the Government be pleased to state if there are any more Indians to be taken into the permanent cadre of Indian Medical Service and, if so, the dates about which the selection is to be made?

Mr. E. Burdon: (a) There are still many Indian officers temporarily employed in the Indian Medical Service but the Government are unable to say how many of these desire to obtain permanent commissions.

(b) More Indians will be taken into the Indian Medical Service but no precise date can be given. During the last four years 91 Indians have received permanent appointments.

Sir Deva Prasad Sarvadhikary: May I ask a Supplementary Question, Sir? In making these thirty appointments recently by the Secretary of State, were the claims of those who had already served as Temporary Officers taken into consideration in the way that the Honourable Sir Malcolm Hailey has been good enough to tell us to-day that temporary services are taken into consideration in making permanent appointments in the departments of which he spoke?

Mr. E. Burdon: The number of permanent officers at present in the Service, when the thirty officers to whom the Honourable Member just referred have been appointed, would be less than the authorised cadre in the Indian Medical Service.

Sir Deva Prasad Sarvadhikary: I am afraid, Sir, that is not my question. I shall repeat it. In making these 30 appointments, did the Secretary of State take into consideration the claims of those who had served as temporary officers and whose services had the first claim on the Secretary of State according to the proposition to which the Honourable Sir Malcolm Hailey has agreed in answering another Supplementary Question this morning?

Mr. E. Burdon: The claims of the temporary officers were taken into consideration.

Mr. T. V. Seshagiri Ayyar: Of these 30 people who will soon be coming in, would any of them replace the existing temporary officers who have been promoted from the Provincial Service; would any of these 30 men replace the men already in the Provincial Service?

Mr. E. Burdon: I cannot say definitely off hand. I should like to have notice of the question.

Mr. K. Ahmed: It would be a burden on the revenue, would it not, Sir?

MEMORIALS FROM MEMBERS OF THE INDIAN CIVIL SERVICE.

331. *Rai Bahadur Bakshi Sohan Lal: (a) Has the attention of Government been drawn to the references that have been made in the Indian newspapers as to the memorials submitted by the members of Indian Civil Service from different Provinces to the Secretary of State for India in Council?

(b) If so, will Government be pleased to place copies of the memorials on the table together with the remarks, if any, of His Excellency the Governor General thereon?

The Honourable Sir Malcolm Hailey: (a) The Government are not sure what references in the newspapers the Honourable Member has in view. Memorials have been submitted by members of the Indian Civil Service in the various provinces to the Secretary of State in Council and there have been numerous references in the Press to questions relating to the all-India services including the Indian Civil Service.

(b) The answer is in the negative.

Sir Deva Prasad Sarvadhikary: A Supplementary Question, Sir? Has there been any reference to the Secretary of State without any reference to the Government of India from any province? If so, what action has the Secretary of State or the Government of India taken on that?

The Honourable Sir Malcolm Hailey: -I shall be able to answer that question if the Honourable Member will inform me as to what he means by a representation to the Secretary of State and on what matter?

Sir Deva Prasad Sarvadhikary: Representation regarding grievances of the services from any particular province or jointly?

The Honourable Sir Malcolm Hailey: The Honourable Member asks me whether there has been any representation from the services to the

Secretary of State. As far as I am aware, memorials sent direct to the Secretary of State are invariably returned by him for submission through the proper channel. If any such memorials had reached the Secretary of State and had not been so returned to the memorialists for submission through the proper channel, I should naturally have been unaware of the fact.

PASSED CANDIDATES OF THE STAFF SELECTION BOARD.

37. ***Rai Bahadur Bakshi Sohan Lal:** (a) Is it a fact that the passed candidates of the Staff Selection Board are appointed in leave and other temporary vacancies in some Department of the Secretariat and are spared when there is no vacancy available in that Department?

(b) Is it also a fact that even when they get a vacancy in some other Department of the Secretariat without any break of service, their previous service is not taken into account in determining their position among similar temporary men?

(c) Is it a fact that temporary men have got no service book in which to keep a record of their services as long as they are temporary?

(d) Do the Government propose to prescribe a brief service book (or open sheet) which should remain in the possession of every passed candidate moving as a temporary clerk from one Department to another?

The Honourable Sir Malcolm Halley: The Honourable Member is referred to the reply given to-day to Mr. B. N. Misra's question on subject No. 8.

UNPASSED CANDIDATES OF THE STAFF SELECTION BOARD.

38. ***Rai Bahadur Bakshi Sohan Lal:** (a) Will the Government please lay on the table a statement showing the number of unpassed candidates employed in the Lower and Upper divisions of the Foreign and Political Legislative and Commerce Departments of the Secretariat?

(b) What was the total number of outside candidates passed by the Staff Selection Board in 1921 and how many of them were in Secretariat service on 1st September, 1922?

(c) How many of the passed candidates were not in service on 1st September, 1922, and how many unpassed men were in service on the same day?

(d) What steps do the Government propose to take with a view to replace unpassed men by passed men?

(e) Will the Government be pleased to call for a list of all unpassed men in the various Departments showing also definite dates by which they will be replaced by passed candidates?

The Honourable Sir Malcolm Halley: The information is being collected and will be laid on the table when ready.

STAFF SELECTION BOARD EXAMINATION.

39. ***Rai Bahadur Bakshi Sohan Lal:** (a) Will the Government please state the following facts about the last examination of the Staff Selection Board for outside candidates:

- (1) Total number of candidates who applied for all the examinations.
- (2) number of those who applied for the upper division of the attached offices (Assistants).
- (3) number of those allowed to appear and of those who actually appeared for it.
- (4) how many of them are likely to be called for interview at Simla?

(b) Are the Government aware that some of the Departments of the Secretariat and Army Headquarters are dismissing more men, on account of reduction or otherwise, than can be taken in by other Departments and that it is causing great hardship on those who have to remain unprovided at Simla?

(c) How do the Government propose to provide the additional number of 110 outside candidates who are to be declared successful by the Board on the result of the examination which was held in July last and when is the result likely to be published in the *Gazette of India*?

(d) Is the Army Headquarters establishment in receipt of pay and allowances of the Secretariat and is it considered to be a Secretariat or attached office for the purposes of recruitment by the Staff Selection Board?

(e) Is it a fact that the Board has re-examined the Departmental men in view of the rumour that the questions had leaked out?

(f) Does the Board intend to hold a second or short additional test in drafting and office routine for such of the outside candidates as pass the first examination?

The Honourable Sir Malcolm Hailey: (a) (1) The total number of outside candidates who applied for permission to sit for the examination was 1,012

(2) The number who applied for the Upper Division of Attached Offices was 440.

(3) The number of those allowed to appear was 420 and of those who actually appeared was 338.

Most of these men also appeared for other categories of appointments.

(4) The number of those shown in answer (3) above who were called for the interview in Simla was 80.

(b) and (c) The position does not appear to be as stated, and it is assumed that the men whose services are being dispensed with are men without permanent appointments.

(Altogether 105 outside candidates passed the Board's examination but there are still a few left who, owing to absence, have not completed the test). The Board have already been able to offer employment to several of the candidates who had passed the recent examination, e.g., of the 10 candidates who qualified as Typist in the Secretariat, every one has either secured or been offered employment. The results have been published in the *Gazette of India*, dated the 30th December, 1922.

(d) The Army Headquarters establishment is not in receipt of the pay and allowances of the Secretariat proper but for purposes of recruitment by the Staff Selection Board, it is treated in the same way as the establishment of the Secretariat.

(e) Yes.

(f) No.

DISTURBANCES IN THE WAZIR FORCE.

40. **Rai Bahadur Bakshi Sohan Lal:** (a) Will the Government be pleased to state briefly the present condition of disturbances in the Wazir Force as compared with that 6 months back?

(b) Do the Government propose to keep all the additional troops and establishments in the Wazir Force? If so, how long?

(c) Will the Government be pleased to lay on the table a statement showing expenditure on Military establishments and troops in the Wazir Force for 1914-15 and 1919-20?

(d) Do the Government propose to reduce this increase of expenditure? If so, in what way and when?

Mr. E. Burdon: (a) There was a decided improvement in the situation in Waziristan during the six months June to November, 1922, as compared with the period December, 1921 to May 1922, as the following statistics will show:—

During December 1921 to May 1922, the number of military casualties was 183, whereas during the period June to November 1922, our casualties only numbered 70, while the number of hostile actions decreased by 26. As regards outrages against the civil population in the Administered Territory (Derajat and Bannu Districts) these number 110 during the period December 1921 to May 1922, as compared with 57 during June to November 1922. During the month of November 1922, however, a more definitely hostile attitude was adopted in South Waziristan by some sections of Mahsuds and Wazirs in consequence of which punitive measures, in the shape of bombing by aeroplanes, were undertaken commencing from the 17th December 1922.

(b) and (d) The Government cannot, at the present time, make any statement in regard to this. It would be contrary to the public interest to do so.

(c) The attention of the Honourable Member is invited to the reply given in the Council of State on the 7th September last to question No. 64.

SERGEANTS IN ARMY HEADQUARTERS.

41. ***Rai Bahadur Bakshi Sohan Lal:** (a) Will the Government lay on the table a statement showing the number of Sergeants and Staff-Sergeants employed in the various Branches and Directorates of the Army Headquarters on clerical and assistant's work?

(b) What is the minimum pay of an Indian Lower Division clerk and what is that of the women clerks employed in the Army Headquarters?

(c) What are the total pay and allowances (including regimental) of a Staff-Sergeant employed in the Army Headquarters on clerical work?

(d) Do the Government propose to consider the necessity of replacing the Military and women clerks by Indian clerks and assistants as early as possible?

(e) If so, when?

Mr. E. Burdon: (a) A statement is laid on the table.

(b) The minimum pay of second (or lower) division clerks whether European (civilian) or Indian, is Rs. 75 for new entrants and Rs. 90 on confirmation, and that of women clerks Rs. 100 during probation and Rs. 120 on confirmation.

(c) A British soldier who enters the Upper Division starts on the same rate of pay, namely, Rs. 175 as civilian members of that division. A British soldier entering the Lower Division starts on Rs. 140 since it is

necessary to give an initial rate which shall be higher than the pay and allowances admissible to the soldier if employed regimentally. On confirmation such soldiers formerly became staff-sergeants; now they become civilians. After confirmation they are promoted on the prescribed incremental scales, namely, Rs. 90—8—250 (special grade Rs. 250—25—300) for second division clerks, and Rs. 200—12—440 (lower time scale) and Rs. 200—12—344—350—20—450 (Upper time scale) for first division assistants. Soldier and ex-soldier clerks do not draw regimental rates of pay.

(d) and (e) The question of restricting the number of soldier and ex-soldier clerks employed at Army Headquarters is under consideration and has not yet been finally decided. It is necessary to retain a certain proportion of clerks of this class on account of the knowledge and experience of military matters gained by service in the ranks of British units.

The employment of women clerks on the present scale is in the main a result of the war. Their numbers will diminish with time but there are certain kinds of clerical work which it has been held can most suitably be entrusted to women clerks.

Total number of Sergeants and Staff Sergeants employed at Army Headquarters.*

Branch.	On clerical work.	On technical work.
General Staff Branch	8	9
Adjutant General's Branch	14	...
Quartermaster General's Branch	2	21
Ordnance Branch	1	...
Military Secretary's Branch . . . . .	...	...
Medical Directorate	1	...
Military Works Directorate	1	...
Assistant Military Secretary (Personnel)	1	...
Total	28	24

INTER CLASS ACCOMMODATION IN MAIL TRAINS.

42. ***Rai Bahadur Bakshi Sohan Lal:** (a) Do the Government propose to connect Delhi, the capital of India with Calcutta, Bombay and Peshawar by through Mail trains providing Inter Class accommodation for the benefit of Secretariat and other people and their families?

(b) Is it a fact that both the Bombay Mail trains carry Inter Class up to Lahore only?

* Including temporary and officiating.

(c) Will the Government consider the desirability of having Inter Class accommodation provided in Bombay Mails up to Peshawar for the convenience of middle class people on long journeys?

(d) Is it a fact that both the Bombay Mail trains *via* Bhatinda and *via* Saharanpur leave Delhi for Lahore at practically the same time in the evening thus diminishing their utility?

(e) Will the Government consider the desirability of instructing the authorities concerned to so arrange that there should be a difference of at least 3 hours in their timings?

Mr. C. D. M. Hindley: (a) (b) and (c). Inter class accommodation is provided on the Punjab Mail between Delhi and Howrah (Calcutta).

Government does not propose to press the Great Indian Peninsula Railway to make such provision on their mail trains between Bombay and Delhi as the brakes and postal mail vans with other classes of accommodation make up the full load of these trains.

A fast express with inter accommodation runs between Delhi and Bombay leaving Victoria Terminus at 22 hours and arriving at Delhi at 8 hours on the third day. The train is practically run at mail speed and does the journey in 34 hours from Bombay to Delhi and in 30 hours and 40 minutes from Delhi to Bombay.

In view of the number of passengers using Nos. 3 Up and 4 Down which are the only mail trains running between Lahore and Peshawar it does not appear to be feasible to make such provision on these trains also. It is true that at present intermediate class accommodation is provided on the Bombay, Baroda and Central India and Great Indian Peninsula Bombay Mails over the North-Western Railway to the extent of one and two intermediate class bogie carriages respectively as far as Lahore, but beyond Lahore owing to the graded section the loads of the mail trains with single engines are now at their maxima. The provision of inter class accommodation between Lahore and Peshawar would entail the use of an extra engine on each of these trains.

(d) It is true that the two Up Bombay Mail trains leave Delhi for Lahore within an hour and a half of each other but as, apart from Lahore Station, these two trains serve two distinct sections of the North-Western Railway, this fact does not in any way diminish their utility for the passengers for whom they are intended.

(e) It is not possible to allow a larger margin between the arrival of both the Punjab Mails at Delhi because these two trains are amalgamated at Lahore and they must arrive at Delhi at about the same time.

Sir Deva Prasad Sarvadhiary: Having regard to the difficulties just mentioned, would the Railway Administration consider the desirability of providing greater and better facilities for reserved accommodation in the Intermediate and Third class on the Express trains for the members of the public and of the Secretariat? I ask this question, particularly in view of the recent decision that clerks getting Rs 100 will get third class allowance and therefore will have to travel with menials.

Mr. C. D. M. Hindley: I think all I can say in reply to that is that the suggestion, I believe, is under consideration by some of the Railway Administrations.

Mr. M. M. Joshi: May I ask, Sir, what will pay the Government more, whether to carry First and Second class carriages or third class carriages with the mail?

Mr. C. D. M. Hindley: I am quite unable to give an answer to that, Sir. It is a matter of statistics which I have not got with me.

Mr. Jamnadas Dwarkadas: Sir, before the House proceeds with the business on the agenda, I should like to ask your permission
12 Noon. to ask a question, an important question, of which I have given private notice to the Honourable Member for Revenue and Agriculture. I may inform you, Sir, that the Government have kindly consented to answer this question at short notice. Have I your permission to ask it. (Here the Deputy President nodded assent) The question runs thus.—Has the attention of the Government of India been drawn to a report in the Press that the elections to the Legislative Council in Kenya will be held in February? In view of the fact that no decision has yet been announced on the general question of franchise in that Colony, and the grave concern which is felt by the Indian community both in Kenya and in this country over the matter, will the Government be pleased to press for an early decision so as to enable the Indian community to participate in the elections?

Mr. J. Hullah: Yes. The Government of India have telegraphed to the Secretary of State asking him, if necessary, to obtain the postponement of the next general election until Indians are able to participate.

Mr. Jamnadas Dwarkadas: Can the Government throw any further light on this question? Is it likely that the elections will be postponed?

Mr. J. Hullah: I have no official intimation to that effect, but I see in this morning's Reuters telegram a statement that "it is thought that it will be in the interests of all parties to delay the elections for the Kenya Council in order to give ample time for the consideration of the proposals and for holding the next election on any new electoral basis which may be adopted."

UNSTARRED QUESTIONS AND ANSWERS.

VACANCIES ON ASSAM-BENGAL RAILWAY

1 Rai Bahadur G. C. Nag: Will Government kindly state how many vacancies or new appointments in the superior service occurred on the Assam-Bengal Railway during the last 10 years and how many of them were filled by public advertisement and how many pure Indians were appointed in the different departments?

Mr. C. D. M. Hindley: Forty seven new appointments to the superior service of the Assam Bengal Railway were made during the last ten years. Of these nine were Indians who were appointed as follows.

5 to the Engineering Department.

1 each to the Traffic and Audit Departments and 2 to the Medical Department.

Most of the appointments were made by the Home Board in London, and the Agent of the railway is unable to say whether the appointments were filled by public advertisement or not.

PROBATIONERS ON ASSAM-BENGAL RAILWAY.

2. Rai Bahadur G. C. Nag: Will Government kindly state the number of pure Indian probationers in the Loco. and Traffic departments of the Assam-Bengal Railway and how many of them are under probation for the Senior Subordinate Grades and when the first probationer was admitted?

Mr. C. D. M. Hindley: One Indian Traffic Probationer for the superior service was appointed on 1st August 1918 and he is now acting as an Assistant Traffic Superintendent. No Indian Locomotive probationer of the same class has been appointed. During the last ten years there have been 500 Indian probationers in the subordinate grades of various departments.

A probationer of this class, with abilities, if confirmed, is able to rise to the top grade of the subordinate cadre.

ASSAM-BENGAL RAILWAY: ENGINEERING DEPARTMENT.

3. Rai Bahadur G. C. Nag: Will Government kindly state how many European officers were recruited for the Engineering department of the Assam-Bengal Railway during the last three years and how many of them have left the service and how many were sent back to England at railway expense?

Mr. C. D. M. Hindley: Five European officers were appointed in the last three years. One resigned and received a return passage back in terms of his agreement.

ADMINISTRATIVE POSTS IN RAILWAY BOARD.

4. Rai Bahadur G. C. Nag: Will Government kindly state (a) whether any of the administrative posts at the headquarters of the Railway Board requiring engineering qualifications have ever been filled by officers of the Company-worked State railways and whether any were held by Indians, (b) if the reply is in the negative, why not?

Mr. C. D. M. Hindley: (a) It is not clear what precise information the Honourable Member wants but if, as is assumed, he refers to the selection for appointment as Chief Engineer with the Railway Board the reply to both parts of this question is in the negative..

(b) The reason is that the appointment is borne on the State Railway Engineer cadre and that senior and fully qualified European State Railway Engineers were available and selected for the appointment.

VACANCIES ON RAILWAYS.

5. Rai Bahadur G. C. Nag: Is it the normal practice on railways to reserve vacancies in substantive appointments as they occur to be filled by probationers on the satisfactory completion of their stipulated probationary period?

Mr. C. D. M. Hindley: Probationers are taken on in accordance with an estimate of the vacancies which will admit of their permanent appointment on the termination of their probationary period.

WATERWAYS ON BENGAL RAILWAYS.

6. Mr. J. N. Mukherjee: (a) Has the Government any information as to the insufficiency of the waterways in the line of the Eastern Bengal Railway and the Railways connected with it, in northern and north-eastern Bengal, to afford a rapid and free outflow of water in times of extraordinary floods, such for example, as came about towards the end of September, 1922? Has the attention of the Government been drawn to the opinion of Dr. Bentley published in the daily papers of Calcutta in October last, in this connection?

(b) Do the Government propose to take any steps with a view to collect accurate information as to the impediments caused by the said Railways to a free and rapid outflow of flood-water at times of excessive flood, and to remove them by providing larger escapes in the said railway alignments?

Mr. C. D. M. Hindley: Immediately after the floods of September last an investigation into the adequacy, or otherwise, of the waterways in the railway embankments chiefly concerned was undertaken by the Senior Government Inspector of Railways in consultation with the Bengal Government and the Eastern Bengal Railway Administration. Subsequently the Railway Board decided to obtain the services of a fully qualified and independent authority to report on the question, and with the permission of His Highness the Maharaja of Patiala, the Chief Engineer of that State, Rai Rala Ram Bahadur, C.I.E., I.S.O., was deputed for this purpose. His report was received in December, and arrangements were made immediately to give effect to his recommendations. A copy of the report will be placed in the Library as soon as possible.

The attention of Government has not been specifically drawn to the opinion expressed by Dr. Bentley, but they are aware of it from the Press reports.

ADDITIONAL DISTRICT MAGISTRATE, DELHI.

7. Mr. Mohammad Faiyaz Khan: Will the Government be pleased to state if it is true (a) that the present post of an additional District Magistrate of Delhi is being held by an Englishman or an Anglo-Indian?

(b) That he is not a member of the Indian Civil Service but belongs to the Provincial Civil Service?

(c) That he is also drawing Rs. 100 a month as a local allowance?

(d) That two of his subordinate officers—the City Magistrate of Delhi and the Revenue Officer of Delhi—also belong to the same Provincial Civil Service and both these officers are also senior to him in their services?

(e) That no local allowances are being given to both these officers?

(f) That last year a City Magistrate of Delhi was posted as his subordinate, but he soon got himself retransferred from Delhi on account of the same?

(g) If the above statements are true, will the Government be pleased to state the reasons which led the Government to overlook the seniorities and services of other officers before the appointment of the Additional District Magistrate of Delhi, and what special qualification does the present Additional District Magistrate hold?

The Honourable Sir Malcolm Hailey: (a), (b) and (c) The answer is in the affirmative.

(d) The two officers named are not subordinate to the Additional District Magistrate. The Additional District Magistrate is merely one of the staff of 1st class Magistrates who is gazetted under section 10 (2), Criminal Procedure Code, to exercise the powers of the District Magistrate to relieve the latter of a certain amount of work. All three officers are equally subordinate to the District Magistrate and Collector.

(e) No allowance is attached to the post of Revenue Assistant, but the City Magistrate draws a duty allowance of Rs. 50 per mensem for discharging the additional duties of Secretary to the Notified Area Committee.

(f) The facts are not as stated. The officer named held the post of City Magistrate during the absence on leave of the permanent incumbent and was transferred on the latter's return to duty.

(g) In view of the facts as stated above this part of the question does not arise.

RESOLUTIONS PASSED BY LEGISLATURES.

8. **Lala Girdhari Lal Agarwala:** Will the Government be pleased to lay on the table a statement showing the Resolutions hitherto passed by the Legislative Assembly and the Council of State and the effect given to them by the Government in each case?

Sir Henry Moncrieff Smith: The Honourable Member has already received most of the information asked for by him in the reply given to a question asked by him in this Assembly on the 6th September, 1922. I would refer him to pages 107-109 of the Legislative Assembly Debates, Volume III. Statements in regard to the Resolutions adopted by the two Houses during the September Session, 1922, are laid on the table.

Statement showing the Resolutions adopted by the Legislative Assembly during the September Session, 1922, and action taken by Government thereon.

Serial No.	Date on which moved.	By whom.	Subject of resolution.	Department concerned.	Action taken by Government.
1	7th September, 1922.	Baba Ujagar Singh Bedi	Amendment of clause (4) of rule 12 of the rules for the election and nomination of Members of the Provincial Legislative Council as well as of the Legislative Assembly.	Home	The Secretary of State has been addressed in the matter.
2	Ditto	Mr. N. M. Joshi	Improvement in travelling facilities for third class passengers.	Railway	Agents of railways have been asked to make a careful examination of the main grievances on their lines and to submit a report as to what is being done to remedy them.
3	Ditto	Sardar Balasahr (Bijay Singh)	Removal of restrictions imposed on the export of wheat, pulses and oil-seeds from India.	Revenue and Agriculture.	All restrictions on the export of food-grains were removed with effect from the 29th September, 1922. There is no embargo on the export of oil-seeds from India.
4	Ditto	Mr. K. B. L. Armitage	Premier's speech of the 4th August, 1922, on the Reform.	Home	The resolution adopted by the Assembly was communicated to the Secretary of State.
5	11th September, 1922.	Mr. J. Hullah	Recruitment for the Indian Forest Service.	Revenue and Agriculture.	The resolution has been communicated to His Majesty's Secretary of State for India for information. No final decision has yet been arrived at on the recommendations made therein.
6	Ditto	Honourable Mr. C. A. Innes.	Weekly rest day in commercial establishments as recommended by the General Conference of the International Labour Organisation of the League of Nations convened at Geneva on the 25th October, 1921.	Commerce	The recommendation of the Assembly has been accepted by the Government of India and action taken accordingly. A copy of the resolution has also been communicated to the Secretary General of the League of Nations.

Serial No.	Date on which moved.	By whom	Subject of resolution.	Department concerned.	Action taken by Government.
7	11th September, 1922.	Honourable Mr. C. A. Luncs.	Recommendations of the Genoa Seamen's Conference concerning the limitation of hours of work in inland navigation.	Commerce	The recommendation of the Assembly that no action should be taken in the matter has been accepted by the Government of India. A copy of the resolution has also been communicated to the Secretary General of the League of Nations.
8	Ditto	Honourable Mr. C. A. Luncs.	Draft Conventions adopted by the Geneva Labour Conference of 1921.	Commerce	The recommendation made by the Assembly to ratify these draft Conventions has been accepted by the Government of India; and the question of amending the Merchant Shipping Acts in order to give effect to this decision is under consideration. The India Office has been asked to communicate this decision to the League of Nations.
9	12th September, 1922.	Honourable Sir W. Vincent.	Revision of the Electoral Rules	Home	A Committee was appointed in pursuance of the resolution. The Committee have submitted their report and the report has been forwarded to the Secretary of State.
10	23rd September, 1922.	Mr. M. S. D. Butler	Indian Research Fund Association.	Education and Health.	The Government of India have approved the proposals of the Governing Body referred to in Parts I and II of the resolution. As regards Part III necessary action is being taken in consultation with the Government Solicitor with a view definitely to accept the offer made by the donors towards the Imperial Medical Research Institute.

Statement showing the Resolutions adopted by the Council of State during the Simla term, 1922, and the action taken by Government thereon.

Serial No.	Date on which moved.	By whom.	Subject of Resolution.	Action taken by Government.
1	15th September, 1922.	The Honourable Mr. S. P. O'Donnell.	Appointment of a Committee to examine and report on the desirability of amending the Electoral Rules of the Indian Legislature and the Provincial Legislative Councils.	A Committee was appointed in pursuance of the Resolution. The Committee have submitted their report and the report has been forwarded to the Secretary of State.
2	16th September, 1922.	The Honourable Mr. Phiroze C. Nethana.	Recruitment and training of probationers for the Indian Forest Service.	The resolution has been forwarded to the India Office for the information of His Majesty's Secretary of State for India. No final decision has been arrived at on the recommendations contained therein.
3	Ditto	The Honourable Mr. H. A. F. Lindsey.	Limitation of hours of work on inland navigation.	The recommendation of the Council of State that no action should be taken in the matter has been accepted by the Government of India. A copy of the Resolution has also been communicated to the Secretary General of the League of Nations.
4	Ditto	The Honourable Mr. H. A. F. Lindsey.	Trimmers, stokers and children employed at sea	The recommendation made by the Council of State to ratify the Draft Conventions of the General Labour Conference on this subject has been accepted by the Government of India, and the question of amending the Merchant Shipping Acts to give effect to this decision is under consideration. The India Office has been asked to communicate this decision to the League of Nations.
5	Ditto	The Honourable Mr. H. A. F. Lindsey.	Weekly rest day in commercial establishments.	The recommendation of the Council has been accepted by the Government of India and action taken accordingly. A copy of the Resolution has also been communicated to the Secretary General of the League of Nations.
6	24th September, 1922.	The Honourable Sardar Jogendra Singh.	Recommendations of the Railway Committee and the reconstitution of the Railway Board so as to provide for a strong Indian representation.	The question of the reorganisation of the Railway Board is at present under consideration. As the scope of the changes which are to be made may be affected by the Report of the Retrenchment Committee no decision can be arrived at until that Report is received.
7.	Ditto	The Honourable Mr. Vaman Govind Kale.	Collection, compilation and publication of statistics relating to the economic, social and constitutional progress of India.	The Director-General of Commercial Intelligence has been asked to examine all the publications of the Department of Statistics with a view to see that so far as possible the statistics in their new and simpler form will meet all practical requirements.

COMMITTEES.

-9. **Lala Girdhari Lal Agarwala:** (a) Will the Government be pleased to lay on the table a statement showing the Committees appointed (1) by a Resolution of the Council of State, or (2) the Legislative Assembly, or (3) appointed by order of the Government, with their dates of appointment, their personnel in each case, the money spent on each of these Committees and its result in each case?

(b) Are the findings of the Committees in any case kept confidential and not laid on the table of the House or otherwise made known to the members of the Indian Legislatures? Are the Government prepared to publish such reports?

(c) In how many and what cases were the reports of any such Committees laid before the Government and orders passed finally without the consultation of the Indian Legislature?

The Honourable Sir Malcolm Hailey: The attention of the Honourable Member is invited to the statement laid on the table on the 6th September, 1922, by my predecessor in reply to a question asked by Lieutenant-Colonel Gidney regarding the cost of Committees appointed by the Government of India. *The Government of India do not consider that any sufficiently useful purpose would be served by undertaking the labour involved in amplifying that statement to give the further information asked by the Honourable Member.* If he will refer to the list of Committees included in those statements he will probably be able himself to decide in the cases of such Committees as he was interested in whether the Report has been published and as to whether action has been taken upon it.

HIGH COMMISSIONER FOR INDIA.

10. **Lala Girdhari Lal Agarwala:** (a) For what period was the present High Commissioner for India in London appointed? (b) Is an Indian debarred from being appointed to that post? (c) In whose hands does the appointment rest? (d) Have the Government of India decided to appoint a suitable Indian for the post in future?

The Honourable Mr. C. A. Innes: Under the terms of His Majesty's Order in Council dated the 12th August, 1920, which was published in the notification of the Government, No. 6534, dated the 2nd October, 1920, the person appointed as High Commissioner for India in the United Kingdom is to hold office for a period not exceeding five years, but is at the same time eligible for re-appointment. The Order in Council also prescribes that the appointment of High Commissioner shall be made by the Governor General in Council with the approval of His Majesty's Secretary of State for India in Council. An Indian is not debarred from holding the appointment. No decision has yet been arrived at on the question of a permanent successor to the late Sir William Meyer.

RETRENCHMENT PROPOSALS.

11. **Lala Girdhari Lal Agarwala:** Will the Government be pleased to lay on the table a summary of the proposals for retrenchment as prepared

by the Government to be laid before the Retrenchment Committee and also the proposals of the said Committee so far as possible?

The Honourable Sir Basil Blackett: The House will be fully informed on this subject at the earliest opportunity.

SECTS, CREEDS AND APPOINTMENTS IN MADRAS.

12. **M. K. Reddi Garu:** Will the Government be pleased to collect the following information regarding the Presidency of Madras and place it on the table:

- (a) How many Brahmins, Non-Brahmins, Hindus, Muhammadans, Christians and Anglo-Indians are employed in the grades of the Gazetted officers in the Madras Postal Circle, including the Telegraph Department?
- (b) How many Postal Inspectors, Post Masters are Brahmins, non-Brahmins, Muhammadans and Christians?
- (c) In the offices of the Post Master General, Presidency Post Master and the Superintendents of Post Offices, how many clerks of the higher grade are Brahmins, non-Brahmins, Muhammadans and Christians?

Colonel Sir Sydney Crookshank: It is regretted that the information cannot be obtained without undue labour and expense.

INDIANS AND NON-INDIANS AS GOVERNORS, CHIEF JUSTICES, ETC

13. **Lala Girdhari Lal Agarwala:** (a) Will the Government be pleased to lay on the table a statement showing on 1st January, 1923 or about that time the number of Indians and non-Indians in the following posts, viz., Governors of Provinces, Chief Justices, Chief Judges and other heads of highest Judicial Courts in India as well as Judges of High Courts or of other highest Judicial Courts in India?

(b) What new posts, if any, are going to be created in the High Court Benches or in other highest Judicial Courts in India in the year 1923?

(c) Which of the posts referred to in part (a) of this question are likely to fall vacant either permanently or temporarily in the year 1923?

(d) Of the posts referred to in parts (b) and (c) of this question, how many are proposed to be given to Indians?

(e) Has the Indian element in any of the above posts been reduced within the last one year, if so, what?

The Honourable Sir Malcolm Hailey: (a) A statement is laid on the table.

(b) (c) and (d) The Government has no precise information as to the post likely to be created or the vacancies likely to occur and is not in a position to say how many, if any, Indians will be appointed. With the

exception of posts of Additional Judges of High Courts, to none of these posts are appointments made by or on the recommendation of the Government of India.

(c) One post, namely, the Governorship of Bihar, which was held by an Indian until 29th November 1921, and is now held by a European.

Statement showing the number of Indians and non-Indians employed in certain high posts in India on the 1st January, 1923.

	Number of Indians.	Number of non- Indians.
Governors of Provinces . . . . .	...	9
Chief Justices	1	6
Heads of highest Judicial Courts	1	4
Judges of High Courts or of other highest Judicial Courts in India.	27	50

INDIANS AND NON-INDIANS IN IMPERIAL SECRETARIAT.

14. **Lala Girdhari Lal Agarwala:** (1) Will the Government be pleased to lay on the table a statement showing on 1st January, 1923 or about that time:

(a) The total number of Secretaries, Deputy Secretaries and Assistant Secretaries in the Imperial Government Secretariat?

(b) Registrars and other heads of Departments in Imperial offices?

(c) The number of Indians and non-Indians in each case?

(2) What temporary or permanent appointments are going to be made in any of the posts referred to above in the year 1923 on account of vacancies or creation of new posts and which of those posts are proposed to be given to Indians?

(3) Are any of the posts referred to above going to be retrenched? If so, is any Indian to be reduced thereby? Has the Indian element in any of the above posts been reduced within the last one year? If so, what?

The Honourable Sir Malcolm Hailey: (1) A statement giving the information required is laid on the table.

(2) It is not possible to say how vacancies which may occur during 1923 will be filled, or whether any new posts will be created.

(3) Government are not in a position to answer the first part of the question. The answer to the second part of the question is in the negative.

Statement showing the number of Secretaries, Deputy Secretaries, etc., employed in the Government of India Secretariat, on the 1st January 1923.

DEPARTMENTS.	NUMBER OF SECRETARIES.			NUMBER OF JOINT SECRETARIES.		NUMBER OF DEPUTY SECRETARIES.		NUMBER OF UNDER SECRETARIES.		NUMBER OF ASSISTANT SECRETARIES.		NUMBER OF REGISTERARS.		NUMBER OF OTHER OFFICERS NOT BELOW THE RANK OF OFFICERS.		REMARKS.
	Indians.	Non-Indians.	Indians.	Non-Indians.	Indians.	Non-Indians.	Indians.	Non-Indians.	Indians.	Non-Indians.	Indians.	Non-Indians.	Indians.	Non-Indians.	Indians.	
Home	...	1	...	...	...	1	...	...	...	...	...	...	...	2 (a)	1	Non-Indians.
Foreign and Political	...	2	...	...	...	2	...	...	...	...	...	...	...	1 (c)	1	Indians.
Finance	...	1	...	...	...	1	...	...	...	...	...	...	...	1 (d)	4	Non-Indians.
Army	...	1	...	...	...	1	...	...	...	...	...	...	...	1 (e)	1	Indians.
Public Works	...	1	...	...	...	1	...	...	...	...	...	...	...	1 (f)	1	Non-Indians.
Legislative	...	1	...	...	...	1	...	...	...	...	...	...	...	3 (h)	2	Indians.
Revenue and Agriculture	...	1	...	...	...	1	...	...	...	...	...	...	...	2 (i)	1	Non-Indians.
Commerce	...	1	...	...	...	1	...	...	...	...	...	...	...	1 (j)	1	Indians.
Railway Board	...	1	...	...	...	1	...	...	...	...	...	...	...	5 (k)	4	Non-Indians.
Education and Health	...	1	...	...	...	1	...	...	...	...	...	...	...	2 (m)	3	Indians.
Industries	...	1	...	...	...	2	...	...	...	...	...	...	...	1 (n)	3	Non-Indians.
Offices of Financial Adviser.	1 (o)	...	...	...	...	4 (p)	...	...	...	...	...	...	...	...	2	Indians.
Offices of Military Finance.
TOTAL	2	11	1	3	3	15	2	8	6	14	1	7	6	18	21	76

(k) Attached—

- 1 Accountant General.
1 Deputy Accountant General.
1 Assistant Accountant General.

- (l) 1 Chief Commissioner of Railways, 2 Members, Railway Board, 1 Chief Engineer, 1 Chief Mechanical Engineer.
(m) Educational Commissioner and Curator, Bureau of Education (the latter post will be abolished on the expiry of leave of the present incumbent).
(n) Controller (Labour Bureau).
(o) Financial Adviser.
(p) Deputy Financial Adviser.
(q) Assistant Financial Adviser.

(e) Inspector of Office Procedure and Director of Central Bureau of Information.

(b) Assistant Director of Central Bureau of Information.

(c) Attaché.

(d) The appointment will be abolished from 1st April 1923.

(e) Officer on special duty in connection with the Retrenchment Committee.

(f) Establishment Officer.

(g) 2nd Assistant Solicitor.

(h) Solicitor, Assistant Solicitor and Officer on Special duty.

(i) Inspector (General of Forests and Assistant Inspector General of Forests.

(j) Actuary to the Government of India.

GOVERNMENT OF INDIA SUPERIOR POSTS.

15. Lala Girdhari Lal Agarwala: How many persons belonging to the United Provinces have been employed under the Government of India, in any superior post within the last one year and how many have been taken from Bengal and the Punjab during that period?

The Honourable Sir Malcolm Hailey: The information asked for is given in a statement which is being sent to the Honourable Member.

TOLLS ON MUTHRA RAILWAY BRIDGE.

16. Lala Girdhari Lal Agarwala: What steps have the Government taken or propose to take to free the Muthra Railway Bridge from tolls on wheel and passenger traffic? Will the Government be pleased to lay on the table all correspondence on the subject?

Mr. C. D. M. Hindley: The Government of the United Provinces have announced that as soon as their financial position improves they propose to make the bridge free of tolls. There the matter rests for the present. Until the Government of the United Provinces agree to the payment of compensation to the Bombay, Baroda and Central India Railway for the loss occasioned by the abolition of tolls, no further action can be taken. The Government regret that the correspondence cannot be placed on the table.

TELEPHONE CONNECTIONS WITH DELHI AND SIMLA.

17. Lala Girdhari Lal Agarwala: (a) Will the Government be pleased to state which of the official permanent capitals of the Provinces are connected by telephone directly with Delhi and Simla?

(b) Is Allahabad the official permanent capital of the United Provinces and is it directly connected by telephone with Delhi and Simla. If not, is it proposed to be so connected?

Colonel Sir Sydney Crookshank: (a) Lahore is the only official capital of a Province in direct telephonic communication with Delhi and Simla.

(b) Allahabad is the official capital of the United Provinces and when the Automatic Exchange now being set up there is completed, telephonic communication between Allahabad and Delhi will be open to the public. Owing to the distance, commercial speech will not be possible between Allahabad and Simla until repeaters are fitted in Delhi, and it cannot be stated at present when this will be done.

POLITICAL PRISONERS.

18. Lala Girdhari Lal Agarwala: Have the Government taken or do they propose to take any steps (a) to set at liberty persons imprisoned for political offences; and

(b) to withdraw the Criminal Law Amendment Act from the localities to which it had been made applicable about the time of the Royal visit and thereafter?

The Honourable Sir Malcolm Hailey: The Government of India do not propose to interfere with the discretion of local Governments in either matter.

STATE-OWNED RAILWAYS WORKED BY COMPANIES.

19. **Lala Girdhari Lal Agarwala:** Will the Government be pleased to lay on the table a list of the State-owned Railways worked by Companies, with the respective dates of the expiry of their contracts and to state which of these Companies have mostly Indian capital?

Mr. O. D. M. Hindley: The information asked for by the Honourable Member in the first part of his question will be found in the "History of Indian Railways" a copy of which is in the library of the House.

The capital of the railway companies under consideration is in sterling and the Government of India are not in a position to state whether and to what extent Indian capital has contributed to it

PAY OF HIGH COURT STAFF, UNITED PROVINCES.

20. **Lala Girdhari Lal Agarwala:** 1. Have the Government seen a paragraph in the *Pioneer* of Allahabad, dated 29th November, 1922, at page 9, column 4, headed "High Court staff's pay"?

2. Will the Government be pleased to state what action, if any, have they taken within the last 5 years in the exercise of their powers of control over the High Court at Allahabad under section 6 of the Letters Patent as amended with regard to the remuneration of the clerks and ministerial officers of the aforesaid High Court?

The Honourable Sir Malcolm Hailey: 1. The Government of India have seen the paragraph in question.

2. Under clause 6 of the Letters Patent establishing the High Court of Judicature at Allahabad the salaries of officers and clerks of the Court are such as the Honourable the Chief Justice may appoint and the Government of the United Provinces, subject to the control of the Government of India may approve of. The control referred to is exercisable in accordance with the provisions of the general orders governing expenditure from provincial revenues. In fact under the present orders the control is control by the Secretary of State in Council, and, so far as individual salaries are concerned it only comes into operation when it is proposed to increase the salary of an appointment which is fixed or is proposed to be fixed at above the rate of Rs. 1,200 a month. The Governor General in Council is therefore not primarily concerned with the remuneration of these persons, and under the orders referred to no reference in the matter has recently come before him. The local Government has full power to decide questions connected with the remuneration of these persons subject to such limitations as I have indicated and presumably no question which could not be decided by the local Government has arisen.

PAY AND PROSPECTS OF CLERKS AND MINISTERIAL OFFICERS.

21. **Lala Girdhari Lal Agarwala:** Will the Government be pleased to lay on the table a comparative statement showing the scales of pay, rates of promotion and prospects of the Clerks and Ministerial Officers attached to Allahabad High Court and the Calcutta High Court and Imperial Secretariats?

CLERKS AND MINISTERIAL OFFICERS, UNITED PROVINCES.

22. **Lala Girdhari Lal Agarwala:** Has the following principle laid down by the Right Hon'ble the Secretary of State for India for regulating the

salary of the establishment been applied to the Clerks and Ministerial Officers of the Allahabad High Court:

"It is highly desirable that the remuneration of all ministerial establishment employed at any particular station whether their salaries fall on the Military, the Imperial, Civil or Provincial budget, should be pitched, either directly or indirectly by means of allowance, as to give such equality of remuneration for similar labour as will prevent just cause of discontent"?

REPRESENTATION FROM CLERKS, ETC., UNITED PROVINCES HIGH COURT.

23. **Lala Girdhari Lal Agarwala:** Did the Hon'ble the Chief Justice of the Allahabad High Court receive any representation from the Clerks and Ministerial Officers of the said High Court regarding the increase in their pay and forward it to the United Provinces Government with a letter of recommendation to His Excellency the Governor of the United Provinces in or about July, 1922? If so, will the Government be pleased to lay on the table a copy of all the correspondence on the subject?

Have the Government of India been approached in the matter referred to above, if so, when and with what result?

DISCONTENT AMONG CLERKS, ETC., UNITED PROVINCES HIGH COURT.

24. **Lala Girdhari Lal Agarwala:** What action have the Government taken or do they propose to take to "prevent just cause of discontent," among the Clerks and Ministerial Officers of the High Court at Allahabad in the exercise of their powers of control under Section 6 of the Letters Patent as amended?

INCREASE TO PAY OF UNITED PROVINCES HIGH COURT CLERKS, ETC.

25. **Lala Girdhari Lal Agarwala:** Is it a fact that the Allahabad High Court yields a profit of nearly 2½ lacs a year and that the increase claimed by the Clerks and Ministerial Officers of that Court or proposed by the Hon'ble the Chief Justice of that Court would create no additional burden on the general Provincial Revenues?

The Honourable Sir Malcolm Hailey: The Government of India have no information as to the scales of pay, rates of promotion and prospects of the clerks and ministerial officers of the Allahabad High Court. They are not primarily concerned with these matters. They have therefore not called for the information from the local Government and they are accordingly unable to supply the statement or information asked for in this and the following questions 95 to 98.

FOREIGN ENLISTMENT ACT, 1870.

26. **Mr. Mohammad Faiyaz Khan:** (a) Will the Government be pleased to state if the Foreign Enlistment Act of 1870 is operative or enforced in British India?

(b) If the answer is in the affirmative, will the Government be pleased to state what statute in India or England makes this Act operative in the whole or a part of India, many parts of which were not then even under the British Crown?

(c) Is there any distinction in the 1870 Act in respect of Asiatic Nations and European Nations?

(d) Is this Act operative in the British Colonies?

(e) At what moment does this Act begin to operate?

(f) At what stage does the "consent or license"—as given in this Act—from His Majesty become necessary?

The Honourable Sir Malcolm Hailey: (a), (b) and (d). The Honourable Member is referred to Section 2 of the Act.

(c) No.

(e) The Honourable Member is referred to Section 3 of the Act.

(f) The Honourable Member is referred to the relevant provisions of the Act.

POLITICAL PRISONERS AND SERVICE IN LEGISLATURE.

27. Mr. Mohammad Faiyaz Khan: Will the Government be pleased to remove the restriction which debars persons, who have undergone imprisonment, from election to serve in a Legislative Council or in the Indian Legislature and permit all such persons to stand in the Reformed Council Election who have undergone simple or rigorous imprisonment on account of their political views or deeds? If the Government is not prepared to remove such restrictions will it be pleased to state the reason why?

The Honourable Sir Malcolm Hailey: Under sub-rule (2) of rule 5 of the Electoral Rules a person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting is not eligible for election for five years from the date of the expiration of the sentence unless the offence of which he was convicted has been pardoned. I would remind the Honourable Member that a pardon, which would have the effect of removing the bar where it exists, is granted by the Governor General and not by the Governor General in Council. I am not aware whether the Honourable Member has the authority of the persons affected in suggesting that the Governor General should exercise his powers on their behalf.

POLITICAL PRISONERS IN DELHI JAIL.

28. Mr. Mohammad Faiyaz Khan: (a) How many political prisoners are in Delhi jail at present?

(b) How many of them are treated as special class prisoners?

The Honourable Sir Malcolm Hailey: The information has been called for and will be supplied when available.

MOULANA QUTBUDDIN, EDITOR OF THE "CONGRESS."

29. Mr. Mohammad Faiyaz Khan: Are the Government aware that Moulana Qutbuddin, Editor of the "Congress" and a prominent Muslim of Delhi who is undergoing 3 years' rigorous imprisonment in Delhi jail, is not given the preferential treatment to which he is entitled by reason of his good social status, education, etc.? If he is not treated as a special class prisoner will the Government be pleased to state the reason and do the Government propose to issue immediate instructions to the effect mentioned above?

The Honourable Sir Malcolm Hailey: The information has been called for, and will be supplied to the Honourable Member when available.

DUTY ON MOTOR SPIRITS.

30. Mr. Mohammad Faiyaz Khan: (1) Will the Government be pleased to state if it is true:

- (a) that an Act in 1917 was passed to impose a duty of six annas per gallon on all motor spirits produced in India and Burma,
- (b) that this Act still applies to petrol consumed in India and Burma,
- (c) that there is no tax at all on petrol exported to foreign countries—the Governor General in Council having exempted exported petrol from such tax.

(2) What is the amount of petrol exported to foreign countries from Burma since this Act was passed?

(3) What is the reason for not taxing the petrol exported from Burma to foreign countries?

(4) Is it true that the Oil Companies at Burma themselves value petrol at one anna and six pies per gallon while the petrol charges at Bombay are charged two rupees per gallon for exactly the same petrol?

The Honourable Mr. C. A. Innes: 1. (a) and (b) Yes.

(c) The position is as stated by the Honourable Member. Excise duties being duties on consumption, a refund of excise duty is granted in the case of all commodities subject to such duties in order to enable these goods when exported, to compete on equal terms with similar goods of foreign origin in foreign markets. In exempting exported petrol from this excise duty, the Government of India followed this general principle.

2. The export of benzine and petrol from Burma since 1917 was as follows:

	Gallons.
1917-18	18,934,711
1918-19	22,600,932
1919-20	36,222,584
1920-21	18,856,638
1921-22	20,156,323
1922-23 up to October 1922	12,872,217
Total	129,643,435

3. Attention is invited to the answer to (c) above.

4. No. The Honourable Member has probably been misled by the figures of total value published in the returns of Sea Borne Trade of last and previous years, calculations from which do give his figure. Those were not, however, the figures reported by the Oil Companies. It is not known how this old conventional rate became established but it was of long standing. The Collector of Customs, Rangoon, noticed the discrepancy and ~~abolished~~ ^{abolished} it in March 1922 and if the Honourable Member will refer to

the volumes of Sea-borne trade published every month from April last, he will see correct figures of value have been given. The same applies to the last published volume of Annual Returns.

AGRICULTURAL RESEARCH INSTITUTE, PUSA.

31. Rai Bahadur Lachmi Prasad Sinha: Adverting to the *ad interim* reply and subsequent informations given to Question No. 70 asked on the 6th September, 1922, regarding the Agricultural Research Institute and College at Pusa, will the Government be pleased to give the following additional informations :

- (a) What quantity of different kinds of seeds and manures were supplied each year from 1908 to 1922 to the different local Agricultural Departments and Agriculturists?
- (b) What general or particular steps, if any, have been taken to improve the milching of Indian cattle?
- (c) What is the meaning of short course training, which is said to have been imparted to 223 students? Are these regular students of the College?
- (d) Are the students, who were imparted special study in Laboratories included in the Post-Graduate training class or are they separate students?
- (e) Is it a fact that a sum of Rs. 76,46,000 has been spent from the year 1903-04 up to 1921-22 over the education of students, numbering 123, in Post-Graduate training class, 223 in short course training class and 23 in the class of special study in Laboratories?

Mr. J. Hullah: The information asked for is being collected and will be supplied to the Honourable Member as soon as possible.

WAITING ROOM AT MOHESHKHUNT.

32. Rai Bahadur Lachmi Prasad Sinha: (a) Will the Government be pleased to state what steps have been taken in regard to the providing of a Waiting Room at Moheshkhunt Station on the Bengal and North-Western Railway?

(b) Will the Government be further pleased to state if any new Waiting Room has been constructed on the Bengal and North-Western Railway line ever since September, 1922, and if so, where and what is the number of first and second class passengers booked to and from those stations?

Mr. C. D. M. Hindley: (a) A reference in this matter has been made to the Bengal and North-Western Railway who now state that a first and second class waiting room at Moheshkhunt Station will be provided as soon as possible.

(b) No waiting room on the Bengal and North-Western Railway has been constructed since September 1922.

DR. GOUR'S CIVIL MARRIAGE BILL.

33. †Lala Girdhari Lal Agarwala: Will Dr. Gour, M.L.A., be pleased to state whether he has received a copy of the resolution adopted at a meeting of the Parsees held on the 26th November, 1922 protesting

†The reply to this question will be printed in a later issue of these Debates.

against the Honourable Member's Civil Marriage Bill and if so, will he be pleased to place a copy of the same on the table?

REPRESENTATION AGAINST CIVIL MARRIAGE BILL.

34. Lala Girdhari Lal Agarwala: Have the Government received any representation from the Council of Parsee Central Association praying that the Bill to amend Act III of 1872 (Civil Marriage Bill) be not enacted into law, at least so as to affect the Parsee community in any way?

• **Sir Henry Moncrieff Smith:** The answer is in the affirmative.

SIR MONTAGU WEBB AND A BARONETCY.

35. Mr. Mohammad Faiyaz Khan: (a) Has the attention of the Government been drawn to the rumour published in many papers that Sir Montagu Webb, Kt., of Karachi had written a letter to an English paper in England to the effect that some time ago the Home Department had suggested to him to contribute some 20 thousand pounds towards a particular fund and on payment of this sum the Home Department would get him the title of "Baronet"?

(b) If the above statement is true, what action do Government propose to take in the matter?

Mr. Denys Bray: (a) The Honourable Member is no doubt referring to a letter written by Sir Montagu Webb to the London "Morning Post" and reproduced in various Indian papers. This letter contains a reference to the Home Government, i.e., His Majesty's Government, but none, of course, to the Home Department of the Government of India.

(b) Does not arise.

LECTURES BY MR. RUSTOMJI IN UNITED STATES OF AMERICA.

36. Mr. Mohammad Faiyaz Khan: (a) Will the Government be pleased to state if the Government of Bombay or the Government of India is paying any remuneration to Mr. Rustomji in the United States of America for his lectures, etc., about India in the United States of America?

(b) Was the said Mr. Rustomji connected with any paper at Bombay some time ago?

(c) What was the reason for his leaving the paper?

The Honourable Sir Malcolm Hailey: (a) Mr. Rustomji is in receipt of certain allowances towards which the Government of India contribute.

(b) and (c) Government are not prepared to give any information.

MEDICAL RESEARCH CHAIRS IN CENTRAL RESEARCH INSTITUTE, DELHI.

37. Rai Sahib Lakshmi Narayan Lal: (a) Have the Government taken any step for the inauguration of Chairs in the Central Research Institute, Delhi for research in the medicines of the indigenous systems by experts of those systems?

(b) If not, do the Government propose to take any such step in near future?

(c) Will the Government be pleased to lay on the table a detailed account of what has been done and of what is going to be done in the said Institute?

Mr. A. C. Chatterjee: (a), (b) and (c) The scheme for the establishment of an Imperial Medical Research Institute has not yet been finally settled. For information on the subject the Honourable Member is referred to my speech in the Assembly on the 23rd September 1922.

SPECIAL RECRUITMENT FOR INDIAN MEDICAL SERVICE.

38. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state:

- (a) Whether it is a fact that the Government propose to recruit 30 Europeans to the Indian Medical Service every year and on special terms?
- (b) What would be the cost of each recruit for serving in India for 5 years?
- (c) Why was this unusual step taken and the necessity therefor?

Mr. E. Burdon: (a) No. The present proposal is to obtain 30 European officers during this year only.

(b) The officers will serve under the ordinary Indian Medical Service regulations as regards pay and allowances, etc., except that a special gratuity will be granted in lieu of pension.

(c) I invite the Honourable Member's attention to the reply given to the question asked by Rai Bahadur Bakshi Sohan Lal, No. 81.

EXODUS TO SIMLA.

39. **Mr. B. Venkatapatiraju:** (a) Has the attention of the Government been drawn to the statement of Sir Edwin Lutyens that "the Government could if it liked stay down in Delhi most if not the whole of the hot weather and that he was sure the personnel would keep better health than they did at Simla"?

(b) Will the Government be pleased to reconsider the possibility of materially reducing the expenditure of Simla Exodus?

(c) What would be the savings to the Indian Exchequer, if Exodus to Simla is wholly stopped?

The Honourable Sir Malcolm Halley: (a) Yes. It is assumed that the statement refers to the period after the new capital has been completed.

(b) The matter is now receiving the attention of the Retrenchment Committee and their recommendations will be duly considered.

(c) The attention of the Honourable Member is invited to the reply given by Sir William Vincent to the question asked by Mr. W. M. Hussanally on the 10th January 1922.

VIZAGAPATAM HARBOUR SCHEME.

40. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state:

(a) At what stage is the financial progress of the Vizagapatam Harbour scheme?

(b) Whether the Bengal Nagpur Railway company made any proposal towards the solution of the financial difficulty?

- (c) And if so, whether they were accepted by or acceptable to the Government of India?
- (d) Whether the Government of India has any alternative proposal to effectuate the said purpose?
- (e) What was the amount already spent towards acquisition of land for Harbour purposes?
- (f) Whether any steps are being taken to proceed with the Railway construction for the completion of Vizagapatam Raipur line and Kottavalsa Baster Durg line along with Harbour construction?

Mr. C. D. M. Hindley: (a), (b), (c) and (d) The question of the method of financing the Vizagapatam Harbour Scheme is under consideration and no decision has yet been reached. The Bengal Nagpur Railway Company has not made any definite proposal on the subject.

(e) The amount spent towards acquisition of land for Harbour purposes to the end of 1921-22 is Rs. 11,80,175.

(f) The harbour project is still under investigation and no special steps are therefore being taken for the completion of the railway projects referred to.

SETTLEMENT OF INDIAN ARMY OFFICERS IN VICTORIA.

41. **Mr. B. Venkatapatiraju:** (a) Will the Government be pleased to state whether any guarantees have been given by the Government to the "Australian farms Limited" Melbourne in connection with the Settlement of Indian Army Officers on land in Victoria?

(b) And if so, will the Government be pleased to place on the table papers relating to it and to state the eventual cost that will be involved thereby?

Mr. E. Burdon: (a) and (b) The facts which have apparently given rise to the Honourable Member's question are as follows:

Last year, a Director of the Australian Farms Company, Limited, visited India with a view to making known to surplus officers of the Indian Army who were at that time about to be released from service a scheme of land settlement in Victoria. An important feature of this scheme was that any officer who wished to take advantage of it should, before entering into possession of the land, deposit a certain sum of money for the purchase of stock, implements and so on. As those surplus officers who had accepted the option of deferring for 3 years the receipt of their gratuities were not likely to be in a position to pay at once the sum required, the company expressed their willingness to accept in lieu of immediate payment, where necessary, an assignment, up to the amount required, of the gratuity of any officer who wished to enter the scheme. At the same time, the company requested that, in order to safeguard the ultimate payment to the company of the amount assigned to it by the officer, the Government of India should undertake to hold the assigned portion of the gratuity and arrange for its being paid to the Company when the payment fell due. As the arrangement described cost Government nothing and ensured important facilities to officers who had unfortunately for themselves been deprived of a career in Government service, it was agreed to by the Government of India with the approval of the Secretary of State.

The facts being as stated the Government do not consider it necessary to lay the papers on the table.

HIGH AND TRADE COMMISSIONERS.

42. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state:

- (a) Whether the power of appointing the High Commissioner for India in England vests in the Government of India?
- (b) Whether any Commissioner of Trade for India is appointed in Australia and if so, what are his duties?
- (c) Whether there is any near chance of enlarging his duties to include the safeguarding of Indian interests in Australia, Newzealand, Fiji and other Islands in the Pacific Ocean?

The Honourable Mr. C. A. Innes: (a) Under the terms of His Majesty's Order in Council dated the 13th August 1920, which was published in the Notification of the Government of India, No. 6634, dated the 2nd October 1920, the appointment of High Commissioner for India is made by the Governor General in Council with the approval of His Majesty's Secretary of State for India in Council.

(b) No. (c) consequently does not arise.

EMIGRANTS FOR FIJI.

43. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state the circumstances under which emigrants are recently permitted to leave Bengal to Fiji?

Mr. J. Hullah: No emigrants, as defined in the Indian Emigration Act, 1922, have been permitted to leave Bengal recently. I may, however, add, for the Honourable Member's information, that 781 Indians, travelling as ordinary passengers outside the Indian Emigration Act, left Calcutta for Fiji during 1922. This number included 152 return emigrants, who proceeded to Fiji defraying the cost of passages themselves.

INCHCAPE COMMITTEE'S REPORT.

44. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state whether the report of the Inchcape Committee is to be placed for discussion in the Legislative Assembly before any final orders are passed by the Government?

The Honourable Sir Basil Blackett: The Government regret that this course is not practicable.

INDIANS IN HIGHER ARMY POSTS.

45. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state:

- (a) Whether any and if so, how many Indians are being trained in the Supply and Transport and the Artillery branches of the Army and Air Service?
- (b) What was the total number of Indians trained for the higher posts in the Army, and what proportion does it bear to the total Army Officers paid for by the Indian exchequer?

Mr. E. Burdon: (a) There are at present 19,279 Indian officers and other ranks employed with the Supply and Transport Corps, 12,300 with the Royal Artillery, and 104 Indian other ranks with the Air Force in India.

(b) All officers holding the King's commission, whether British or Indian, are trained with a view to their being rendered fit to hold the highest posts in the Army. Of the total number of King's commissioned officers in the Indian Army, 3,925 are British officers and 108 are Indian officers. This latter figure includes 44 Indians who hold temporary or honorary commissions.

REVENUE AND EXPENDITURE.

46. **Mr. B. Venkatapatiraju:** (a) Has the attention of the Government been drawn to the fact that 70 Million £. were reduced in Civil Departments in England?

(b) What was the reduction contemplated in Civil Departments in India?

(c) What was the total Military expenditure in India both ordinary and extra-ordinary from 1914 up to day, or as far as figures are available and what was the total Imperial Revenue raised during that period?

The Honourable Sir Basil Blackett: (a) I cannot identify the figure of £70,000,000 mentioned in the question. According to the statement of Sir Robert Horne when introducing his Budget for 1922-23 on the 1st May 1922, the total estimate for supply services for 1922-23 showed a reduction of £218,500,000 below the adjusted Budget estimate for 1921-22. It must however be remembered that a considerable part of this reduction was the almost automatic outcome of reduced prices and the winding up of certain special War Accounts.

(b) The amount cannot be stated until the report of the Incheape Committee has been received and considered.

(c) The required statement is laid on the table.

Statement showing the total net Military Expenditure in India from 1914-15 to 1921-22 and the Revenue of the Central Government in the same years.

Year.	Net Military Expenditure.	Central Revenue (excluding Military Receipts).
	Rs.	Rs.
1914-15	23,54,00,755	73,58,91,455
1915-16	26,19,31,979	77,59,90,514
1916-17	29,15,39,169	95,34,71,880
1917-18	34,32,01,959	1,13,47,21,989
1918-19	58,79,59,252	1,22,43,80,023
1919-20	76,08,87,678	1,27,90,42,422
1920-21	70,49,84,716	1,26,75,61,423
1921-22	59,91,59,703	1,01,33,75,000 (Revised Estimate, 1921-22)

EXPENDITURE ON DEFENCE.

47. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state what proportion of the total revenues of India has been spent on defence during the last two years?

Mr. E. Burdon: The information is being collected and will be supplied to the Honourable Member as soon as possible.

DEBT AND TAXATION.

48. Mr. B. Venkatapatiraju: (a) What was the total national debt of India before 1914, and what was it by the end of 1922?

(b) What was the amount of additional taxation levied during the said period?

(c) Whether any and what amount is spent on productive purposes by the Imperial Government during the same period?

The Honourable Sir Basil Blackett: (a) The national debt of India amounted to 447 crores on the 31st March 1914 and to 781 crores on the 31st March 1922.

(b) During the above period additional taxation estimated to yield 20½ crores a year was imposed. This is exclusive of the excess profits duty which actually yielded 11½ crores during the short time it was in force.

(c) The total amount spent on productive purposes during the same period was 105 crores.

FOREST RESEARCH INSTITUTE, DEHRA DUN.

49. Mr. B. Venkatapatiraju: Will the Government be pleased to state whether they have organised in the Forest Research Institute, at Dehra Dun, a course of instruction to qualify the students for Imperial Posts?

Mr. J. Hullah: No such course has yet been organised. The question as to the future place of training of the Imperial Forest Service probationers is under consideration at present and no final decision thereon has been arrived at.

FORESTRY SCHOLARSHIPS.

50. Mr. B. Venkatapatiraju: Will the Government be pleased to state the number of Scholarships given by the India Office for the study of Forestry during the last three years and to whom they were awarded and how many Indians were the recipients thereof.

Mr. J. Hullah: There is only one scholarship for Indian Forest probationers, namely, the Currie scholarship, which is awarded annually by the India Office on the results of the final examination held after the period of training. During the last three years it has once been awarded to an Indian.

RESEARCH AT DEHRA DUN AND PUSA INSTITUTES.

51. Mr. B. Venkatapatiraju: Will the Government be pleased to state whether any and what facilities are given to students to undertake research at the institutes at Dehra Dun and Pusa, and whether they are merely confined to teachers and lecturers?

Mr. J. Hullah: *Forest Research Institute, Dehra Dun.*—It is not possible for students to spare any time for independent research during the period of two years covered by the course at the Forest Research

Institute. Even now the syllabus is with great difficulty carried out. The research officers take part in the instruction and students are made familiar with the main problems under or awaiting investigation.

The time for research work is in reality after students have obtained their certificates. It then rests with local Governments to depute selected men for special courses or research work. As yet this has not been done but as soon as the new buildings are fully equipped facilities will be available for post-certificate courses or research.

Agricultural Research Institute, Pusa.—The conduct of research at the Pusa Institute is not merely confined to teachers and lecturers but qualified students are accepted for training in specialised branches of agricultural science and are encouraged to undertake research. They are given free all available facilities, e.g., the use of the Library, the laboratories (apparatus, chemicals, etc.), the benefit of expert advice, accommodation, etc.

BACTERIOLOGICAL DEPARTMENT.

52. Mr. B. Venkatapatiraju: Will the Government be pleased to state whether any and if so, how many qualified Indians were appointed in the Bacteriological department during the last three years and the total number of persons appointed during the said period?

Mr. A. C. Chatterjee: During the last three years five officers have been appointed permanently to the Bacteriological Department. Two of these officers are Indians.

VETERINARY SCHOLARSHIPS.

53. Mr. B. Venkatapatiraju: Will the Government be pleased to state whether any veterinary Scholarships were given by the Government during the last three years and how many out of the total were allotted to Indians?

Mr. J. Hullah: Five scholarships were granted all to Indians.

DISABILITY ON INDIAN OFFICERS ENTERING TRAINING CORPS, ETC.

54. Mr. B. Venkatapatiraju: Will the Government be pleased to state whether the War Office objected to the admission of Indians to the 'Officers training corps,' and whether the Admiralty objected to the entry of Indians in naval Schools in England while admitting foreigners (other than British subjects) and whether the Government of India propose to take any steps for the removal of the disability?

Mr. E. Burdon: (i) The Army Council have held that the Officers Training Corps exists for the training of potential officers for the British Army and Territorial Force, and that consequently it is not open to Indian students, who cannot, under present regulations, become officers in either of these two forces.

(ii) The Government have no knowledge that the Admiralty have objected to the entry of Indians to Naval Schools in England, nor do they know that the Admiralty have admitted foreigners, other than British subjects, to such schools.

(iii) The Government of India have at present under their consideration certain proposals which aim at securing the admission in future of

Indian students to the Officers Training Corps and they are also considering proposals which relate to the training of Indian boys at certain nautical institutions in the United Kingdom.

MILITARY COLLEGE FOR INDIANS.

55. **Mr. B. Venkatapatiraju:** Is it a fact that at present 10 Indians were being nominated each year for Sandhurst out of a total of about 60 appointments to the Indian Army? Whether there is any prospect of starting at an early date a well equipped military college in India?

Mr. E. Burdon: The answer to the first part of the question is in the affirmative, and to the second part that there is no prospect of the establishment in the near future of a Military College in India on the lines of the Royal Military College, Sandhurst.

INDIANS IN COMMISSIONED RANKS.

56. **Mr. B. Venkatapatiraju:** What is the number of the Commissioned Officers in the army in India—would it be between four or five thousand? How many Indians were appointed out of them; whether it would be more than fifty?

Mr. E. Burdon: The total number of commissioned officers in the Indian Army is as follows:

British officers with the King's commission	3,925
Indian officers with the King's commission	108*
Indian officers with the Viceroy's commission	3,329
Total	<u>7,362</u>

* Includes 44 who hold temporary or honorary commissions.

INDIANS FOR WOOLWICH.

57. **Mr. B. Venkatapatiraju:** Is it a fact that no Indian cadet had been nominated for admission to the Royal Military academy, Woolwich, which trained cadets for the Artillery and Engineers? Whether the Indian exchequer is contributing any amount to that institution either directly or indirectly?

Mr. E. Burdon: The answer to the first part of the question is in the affirmative. As to the second part, India pays, through the capitation payment for British troops, a share of the cost of the Royal Academy, Woolwich, based on the number of recruits she takes from the institution annually to maintain the sanctioned establishment of Royal Engineers.

COST OF MILITARY COLLEGES.

58. **Mr. B. Venkatapatiraju:** (a) What was the capitation rate paid to the War Office in respect of each soldier sent to India?

(b) Whether it is a fact that before 1890 the share of the cost of the Military Colleges which was allotted to India was £1,122 for Sandhurst, £7,582 for Woolwich and £15,000 for the upkeep of the Army Medical School, School of Gunnery and School of Military Engineering?

(c) In lieu of contribution of lump sums was the capitation rate fixed at £7½ per man?

- (d) Whether it was increased to £11½ in 1908?
 (e) Whether since 1920 it was increased nearly 2½ times the latter sum?
 (f) What was the total cost on that head in 1920 and 1921?

Mr. E. Burdon: (a) The capitation rate paid at present to the War Office in respect of each British soldier on the Indian establishment is £25-13-0.

(b) The figures quoted in this part of the question are not quite correct. The contribution paid by India towards the cost of the Military Colleges was as follows:

	£
(i) Royal Military College, Sandhurst	11,223
(ii) Royal Military Academy, Woolwich	7,582
(iii) Army Medical School, School of Gunnery and School of Military Engineering.	12,256
(iv) Artillery College	3,178

(c) The answer is in the affirmative. The rate of £7-10-0 had effect from 1890-91.

(d) The rate was increased from 1st May 1908 to £11-8-0 (not £11½).

(e) During 1920-21 and 1921-22 the payments made to the War Office in respect of British Troops were made on the basis of 2½ times the rate of £11-8-0, so as to allow for the general rise of pay and prices. From the year 1922-23, however, the capitation rate has been reduced tentatively to 225 per cent. of £11-8-0 or £25-13-0.

(f) The total expenditure in each of the years 1920-21 and 1921-22 amounted to £1,896,000, which allowed for a reduction in the pre-war establishment of British Forces in India by one-eighth. Provisional payments of £100,000 in 1920-21 and of £92,000 in 1921-22 were also made to the Air Ministry in respect of the charges in connection with the raising, training, etc., of the Royal Air Force serving in India.

NAVY AND AIR FORCE.

59. **Mr. B. Venkatapatiraju:** Is it a fact that admission to the Navy and Air force is confined to those of European descent?

Mr. E. Burdon: The answer is in the affirmative.

INDIANS IN SUPERIOR RAILWAY POSTS.

60. **Mr. B. Venkatapatiraju:** How many Engineers are appointed in the State Railways, and how many of them are Indians and whether there was any obligation to employ Indians by company managed Railways? Whether Indians were appointed to any superior posts of the Wagon and Locomotive Departments and if so, in which proportion?

Mr. C. D. M. Hindley: There are at present 197 officers in the Indian Service of Engineers and the Provincial Engineering Service, State Railways. Of these 50 are Indians and the proportion of Indians is yearly increasing. The Company-worked Railways are under no contractual obligations to employ any fixed proportion of Indians in their establishments but they have been informed of the policy of the Government of India and are increasing the recruitment of Indians as vacancies occur. In the latest

agreement—one between the Secretary of State and the East Indian Railway Company—the following clause finds a place:—

* * * * *

5. The Company so long as this contract remains in force will continue its present policy of extending the employment of Indians in the Superior Establishment as suitable candidates offer themselves and can be trained.

* * * * *

There are at present 84 superior officers employed in the Locomotive and Carriage and Wagon Departments of State Railways. Of these, two are Indians. Both were appointed by the Secretary of State after qualifying in England. Two more Indians, now in training in England, are likely to be appointed this year.

INDIAN RECRUITMENT TO HIGHER RAILWAY SERVICE.

61. **Mr. B. Venkatapatiraju:** Have the Railway Board made any recommendation for any definite proportion of Indian recruitment in the higher posts of Railway Service?

Mr. C. D. M. Hindley: It has been decided by the Government to recruit Indians, as qualified men become available up to 50 per cent. of the total Superior appointments in all departments of State Railways, as recommended by the Public Services Commission.

The Company-worked railways have been informed of the policy adopted by the Government in the matter and have been asked to increase their Indian recruitment.

INDIANS IN PUBLIC WORKS DEPARTMENT.

62. **Mr. B. Venkatapatiraju:** How many Europeans were recruited since 1919 for the Public Works Department and whether any and what proportion of the total number recruited were Indians—whether the Industrial commission report recommended 50 per cent. of the recruits to be Indians?

Colonel Sir Sydney Crookshank: 84 Europeans and 51 Indians (including statutory natives of India) have been recruited since 1919 for the Indian Service of Engineers in the Public Works Department. The excess in the number of Europeans is due to the greater recruitment in Europe beyond the normal figure during these years in order to make up for short recruitment during the period of the war. The total number of officers recruited to the service since 1914 inclusive comprises 105 Europeans and 118 Indians.

The Public Services Commission, and not the Industrial Commission, recommended that 50 per cent. of recruitment for the service should be effected in India.

SHIPBUILDING, AERONAUTICS, ETC.

63. **Mr. B. Venkatapatiraju:** Do the Government of India contemplate providing facilities for training in Ship-building, aeronautics and marine Engineering?

The Honourable Mr. C. A. Innes: A committee will shortly be appointed to consider, among other things, the question of providing facilities for the training of Indian apprentices as officers and engineers of ships, the

encouragement of ship-building and the construction of dockyards and engineering workshops in this country. The question of training of Indian youths in the United Kingdom for admission into the engineering branch of the Royal Indian Marine is also under consideration. The Government of India have had under consideration a proposal for training Indians in aeronautical engineering but it has been found impossible to pursue the matter further owing to the present financial stringency.

INDIANS IN SUPERIOR RAILWAY POSTS.

64. Mr. B. Venkatapatiraju: How far is the Railway Board trying to help Indians qualified to enter the superior posts in the Railway service? Is it a fact that 3 Indians and 15 Europeans are entertained every year on the average since 1915?

Mr. C. D. M. Hindley: The answer to the Honourable Member's question will be found in the comparative statistics given in a reply to Mr. N. M. Joshi on 6th September last in this House.

So far as State Railways are concerned, the average number appointed annually since 1915 to superior posts of all departments except Audit is 9 Indians and 17 non-Indians respectively.

INSTITUTES OF CHARTERED ACCOUNTANTS.

65. Mr. B. Venkatapatiraju: Is it a fact that there are Institutes of chartered accountants in Canada and Australia? Is there any similar institute of chartered accountants in India and if not why do not the Government start one in Delhi?

The Honourable Mr. C. A. Innes: Government have no definite information as to whether Institutes of Chartered Accountants exist in Canada or Australia. There is no such Institute in India but the services of the Sydenham College of Commerce and Economics, Bombay, are utilized by the Government of India as a central examining body for conducting examinations at various centres and for awarding a Diploma in Accountancy.

ALLOCATIONS TO RAILWAYS.

66. Mr. K. C. Neogy: (a) Will Government be pleased to make a statement showing the allocations made to the different Railways out of the provision for capital expenditure in the current year under the recommendation of the Railway Finance Committee?

(b) What is the probable total allotment to be made to each of these Railways during the period of five years for which the capital expenditure programme is to be prepared?

(c) With reference to the said allotment for capital expenditure in the current year, what amount is to be spent in the case of each Railway—

(i) in rehabilitating existing lines, and

(ii) in completion of lines under construction prior to the report of the Railway Finance Committee;

and how much of (ii) approximately represents expenditure on the improvement of the conditions of travel of third class passengers?

(d) Has any amount out of the said allotment for the current year, in the case of any Railway, been, or is proposed to be, spent in undertaking extensions of existing lines or in constructing new lines, contrary

to the recommendation of the Railway Finance Committee? If so, what is the amount in each case, and what is estimated to be the ultimate total cost of each such project?

Mr. C. D. M. Hindley: (a) and (c) The Honourable Member is referred to the Statement of Demands for capital expenditure on railways for 1922-23 being Appendix C to 'Detailed Estimates and Demands for grants' which were presented to the Assembly in March last.

It is not possible to separate expenditure intended to benefit 3rd class passengers alone. The Honourable Member will, however, find in Chapter VII of the Administration Report for 1921-22 just published a great deal of information in respect to the measures which are contemplated with this object on all lines.

(b) The probable annual allotment to be made to each of the railways for open line purposes during the remaining four years of the quinquennium will be approximately the same as in 1922-23 with possibly slight modifications in certain cases. The Demand Statement for each year will be duly presented to the Assembly in the usual course.

(d) The reply is in the negative.

BRITISH INDIA POLICE ASSOCIATION.

67. Beohar Raghupir Sinha: (a) Is it a fact that the Government of India have refused to accord recognition to the British India Police Association?

(b) If the reply is in the affirmative, will Government be pleased to state the reason of such refusal?

(c) Are the Government aware that a feeling of uneasiness has now been caused in the country and that it is apprehended that the Police Amendment Bill recently passed by this House was really directed against the legal activities of the Associations inasmuch as the Bill protected only the Associations recognised by Government?

(d) Are there any rules and regulations for recognising such Associations framed by the Government of India? If so, what are these?

The Honourable Sir Malcolm Hailey: (a) Yes.

(b) The constitution of the Association was not in accordance with the rules, but the real reason for declining to accord recognition was that it was impossible for the Government of India to recognize an All-India association of purely provincial services.

(c) The Government of India are aware that feelings of uneasiness exist in certain quarters, but they are without foundation. The bill to which the Honourable Member refers is in no sense designed against associations lawfully constituted and recognized. It is open to provincial services to form provincial associations and to apply to the local Government for recognition.

(d) I will show the Honourable Member the rules on the subject.

DEPOSITS IN POST OFFICE SAVINGS BANKS.

68. Mr. B. Venkatapatiraju: (1) Will the Government be pleased to state:

(a) Whether it is a fact that deposits in Post Office Savings Banks in England are not liable to attachment for judgment debts of the depositor?

(b) Whether there is no such immunity in India as the deposits in the Savings Banks are attachable under section 60 of the Civil Procedure Code?

(2) Will the Government be pleased to consider the desirability of introducing this protection in India for the encouragement of thrift?

Colonel Sir Sydney Crookshank: (1) (a) Yes.

(b) No.

(2) The question will be considered.

AMNESTY TO POLITICAL PRISONERS.

69. **Mr. B. Venkatapatiraju:** Do the Government propose to consider the desirability of granting amnesty to all political offenders, convicted within three years who have not caused injury to the person or property of anybody?

The Honourable Sir Malcolm Hailey: Government are not prepared to consider the desirability of granting a general amnesty.

PETROL.

70. **Mr. B. Venkatapatiraju:** Will the Government be pleased to state:

(a) the quantity of petrol annually produced in Burma consumed in India and exported to other countries?

(b) the quantity imported into India from other countries?

(c) the average producing cost per gallon in Burma, United States, and cost price per gallon for the consumer in India, United States and England?

The Honourable Mr. C. A. Innes: (a) The export of petrol from Burma to India in 1920-21 amounted to 15,998,291 gallons. Figures for subsequent years are not available. The quantities exported from Burma to other countries were 36,222,584 gallons in 1919-20; 18,856,640 gallons in 1920-21; and 20,156,323 gallons in 1921-22. The production of petrol in Burma is about 32 million gallons.

(b) The imports of petrol from other countries into India were 16,448 gallons in 1919-20; 2,052 gallons in 1920-21; and 1,348 gallons in 1921-22.

(c) The Government of India have no information as to the average producing cost per gallon of petrol in Burma and the United States, or as to the cost price per gallon for the consumer in the United States. The retail price of petrol in London is 2 shillings per gallon and in Calcutta Rs. 1-14 per gallon, i.e., the same as the rate obtaining in London plus six annas on account of excise duty. The price at Rangoon of the two brands sold there is Rs. 1-10 and Rs. 1-12 per gallon.

"SERVICE" POSTAGE STAMPS FOR LEGISLATURES.

71. **Mr. Mohammad Faiyaz Khan:** Do the Government propose to issue instructions to issue "Service" postage stamps to the members of the Legislative Assembly and Council of State on payment?

Colonel Sir Sydney Crookshank: Government do not consider it necessary to issue the instructions suggested.

REPORT OF ARMS RULES REVISING COMMITTEE.

72. Mr. Mohammad Faiyaz Khan: Will the Government be pleased to state when the Report of the Arms Rules Revising Committee (held at Simla in August last) will be published and when will the new Rules be enforced?

The Honourable Sir Malcolm Hailey: The Report of the Arms Rules Committee will be published on the 20th January next. The various recommendations contained therein are under the consideration of Government but it is not yet possible to say when effect will be given to such of them as are accepted.

DEMOLITION OF HINDU TEMPLES IN DELHI.

73. Mr. Mohammad Faiyaz Khan: (a) Will the Government be pleased to state if it is true that in connection with the proposal of building a Railway Station at Delhi, it is being proposed that three Hindu temples will be pulled down?

(b) If it is true, are the Government aware that no consideration of the Hindu sentiments and their religious susceptibilities has been given over this matter?

(c) That Sanatan Dharma Sabha of Muzaffarnagar has also protested, and a copy of the resolution has also been sent to His Excellency the Viceroy?

Mr. C. D. M. Hindley: (a) (b) For the comfort and convenience of the general public who will use the new station now under construction at Delhi it is desirable to move from their present site three Hindu temples which seriously interfere with the approaches to the station. Friendly negotiations are in progress and it is hoped that the desired object may be attained in such a way as to avoid all possibility of hurting the religious feelings of Hindus.

(c) The answer is in the affirmative.

PROFESSOR SKINNER.

74. Mr. B. Venkatapatiraju: Will the Government be pleased to state:

- (a) whether it is a fact that Professor Clarence Skinner of Tufts College, United States, wanted to go to India for a year and study Indian conditions;
- (b) whether the British authorities refused to visé his passport;
- (c) whether Dr. Sudhindra Bose, lecturer in Political Science at the University of Iowa, wanted to go to India after 16 years' absence to see his aged mother;
- (d) whether his passport also was not viséd;
- (e) whether there are any other cases of Americans being refused to visit India, whether Indian authorities are consulted in the matter and the reasons for refusal of admission into India?

The Honourable Sir Malcolm Hailey: (a) and (b) The Government of India have no information.

(c) and (d). The Government of India understand that Dr. Sudhindra Bose's application for a visa for India was refused by the Secretary of State. Attention is invited to the reply given by Sir William Vincent on the 10th January, 1922, to a similar question No. 112 put by Mr. Beohar Raghubir Sinha, in the Legislative Assembly.

(e) The Government of India are not aware of any cases at present in which Americans are being refused permission to visit India. Applications from foreigners other than ex-enemy foreigners and Russians are disposed of by the British Consuls abroad, and a previous reference is only made to the Government of India in cases in which domicile in India is alleged by the applicant and the Consul has reason to doubt the allegation.

MUNSHI IMAM ALI, CHITTAGONG P. O.

75. **Munshi Abdul Rahman:** (1) Are the Government aware that Munshi Imam Ali who was appointed as an unpaid probationer, Chittagong Head Post Office on 1st December 1915 after an examination test as required by Departmental rules and regulations and with the approval and sanction of the Post Master General, Bengal and Assam Circle and who after having served in that capacity for about 5 years to the entire satisfaction of his superiors was appointed a reserve clerk, Chittagong Head Post office with effect from the 1st February, 1920, has been summarily dismissed by the Deputy Post Master General on 4th January, 1921, without any sufficient ground and without any opportunity being given to him to show cause why he should not be dismissed?

(2) Will the Government be pleased to state if his summary dismissal was on the ground of his failure in examination in dictation in English taken in the midst of his official duty?

(3) Will the Government be pleased to state if the order of dismissal of a postal Department servant holding a permanent post without first requiring him to show cause why he should not be dismissed is according to Departmental Rules?

(4) Are the Government aware that all his petitions and memorials seeking for redress of his grievance in the matter sent to the Director General, Posts and Telegraphs, through proper official channel have been systematically withheld by the Post Master General, Bengal and Assam?

(5) Do the Government propose to issue instructions upon the Director General, Posts and Telegraphs to call for the record of the case and reconsider and revise the order of dismissal in question?

Colonel Sir Sidney Crookshank: The necessary information is being collected and will be supplied as soon as it is available.

EXPORT OF PETROL.

76. **Lala Girdhari Lal Agarwala:** (a) Have the Government noticed a leaflet issued by the Motor Trade Association (Western India) recently entitled "Petrol—four crores of rupees thrown away by the Government of India—an intolerable situation"?

(b) Is it a fact that the motor spirit exported to foreign countries is exempt from payment of the duty of six annas per gallon which is levied on such spirits produced and consumed in India?

(c) How much petrol has been exported from India and Burma free from such duty from the time of the passing of Act II of 1917 up to date?

The Honourable Mr. C. A. Innes: (a) and (b). Yes.

(c) The export of benzine and petrol from Burma and India since 1917 was as follows:

	From Burma.	From India.
1917-18	18,934,711	Nil.
1918-19	22,800,932	• 90
1919-20	36,222,684	Nil.
1920-21	16,856,633	2
1921-22	20,156,323	Nil.
1922-23 up to October 1922	12,872,247	Nil.
Total	129,643,436	92

ASSISTANT COLLECTOR, CUSTOMS, KARACHI

77 **Mr. S. C. Shahani:** Will the Government be pleased to state if it is contemplated to appoint a third Assistant Collector, Customs, Karachi?

The Honourable Mr. C. A. Innes: The appointment of a third Assistant Collector of Customs at Karachi was sanctioned by the Secretary of State in 1921, but owing to the financial stringency effect has not yet been given to the sanction.

CLAIM OF INDIAN MEDICAL DEPARTMENT TO MARRIAGE ALLOWANCE

78 **Lieut.-Colonel H. A. J. Gidney:** (1) (a) Will the Government be pleased to state if the marriage allowance sanctioned for British troops and other Departments in India is given to Assistant Surgeons of the Indian Medical Department in Military employ?

(b) If not, why not?

(2) If the answer is in the negative, will the Government be pleased to state why such distinction is made between the Indian Medical Department and other Departments of the Army in India who are also largely recruited in India?

(3) Is Government aware that great discontent and dissatisfaction exists in the Indian Medical Departments on this account and what steps does it propose to remedy this grievance?

Mr. E. Burdon: (1) (a) No.

(b) and (2) The matter is under consideration.

(3) The answer to the first part of this question is in the negative. As regards the second part, matter is as I have said under consideration by Government.

INDIAN COAL ON RAILWAYS

79 **Rai Bahadur G. C. Nag:** Will Government kindly lay on a table a statement shewing, for each of the Budget Lines, the quantity of Indian coal consumed by Locomotives during 1921-22, the quantity purchased and the amount of foreign line freight on the latter?

Mr. C. D. M. Hindley: A statement showing the quantity of Indian coal consumed by locomotives on each of the budgetted lines during 1921-22, including in certain cases the figures relating to non-budget lines

also, is being sent to the Honourable Member. As regards the quantity of such coal purchased by each of the budgetted lines and the amount of foreign line freight paid thereon, the information is being collected and will be furnished to the Honourable Member direct as soon as ready.

CARRIAGE OF COAL ON RAILWAYS.

80. **Rai Bahadur G. C. Nag:** With reference to the answer to starred question No. 25 printed at page 31 of the Legislative Assembly Debates, Volume III, will Government kindly state:

- (a) the date when the differential rates were introduced?
- (b) a few other items for which similar differential rates are allowed as between railway administrations?

Mr. C. D. M. Hindley: (a) 1st April 1920.

(b) Railway materials and stores.

RAILWAY AUDIT AND CONTROL.

81. **Rai Bahadur G. C. Nag:** With reference to the answer given on 6th September 1922 to my starred question No. 38, will Government kindly lay on the table a statement shewing for each of the non-Budget lines, worked by the Bombay, Baroda and Central India and the Great Indian Peninsula Railway Companies; the rate charged for Government supervision, audit and control and amounts recovered during the year 1921-22?

Mr. C. D. M. Hindley: A statement containing the information asked for is placed on the table.

Statement showing the rate charged for Government supervision, audit and control and the amounts recovered during the year 1921-22 for the non-budget lines worked by the Bombay, Baroda and Central India and Great Indian Peninsula Railways.

Railway.	Name of Branch line.	GOVERNMENT SUPERVISION, ETC., CHARGES.		REMARKS.
		Rate.	Amount recovered during 1921-22.	
Bombay, Baroda and Central India Railway.	Tapti Valley Railway	Rs. 40 per mile per half year.	Rs. 12,458	
	Nagda Ujjain Railway	"	2,801	
	Gackwar's Pottal Railway	"	1,717	
	Gackwar Mehsana Railway	"	18,457	
	Tarapur Cambay Railway.	"	9,99	
	Ahmedabad Parantij Railway.	"	7,036	
	Ahmedabad Dolka Railway	"	2,683	
	Jaijpur Railway	"	9,777	
Great Indian Peninsula Railway.	Dhrazandra Railway	"	3,212	
	Bhopal State Railway	"	2,414	
	Bina Baran Railway	"	11,766	
	Bhopal Ujjain Railway	"	9,062	

N.B.—Other branch lines for which charges for Government Supervision, etc., are recoverable under the contracts are worked by the Great Indian Peninsula Railway for fixed percentage of earnings and the charge for Government Supervision is included in this percentage.

TENURE NATURE OF POSTS OF SECRETARY, ETC., IN SECRETARIAT.

82. **Rai Bahadur G. C. Nag:**† Is it a fact that the posts of Secretary, Joint Secretary, Deputy Secretary, Under Secretary and Assistant Secretary in the Government of India Secretariats are all tenure appointments and if so, what is the maximum period fixed for such tenure appointments?

COSTS AND RETURNS OF RAILWAYS.

83. **Rai Bahadur G. C. Nag:** With reference to the answer given on 6th September 1922 to my unstarred question No. 19, will Government kindly lay on the table a statement shewing:

- (i) the Budget lines at present under construction,
- (ii) their cost as per the latest estimate,
- (iii) the amount included in the estimate on account of leave allowances and pensions,
- (iv) the estimated annual return on (ii) during each year of the period fixed by the Secretary of State in Council, and
- (v) the return necessary to fulfil the conditions of a productive work?

Mr. C. D. M. Hindley: The statement is under preparation and will be sent to the Honourable Member as soon as possible.

PROBATIONARY SERVICE OF RAILWAY TRAFFIC OFFICERS.

84. **Rai Bahadur G. C. Nag:** Will Government kindly state whether the entire probationary service of Railway Traffic Officers counts for increments under the new time-scale, both on State-Worked and Company-Worked Railways?

Mr. C. D. M. Hindley: On State Railways, under existing orders only approved service from date of permanent appointment as Assistant District Traffic Superintendent or Assistant Traffic Superintendent counts for increment on the new time-scale.

Companies' railways have their own rules.

FREE ALLOWANCE ON LUGGAGE.

85. **Rai Bahadur Pandit J. L. Bhargava:** Are the Government prepared to consider the desirability of enhancing the weight of luggage allowed free of charge to the passengers travelling in the different classes of railway carriages?

Mr. C. D. M. Hindley: Government do not think that this is a suitable time to take up this question.

THE COTTON TRANSPORT BILL.

The Honourable Mr. C. A. Innes: Sir, I present the Report of the Joint Committee on the Bill to provide for the restriction and control of the transport of cotton in certain circumstances.

THE CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

Mr. E. Burdon: Sir, I present the Report of the Joint Committee on the Bill further to amend the Cantonments (House-Accommodation) Act 1902.

†The reply to this question will be printed in a later issue of these Debates.

THE INDIAN BOILERS BILL.

The Honourable Mr. C. A. Innes: I present the Report of the Joint Committee on the Bill to consolidate and amend the law relating to steam-boilers.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: The motion for the consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State, is now before the House.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Before this Assembly takes up the Bill for its consideration and before Sir Henry Moncrieff Smith successfully moves the Bill to amend the Code of Criminal Procedure, 1898, I have got some objections to make. First of all, as this House is aware, the report of the Racial Distinctions Committee is not just before the Assembly, and that involves Chapter XXXIII of the Bill further to amend the Code of Criminal Procedure, 1898, and it is, Sir, a part and parcel of the Bill which my Honourable friend, Sir Henry Moncrieff Smith, proposes to place before the Assembly for its consideration. Therefore, what he purports to place before us is not full, is not altogether a complete Bill. Therefore, Sir, there seems to be something lacking, something wanting and it is not accurate to say that it is a complete Bill. Under the circumstances, therefore, unless and until he gets the *whole* Bill further to amend the Code of Criminal Procedure, 1898, I do not think he will be in order to move for the amendment of the Bill.

Secondly, we are all aware that there are certain controversies going on in this country that, unless and until that Chapter of the Code of Criminal Procedure is given effect to and unless and until the racial distinctions questions are thrashed out in this Assembly, I do not think my Honourable friend will be in order in placing before the House the amendments further to amend the Code of Criminal Procedure of 1898. Then again, Sir, we understand that in the Provincial Councils Resolutions have been passed that there should be a separation of executive and judicial functions of the executive officers, and every one in the Committee formed for giving effect to it is thinking of how that can be done, that is to say, whether the powers of the Magistrates and the District Magistrates will be just the same as they are along with the Sessions Judges, or whether these Magistrates will be directly under the control of the Sessions Judges. If that is so, the whole amendment, that is, the amendment which my Honourable friend has taken so much trouble over, to bring before us in the Assembly will be of no use and his 'love's labour' I am afraid will be wasted. What is the use of putting up the same thing over again in another few days? Recently we were given to understand from the Government of India, with regard to this Racial Distinctions Committee's Report, that it is coming on before us sooner or later in the next few days. Therefore, unless and until we have got that before us complete, and, in view of the fact that there are so many difficulties which cannot be got over, you cannot begin from the other side when you have not got Chapter XXXIII completed. There are so many words to be changed, the whole thing will have to be recast again a few days hence, after a waste of paper, waste of energy and waste of thought, and again we shall have to begin it again. Everyone in this country was surprised the other day with regard to that case of Reid, Assistant Manager of the Khoreal Tea Plantation concern. It was an extraordinary judgment. There were nine jurors, one was Indian and the remaining eight were Europeans and the verdict was given by them in the High Court of Calcutta in its

Quarter Sessions—the eight European jurors held that the Assistant Manager, Reid, was not guilty and only one, that is, an Indian, found that he was guilty. There was great commotion in this country with regard to this question. We have had only the other day the decision of an European Magistrate in the Madras Presidency with regard to the trial of Sergeant Andrews and five others. What is this judgment? It says that it might be the case that before the transmission of the Moplah prisoners took place, these 70 poor Moplahs might have been poisoned before the train was in motion and that is how the benefit of the doubt was given to all the accused. Sergeant Andrews and five others were discharged under section 253 of the Code of Criminal Procedure.

The Honourable Sir Malcolm Hailey (Home Member): I hope I may be excused for interrupting the Honourable Member as I could not possibly allow that gross travesty of the judgment unchallenged. Whether he is in order or not in referring to these matters I leave it to your decision. In the meanwhile, my duty is to describe the Honourable Member's statement as a travesty of the judgment of the Magistrate.

Mr. Deputy President: When the Honourable Member rose to raise his objections, I thought they were of a technical character and I did not think at the time that he would go into such details. I shall have to stop him from going into details at this juncture.

Mr. K. Ahmed: I am not going into details. Nor am I of the same opinion as my Honourable friend, Sir Malcolm Hailey. Anyhow I want to make this quite clear that I am not criticising the judgment but that is the feeling in the country. There is a great commotion. Unless and until that Chapter is amended, I do not think there is much in the amendments to the Criminal Procedure Code. It will be better, quite worth while, and most desirable that the Honourable Sir Henry Moncrieff Smith should make his time more useful; and unless and until he has got that Chapter amended at once, I do not think he can be in order to move successfully in this Assembly that the whole Procedure Code should be amended. I raise these objections and now move that there should be postponement of this motion and I should like the Honourable Member to point out why he has not got Chapter XXXIII in the Bill which the Assembly is going to consider.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): I rise, Sir, on a point of order. This Bill is a Bill which amends only certain sections of the Code of Criminal Procedure and we are now going to consider amendments only to some of the sections, the other sections remaining untouched. Now the question has been raised about the recommendations of the Racial Distinctions Committee. That is a question which is absolutely irrelevant to the discussion of the present Bill. I suppose the Honourable Member will not accuse me of not having predictions in favour of the view which he has put forward, because, as he knows, I was responsible for the Resolution which led to the appointment of the Racial Distinctions Committee. I am, therefore, as keen on that point as perhaps any Member here, but I do feel that no amendment outside the amendments proposed now in the Code can be rightly moved during the discussion of the present Bill.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban). I wish to join issue with the statement made by Mr. Samarth. This is a Bill to amend the Criminal Procedure Code. . . .

Mr. N. M. Samarth: Only some sections.

Rao Bahadur T. Rangachariar: It is not convenient to amend certain sections of the Code only. If the Honourable Member will read the history of this Bill, he will find that several Committees sat to revise the Criminal Procedure Code and this Bill is specially brought to amend the Criminal Procedure Code. I do not wish, Sir, that by making a statement like this the House should be tied down at this stage to making amendments only to certain sections. I think, Sir, the whole Bill is before the House. I have taken the liberty to suggest amendments outside the amendments proposed by the Committee and I do trust, Sir, that you will not accept the suggestion made by Mr. Samarth that this is a Bill merely to amend certain sections of the Code.

The Honourable Sir Malcolm Hailey: May I suggest to you, Sir, that it is not necessary for you to give a ruling on this particular point at this particular moment. The motion before the House is whether the Bill as placed before the House should be taken into consideration and, Sir, if I may suggest it, the right moment for a ruling from the Chair as to the admissibility or otherwise of certain amendments is after the Bill has been taken into consideration and not at this stage.

Mr. Deputy President: I give my ruling that the further discussion on the motion that the Bill to amend the Criminal Procedure Code be taken into consideration be proceeded with.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadian): The point made is about the postponement of the consideration.

Mr. K. Ahmed: Yes, until we get Chapter XXXIII completed.

Mr. Deputy President: That I would rule out of order.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadian Rural): May I ask what is the motion before the House? We understood that Mr. K. Ahmed's motion was that the consideration of the Bill be postponed. Has that been ruled out of order or has the House to express its opinion on it?

Mr. K. Ahmed: Having allowed the discussion, how can that be ruled out of order?

Mr. J. Chaudhuri: I am only putting the point to the House.

Mr. Deputy President: After hearing the Members I have ruled that the motion before the House is that the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State, be taken into consideration.

Mr. K. B. L. Agnihotri: There is a motion before the House by Mr. Kabir-ud-din Ahmed that the consideration of the Bill be postponed and I venture to submit, Sir, that the postponement of the discussion is in the hands of the House and it is very doubtful whether it could be ruled out of order, if I mistake not, then I think it cannot. I should like to be enlightened as to whether we could discuss the postponement of the Bill or not.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban): Is there a motion before the House?

Mr. K. Ahmed: Yes.

Mr. Deputy President: I did not understand that the Honourable Member had actually moved any motion. Then the motion before the House is that the consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, be postponed.

Mr. K. Ahmed: Yes, until we get Chapter XXXIII and the other Bills ready.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): If that is the motion before the House I do not think it has been sufficiently discussed. Whether it is proposed to be ruled out or has been ruled out rightly or wrongly is another question. But if the amendment for postponement is before the House, it has not been sufficiently discussed.

Mr. Deputy President: The question for postponement of the consideration of the Bill is now before the House.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): On this question of postponement there is one difficulty in the way and it is this. I remember when Sir William Vincent was leading the House, an amendment was sent in, if I remember aright, by Mr. Agnihotri asking for the inclusion of a number of sections along with the sections which have been reported upon; and if I remember aright the President who was then in the Chair and the Honourable the then Home Member had come to the conclusion that it is not desirable or possible to bring in amendments not relating to sections already before the House. There is that difficulty in the way. I do not know whether that would be regarded as barring this discussion but if it is not to be regarded in that light, I should like to say a few words in support of the amendment moved by the Honourable Mr. Kabir-ud-din Ahmed. It is this, Sir. This Bill contains a number of sections. At the same time, it omits cognate sections, sections which go into the sections which are before the House, which relate to the sections which would be discussed now, but which would become altogether useless, unless we have the other sections also before us. I will give you a few concrete instances. Take the Chapter relating to the Joinder of Charges. You deal first of all with section 235 and you go to section 239. Unless you have sections 233, 234, and 236 before the House, it will be impossible to move any amendment or come to any definite conclusion on the matter before the House. It is therefore in a very imperfect manner that the discussion of this Bill has been brought before the House, and it is undoubtedly desirable that the House should have before it a Bill which can be discussed properly and whose discussion would be of use to the Assembly. At present, Sir, by tinkering with some of the sections, we really are not advancing the cause which we have so much at heart. No doubt this Bill has been before the country for a long time, and it is desirable that this Bill should become law as early as possible. But the proper way of dealing with it is to bring in all the sections, at least, of the Chapter which we have to deal with. There is no use in bringing in one section of the Chapter and leaving aside the other sections of the Chapter, thereby rendering the whole discussion useless. Sir, there is a great deal to be said for the motion which has been brought forward by my friend, but there is also another matter, Sir. In Calcutta a report has been presented by a Committee which has been appointed that there should be a separation of judicial from executive functions. Now, if this is going to be given effect to, and if in other Provinces also we have similar results, the whole Bill will have to be recast: and what is the use of going on with a Bill which will be regarded as altogether useless when that question of

[Mr. T. V. Seshagiri Ayyar.]

separation of judicial from executive functions has been considered. For all these reasons, it seems to me, Sir, that we shall be right in delaying the business before the House; we all know that it will be a waste of time if the Member in charge presses for the consideration of this Bill. As I said, if there is a ruling, unless you rule that that ruling does not shut out this discussion, I would agree to the proposition which has been put forward to the House by my friend, Mr. Kabir-ud-Din Ahmed.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, I think that the amendments which are before the House can be dealt with independently and without making a reference to those sections which are not within the scope of being amended, and I, therefore, oppose the motion for postponement, which has been put forward before this House. The Honourable Mr. Seshagiri Ayyar has raised his objection to our now proceeding with the amendments, and the salient point, which has been referred to is that the separation of executive and judicial functions is being contemplated and that it would be better that this amendment may be taken in hand after that. I am afraid, Sir, there is no force in this argument. I myself am anxious to see those functions separated, but it will be seen when that question finally comes before the House. There is no guarantee that that question will, even within a year hence, be brought before this Assembly, in its final shape. Therefore there will be no good in delaying the present amendments for which the whole country has been waiting for the last three years. (A Voice: 'More.') Three years so far as I know, it may be more. (A Voice: 'Six years.') Then my argument becomes more forcible. Therefore, I very strongly oppose this motion for postponement. It would be better that we should take this important work in hand at once and do our level best to finish it, nothing will preclude us from suggesting fresh amendments, if necessary, hereafter.

Bhai Man Singh (East Punjab: Sikh): Sir, one of the questions before the House now is whether amendments referring to sections other than those referred to in the Bill can or cannot be taken into consideration. There is absolutely nothing on this point in our Rules of Business or Standing Orders. This question arose before this very House in the very first Session. That was with regard to some amending Act about the Land Acquisition Act. I would like to draw your attention, Sir, to that ruling, and it is with reference to that ruling that I would request you to decide the question. Therein, Sir, it was Rao Bahadur Rangachariar.

The Honourable Sir Malcolm Hailey: May I interrupt the Honourable Member, purely in the interest of the House? The point of order now discussed refers to the admissibility or otherwise of amendments relating to sections of the Code which are not placed in the Bill. Do we understand, Sir, that that is open to discussion now, or has it been ruled out of order by you until the major question that the Bill be taken into consideration has been disposed of?

Mr. Deputy President: That question has been ruled out of order by the ruling which the Honourable the President gave on that case.

Mr. Jamnadas Dwarkadas: Sir, may I point out that the situation seems to have a little changed after the speech made by my Honourable friend, Mr. Seshagiri Ayyar. Mr. Seshagiri Ayyar has pointed out that a ruling has already been given by the Honourable the President at the last Simla Session that this amendment would be out of order.

The Honourable Sir Malcolm Hailey: Where?

Mr. Jamnadas Dwarkadas: If the Honourable the Leader of the House could enlighten us, I think it would be much better.

The Honourable Sir Malcolm Hailey: I am very unwilling at this stage to enter into discussion regarding a point of order of this nature. I thought myself that the point of order had been ruled out of discussion by the Chair, until such time as the consideration of the major question had been disposed of. Since, however, Mr. Jamnadas Dwarkadas, considers that the situation has been altered by the considerations put forward by Mr. Seshagiri Ayyar, I will, with your permission, inform Mr. Seshagiri Ayyar that he is incorrect in the statement of that consideration. I have here the September debates, and there is no reference to this matter in regard to the discussion on the Criminal Procedure Code. As Mr. Bhai Man Singh was pointing out, the point came—I won't say under discussion, but under mention in regard to the proceedings regarding the Land Acquisition Bill; but there was no formal decision on the matter at all; and I would again appeal to you, Sir, let us know whether we are to continue discussing this point of procedure now, or are to wait until we have disposed of our major question, namely, whether the Bill as drafted should be taken into consideration or not, or, as the motion now stands before the House, whether that consideration should be postponed. Its consideration was already once postponed in the September Session. I have my own views on the subject of further postponement. I do not intend to put them before the House until we are clear whether we are discussing the point of procedure or the point of postponement.

(Sir Deva Prasad Sarvadhikary rose to speak.)

Bhai Man Singh: I was in possession of the House, Sir, and I had to stop because the Honourable Sir Malcolm Hailey rose to a point of order.

Sir Deva Prasad Sarvadhikary: Before that matter comes up, I have a matter and we wish that it should be perfectly cleared.

(Bhai Man Singh rose.)

Mr. Deputy President: Order, order. Sir Deva Prasad Sarvadhikary.

Sir Deva Prasad Sarvadhikary: If, Sir, as the Honourable Sir Malcolm Hailey told us, it be quite clear that it has not been previously ruled out of order that other amendments may be moved, that do not arise out of or appertain to the ground covered by the Government amendments, then many that are anxious to move these amendments would not support the motion for postponement. If, on the other hand, it be absolutely clear on the ruling then given or that you may now give that this cannot be done, the case for postponement will be strong. If it is given to Bhai Man Singh to differ from Mr. K. Ahmed, it may be given to me to differ from Mr. Samarth, and we do not all take the same view of the situation regarding the admissibility of other amendments. If it be absolutely clear that other amendments can be moved, then there is very little case for postponement. But that brings up another difficulty. Many, under the belief that under the previous ruling no amendments of the kind we are discussing are admissible, have refrained from sending in such amendments. What is their position? From all points of view it seems that the issues must be clearly defined before we proceed, even to vote on the motion for postponement.

Mr. J. Chaudhuri: I submit that my Honourable friend is not in order. The proposition now before the House is whether. . . .

Mr. Deputy President: Order, order. I wish to give my ruling on each amendment as it comes up before the House. It is impossible to lay down in a general manner what amendment is in order and what is not. I think before an amendment is before the House, it is impossible for the Chair to decide whether it is in order or not. We will therefore now proceed with the question regarding the postponement of this motion.

Bhai Man Singh: Of course in deference to the Honourable Chair's ruling that we are not to discuss the point whether such amendment would be in order, I defer my arguments on that point for a future moment.

Now, I have only to submit one point before you, Sir, and that is whether the consideration of the Bill should or should not be postponed. So far as this question by itself is concerned, the Bill has been before the Legislature for the last six years; it had to be postponed during the last summer Session and therefore one naturally feels inclined to say that it should not be postponed any further. But I think the point raised by my friend on the left is really a very strong one; when we are revising practically the whole Code, why should most important matters be left out? These matters, I might say, have been the burning questions before the public for many years; they are questions, not of rules and procedure, but touching on the substantial injustice that is being done in many cases; they are vital questions and they should not be omitted from discussion when we are practically revising the whole code. And because these important questions are being shelved and kept out of the discussion, I should say that the consideration of this Bill should be postponed.

Rai Bahadur Bakshi Sohan Lal (Jullundur Division; Non-Muhammadan): Sir, from the copy of the Bill as passed by the Council of State and sent to us by post it appeared that the whole Code of Criminal Procedure was before the Council of State; and they noted in the very Preamble that the sections which were omitted were held by the Council of State to stand as they were and only those referred to in the clauses were amended. From this it appears that the object of the Bill before the Council of State was to revise the whole Code and not only particular sections, though they came to the conclusion that certain sections were to remain intact and others were to be altered. That was the position before the Council of State, and there is no reason why in the Assembly we should not consider whether the sections which were omitted from amendment or held by the Council of State to remain intact, should not be amended.

Another objection is that we have submitted certain amendments which have been ruled out, I do not know whether by the Secretary or by the President. I object to those amendments being ruled out before they were put before the House. I sent certain amendments and I received an answer that they related to other sections. I do not know under what rule those amendments have been omitted from this printed list; they had to be considered by the House; before they were ruled out of order, they could not be prejudged without being brought before this House. This is another reason why consideration of this Bill should be postponed until those amendments have been printed and are before the House for a ruling as to whether they are in order or not. I therefore respectfully support the proposition that the consideration of this Bill be postponed and all amendments brought before the House before this Bill is taken into consideration.

The Honourable Sir Malcolm Halley: I should like to set the Honourable Member's mind at rest regarding his amendments. What happened was

that the Honourable Member sent in, a considerable time ago, a number of sections forming part of his own draft Bill in regard to racial distinctions, which he desired to enter as amendments to the Bill now before us; the Legislative Department returned them, asking the Honourable Member to draft them in a form more appropriate to this Bill. That, Sir, is all that happened to the Honourable Member's amendments; they were not excluded; and, as far as I know, no amendments which Members have put forward in regard to the Code of Criminal Procedure (Amendment) Bill have been excluded, either by the Legislative Department or anybody else.

Mr. W. M. Hussanally (Sind : Muhammedan Rural): I am, Sir, in great difficulty as to whether I should vote for the postponement of consideration of this Bill or for taking the Bill into consideration by reason of the view that you have been pleased to express a little while ago. You have declined, Sir, to give any ruling upon the point whether the whole Code of Criminal Procedure is before us or whether we are confined to the Bill as it is presented to us after emergence from the Select Committee. That is the point which makes it difficult for me to make up my mind as to which way I should vote. If the whole Code of Criminal Procedure is before us, I should certainly vote against the motion for postponement; and I believe that it will suit my friend, Mr. Kabir-ud-Din Ahmed, if you give a ruling that the whole Code is before us, because I believe that in that case he and his friends would be free to move any amendments in regard to the Chapters which he has mentioned, about racial distinctions and the separation of the executive and the judicial. If, on the other hand, you confine us to the Bill as it has emerged from the Select Committee, then, as my friend, Sir Deva Prasad Sarvadhikary, has said, the case for postponement becomes very strong and probably many non-official Members will vote for postponement. I therefore submit, Sir, that a ruling from you will facilitate matters and give us an opportunity of making up our minds as to which way we should vote, and I appeal to you, Sir, to make up your mind which way your decision is to go before calling upon us to vote one way or the other.

Rao Bahadur T. Rangachariar: There are two points, Sir, on which I should like to have information from the Honourable the Home Member before I decide how to vote on this motion for postponement. In the first place, are they going to take objection to amendments which are outside the scope of their Bill? In the second place, are they going to give us an assurance that they are bringing in the Racial Distinctions Bill before this Council comes to an end? If they are going to take objection and take a ruling from the Chair, then it is a vital matter to us to obtain a postponement. But if the Government are going to allow amendments to the Code generally, then I do not see why we should not proceed with the Bill because Honourable Members who have amendments to bring forward will have plenty of time to give notice of those amendments because this Bill is sure to take some days. Then there is, not only this racial distinctions matter which is of vital importance, but another matter which I will mention and of which I have given notice of amendment, namely, the use of fire-arms on crowds, on unlawful assemblies or rioters. That is a matter in regard to which Honourable Members will remember the Council of State passed a Bill on the motion made by the Right Honourable Mr. Srinivasa Sastri. An amending Bill was brought forward in the Council of State and passed with certain amendments. That Bill was produced here for our consideration and notice of amendments was given; but the Government thereupon withdrew the Bill, and I say they withdrew it

[Rao Bahadur T. Rangachariar.]

deliberately, from the consideration of this House. They have not brought it forward. This Bill came up in Simla in September—not the last September but in September before the last—and the Government have not done anything with reference to that Bill. Six months have elapsed and under the rules that Bill ceases to exist, because the Council of State having passed it and this Assembly not having passed it within six months or that date, that Bill has lost its force. Therefore Government has deliberately abandoned a measure which was of vital importance to the country. These are two vital matters on which the country insists on amendments of the existing Code, and if the Government are going to take technical objection to the amendments which I have given notice of on this question of the use of fire-arms, then I say it is a ground on which I will decide for postponement, because the other amendments are not of any use if my amendments are to be ruled out of order. Therefore, Sir, I want an assurance from the Honourable the Home Member on these two points.

The Honourable Sir Malcolm Hailey: I seem to be supplying information this morning, on a large number of points, and I must apologise for occupying so much of the Assembly's time; but on this occasion I rise in reply to a definite request from my friend, Mr. Rangachariar. He asks what attitude Government is going to take in regard to the question whether amendments referring to sections of the Act that are not in the Bill as it appears before the Assembly will be taken up or not. He suggested further in the latter part of his speech that he desired to bring into the discussion certain further additions to our Act, in other words, to introduce, not only amendments to sections of the Act, as at present in force, or amendments to clauses of the Bill standing before the House, but further extensions to our Code as it at present exists. And he asks what attitude is Government going to take on this. I must remind him, that the decisive factor in this matter is not the attitude of Government at all. It is not the question whether I shall take objection to his doing so. It is the question whether you, Sir, as the custodian of the procedure of this House will rule that amendments are in order or out of order. I suggest that the Honourable Member must wait until he places his amendments before the House for a ruling of the Chair on the admissibility of those amendments. He further asks whether we are prepared to place before the House during the present Session the Bill relating to the removal of racial distinctions. I can only say at this stage that we have every hope of doing so. I can fix no date but the House can take it from me that we have every intention and every hope of doing this. Now, Sir, those are the two points on which I rose in order to give information, but I wish to deal for one moment with the implications which he would draw from the information, or from the lack of information I have afforded. He says he will vote for postponement unless my answers on these points are satisfactory; probably from his point they are entirely unsatisfactory, and I gather, therefore, that he is going to vote for postponement. The postponement would suit my convenience and that of my friend, Sir Henry Moncrieff Smith. We have, I think, to face 360—or it may be 390—amendments to this Bill. We received the great majority of them on Saturday last, the day before yesterday. We and our devoted draftsmen have been at enormous pressure to consider the effect of these amendments. I should like here and at once, to thank those Members of the House who fell in with the suggestion which we made to them that the amendments should be sent to us a month before the Session. For the rest, the fact is,

that we have something like 390 amendments to deal with at very short notice, and it would suit us admirably to gain time to do so. But, Sir, that is not the object of Mr. Rangachariar, and I desire to ask him, for his part, how he is going to gain his particular object by postponing the discussion of the Bill before the House? He says 'I will vote for postponing unless you first of all admit a variety of amendments to which I fancy that you are going to object, or unless you give me a definite pledge that you will place the Racial Distinctions Bill before the House this Session.' If we cannot do that, he will vote for postponing; he may even carry postponement. How is that going to effect his purpose? The Bill as drafted is before the House. He postpones the discussion. If he postpones the discussion until Doomsday, he does not alter its character or put more clauses into it or force us to revise it by bringing new Chapters of the Code under the scope of amendment. All he does is to secure that the Bill lapses, that the great efforts which have been made for a series of years to get our Code into somewhat better shape, the efforts which have been made not only by Member after Member in charge of the Home and Legislative Departments, but by high expert Committees, all these will be thrown away. If it is not clear to him, may I at least make it clear to the House, that by postponing this Bill he will not get more clauses into the Bill, because he cannot; he will not alter its character, because he cannot; and all he will do is to make it certain that the labour which has been bestowed upon this Bill and the trouble which Members of this House themselves have taken in putting forward their numerous amendments will be wasted.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I beg to support the proposal—the simple proposal—that the consideration of the Bill now before the House should be postponed. I do so not upon any controversial or emotional ground. I beg entirely to dissociate myself from the criticisms that have been offered with regard to the findings of Judges, Magistrates and Juries, behind their backs. I say without hesitation that this is not the place where we should hold up judicial decisions and judicial officers and juries to a sort of pillory. It is essential for the good administration of the country that the public should respect our judicial tribunals, but if we are to secure that respect, we, as representatives of the public must set the example. We were not in Court, we did not hear the evidence, we did not hear the arguments and we are not in a position, therefore, to judge definitely that a particular finding is right or a particular finding is wrong. Further, I do not wish to put forward as a reason for supporting this proposal that various controversial sections, now under consideration, have not been included. I do not think that the judgment of this House on this motion ought to be warped by any excitement or emotion over points of that kind. I sustain the proposal to adjourn amendment on the ground of pure common-sense. It is wrong to say, as one Honourable Member remarked, that the whole Code is before the House. It is not.

This is stated to be a Bill *further to amend the Criminal Procedure Code of 1898*. Therefore we are not now considering a new Code, and the question really involved by this proposal to postpone is whether this House will make these extensive amendments in the existing Code, or whether the time has arrived when, by waiting a little longer, we shall be able to put forward an entirely new Code in substitution for this Code. The present Code has been before the country for a quarter of a century. It has now been strengthened in many cases, and perhaps weakened in others, by judicial interpretation; and it seems to me, with all respect to those who hold a different opinion, that the country can get along very well for a little time

[Colonel Sir Henry Stanyon.]

longer until the important questions which are now agitating the public mind, but which must be settled as soon as conveniently may be, can be brought in. After all, the Courts have to interpret the laws which we pass, and one very important rule of interpretation for the purpose of arriving at legislative intention is to consider an enactment *as a whole*. This House, as at present constituted, is in its last Session. Suppose that these amendments are passed, or done away with, or whatever may be the result of considering this Bill, we shall have a certain amount of work done and a certain amount of time spent; and in a very short time a completely new Code, with Chapter 33 and everything else thrown in, will have to come up for the consideration of the next Legislative Assembly. Is it not more correct to say that the time we now spend on this Bill will be wholly wasted? As to the material which has been collected, I do not think, if this Bill lapses, the labour expended in collecting it will be lost; the material will be available when a new Code as a whole comes up for consideration. My simple argument is this, that the present Code is old enough now to carry on for a little bit longer, and that we should not take up the gigantic work of wholesale amendment until we are ready to replace Act V of 1898 by an entirely new Code. On that ground, and on that ground only, I support the proposal that consideration of the Bill to amend should be adjourned.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, my own feeling in the matter is that the House would do well in proceeding with the consideration of this Bill, but there are certain difficulties to which I shall draw the attention of the House if I may. If the Honourable Members will be pleased to refer to a copy of the Bill which is before us, they will see that it says 'an Act to consolidate and amend the law relating to criminal procedure,' and then, 'Whereas it is expedient to consolidate and amend the law relating to criminal procedure, it is hereby enacted as follows':

(An Honourable Member: That is not the Bill.)

Munshi Iswar Saran: It was passed by the Council of State. Now if you refer to Act V of 1898, it says: 'Whereas it is expedient to consolidate and amend the law relating to criminal procedure it is hereby enacted as follows:—...'. Now the first question which has been troubling some Honourable Members has also been troubling me. If we are not entitled, as it is quite open to you to rule, to propose any alteration of any of the sections which have not been touched by the measure before us, then I submit Honourable Members will find themselves in a serious difficulty. Then, there is the report of the Racial Distinctions Committee, which is receiving the long and protracted consideration either of the authorities here or of the authorities in England, of course, we do not know which. The matter apparently is so difficult and complicated that even the Honourable the Home Member is not able to give us any definite information; as to when that measure will emerge out of the consideration of these exalted personages we do not know. That being so, the difficulty is this, that you really take up an important Code like the Criminal Procedure Code and begin to alter it and modify it bit by bit. I submit, Sir, the best course would be, to wait and put the whole thing before the House in a complete form. Though as I have already said my own feeling is that we should not postpone the consideration of the measure. Now take another matter to which I should like to draw your attention. Section 491 of the Code of Criminal Procedure confers power on certain High Courts to issue directions of the nature of *habeas corpus*. There you find that only the High Courts of Madras, Calcutta and Bombay have got the right to issue these directions. The

High Courts of Allahabad, Patna and the Punjab have not got the right of issuing these directions. Now there are such important matters as have not been touched upon by the measure which we have got before the House now, and I am inclined to think that perhaps it will do no very serious harm if the consideration is postponed till Government is able to make up its mind about these various important and really vital questions. The Honourable the Home Member and indeed some other official Members say 'Oh, there are about 250 or 300 amendments.' It is not at all surprising that there are so many when you take into account the number of sections that there are in the Code and when you further remember the vast area of this country and the very large number of people affected thereby. I submit, Sir, that, taking the totality of circumstances at the present moment into consideration, it may perhaps be wise to postpone its consideration till such time as Government is able to make up its mind about all these various matters so that the alteration or the modification may not proceed bit by bit, but the whole Code may be taken into consideration and may be amended, altered or modified as the case may be. As the last speaker has said, the country has gone on for so many years with this Code and it can well be expected to go on a little longer with it without any very serious harm befalling it.

Mr. J. Chaudhuri: Sir, I would suggest that we should proceed with the Bill; I do not approve of the motion that it should be postponed. We have done a lot of work in the Select Committee and we may now proceed with the Bill and it will take some time to consider the amendments and embody each of them as may be carried in the Bill that is before the House. Now if the report of the Racial Distinctions Committee is published by the end of this month, and if the Bill is brought before us in February, in the course of this Session, the assent to this Bill by the Governor General may be put off till the end of the Session, and when the other Bill comes before us, we may also consider it in the course of the Session and then in that case we may consolidate it with the amendments we make now. The further Bill may be tacked on to this in this way. By putting off the assent of the Governor General, which is not usually given during the Session, we can consolidate both the Bills into one and we need not lose time and put away this Bill and have nothing to do for a considerable part of the Session.

So, I beg to oppose the motion for postponement and I support the P.M.'s motion that the Bill be proceeded with.

Mr. Deputy President: The question is:

'That the consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court fees Act, 1870, be postponed.'

The Assembly then divided as follows:

AYES—29.

Abdul Majid, Sheikh.	Ikramullah Khan, Raja Mohd.
Abdul Rahman, Munshi.	Jatkar, Mr. B. H. B.
Agarwala, Lala Girdhardal.	Lakshmi Narayan Lal, Mr.
Ahmed, Mr. K.	Man Singh, Bhai.
Ahmed Baksh, Mr.	Misra, Mr. B. N.
Akram Hussain, Prince A. M. M.	Mukherjee, Mr. J. N.
Asjad ul-lah, Maulvi Myan.	Nag, Mr. G. C.
Bagde, Mr. K. G.	Neogy, Mr. K. C.
Bajpai, Mr. S. P.	Pyari Lal, Mr.
Basu, Mr. J. N.	Reddi, Mr. M. K.
Bhargava, Pandit J. L.	Sarvadhikary, Sir Deva Prasad.
Ghulam Sarwar Khan, Chaudhuri.	Sohan Lal, Mr. Bakshi.
Gulab Singh, Sardar.	Stanyon, Col. Sir Henry.
Hussanally, Mr. W. M.	Venkatapathiraju, Mr. B.
Ibrahim Ali Khan, Col. Nawab Mohd.	

NOES—46.

Agnihotri, Mr. K. B. L.	Jamnadas Dwarkadas, Mr.
Allen, Mr. B. C.	Joshi, Mr. N. M.
Asad Ali, Mir.	Kamat, Mr. B. S.
Ayyar, Mr. T. V. Seshagiri.	Ley, Mr. A. H.
Barua, Mr. D. C.	Mitter, Mr. K. N.
Blackett, Sir Basil.	Moncrieff Smith, Sir Henry.
Bradley-Birt, Mr. F. B.	Nabi Hadi, Mr. S. M.
Bray, Mr. Denys.	Nand Lal, Dr.
Burdon, Mr. E.	Percival, Mr. P. E.
Cabell, Mr. W. H. L.	Ramayya Pantulu, Mr. J.
Chatterjee, Mr. A. C.	Rangachariar, Mr. T.
Chaudhuri, Mr. J.	Samarth, Mr. N. M.
Cotelingam, Mr. J. P.	Sen, Mr. N. K.
Crookshank, Sir Sydney.	Singh, Babu B. P.
Das, Babu B. S.	Singh, Mr. S. N.
Davies, Mr. R. W.	Sinha, Babu Adit Prasad.
Faridoonji, Mr. H.	Spence, Mr. R. A.
Haigh, Mr. P. B.	Subrahmanayam, Mr. C. S.
Hailey, the Honourable Sir Malcolm.	Tonkinson, Mr. H.
Hindley, Mr. C. D. M.	Vishindas, Mr. H.
Holme, Mr. H. E.	Webb, Sir Montagu.
Hullah, Mr. J.	Willson, Mr. W. S. J.
Jones, the Honourable Mr. C. A.	Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock.
 * Mr. Deputy President was in the Chair.

GOVERNOR GENERAL'S ASSENT TO BILLS.

Mr. Deputy President: I have received a communication from the Private Secretary to His Excellency to the effect that the following Bills have received the assent of His Excellency the Governor General:

The Indian Extradition (Amendment) Act, 1922.

The Indian Museum (Amendment) Act, 1922.

The Negotiable Instruments (Amendment) Act, 1922.

The Court-fees (Amendment) Act, 1922.

The Parsee Marriage and Divorce (Amendment) Act, 1922.

The Official Trustees and Administrator Generals (Amendment) Act, 1922.

The Police Incitement to Disaffection Act, 1922, and

The Transfer of Ships Restriction (Repealing) Act, 1922.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: The question before the House is:

'That the motion for the consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State, be taken into consideration.'

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I wish to raise a point of order before we proceed with the consideration of the Bill, and it is this. Certain clauses in the Bill as originally introduced have been omitted by the Council of State, and I would request you to give us a ruling whether the clauses that have been omitted by the Council of State are open to amendment by us in this House.

Rao Bahadur T. Rangachariar: Before you give a ruling, Sir, perhaps I may draw your attention to one point. I have just been looking up May's Parliamentary Procedure on this matter. I do not know if you propose to give a ruling on that now. If you do, I wish to address you.

Mr. Deputy President: I should like to hear you, Mr. Rangachariar.

Rao Bahadur T. Rangachariar: The stage at which we are is this. In May's Parliamentary Practice on page 380 it is stated thus:

'When the Bill, as amended by the Committee, is considered, the entire Bill is open to consideration and new clauses may be added, and amendments made. According to former usage, the amendments might be wholly irrelevant to the subject-matter of the Bill. This vicious practice was, in 1888, rendered impossible by Standing Order No. 41 which prescribes that no amendment may be proposed to a Bill on consideration which could not have been proposed in Committee without an instruction from the House. The practice of the House as to the admissibility of amendments described in connection with the Committee stage of Bills applies generally to amendments on consideration of a Bill as amended by the Committee.'

Turning back, Sir, to that stage, that is the Committee stage, what can be done in the Committee is stated at page 370. This is what we find:

'An amendment must be coherent, and consistent with the context of the Bill, and when a proposed amendment has been so amended to form an incoherent question, the Chairman stated that if no further amendment was proposed he should proceed with the question which next arose upon the clause. Amendments cannot be moved which are based on Schedules or other provisions, the terms of which have not been placed before the Committee. Amendments are out of order if they are irrelevant to the Bill or beyond its scope; governed by or dependent upon amendments already negatived—(we are not concerned with that)—amendments are out of order if they are irrelevant to the Bill or beyond its scope'.

Now the question is whether in the first place, so far as the point raised by my friend, Mr. Agnihotri, is concerned, namely, the clauses omitted in the Committee can be restored according to this because it relates to the Bill itself, therefore there is no difficulty about the question which has been raised by Mr. Agnihotri. On that point the provision is clear, because it is the Bill itself. The Committee may have omitted certain clauses, and it is open to this House to restore them, because it is the Bill itself. You amend the Bill; the Bill has been amended by the Select Committee and the House can certainly restore a clause which has been omitted from the Bill by the Select Committee. That question does not in any way present any difficulty. But when we come to the second question as to the new clauses, I shall have to address you.

Mr. K. B. L. Agnihotri: I am afraid my point has not been properly understood by Mr. Rangachariar. My point was whether where a clause has been omitted by the Council of State, can we take up that original clause here.

Rao Bahadur T. Rangachariar: Because it was part of the Bill.

The Honourable Sir Malcolm Hailey: Sir, I shall deal only with the restricted question which has been put by Mr. Agnihotri, namely, whether we can here deal with clauses which have been omitted by the Council of

[Sir Malcolm Hailey.]

State, and not with the larger question to which Mr. Rangachariar referred. He read first an extract from page 382 of May's Parliamentary Procedure. He claimed that in accordance with Parliamentary Procedure this House could take cognisance of clauses which were in the Bill which was referred to the Select Committee and have been omitted by the Council of State from the original Bill. He bases his contention on this passage:

'When the Bill as amended by the Committee is considered, the entire Bill is open to consideration and new clauses may be added and amendments made.'

He has, I think, forgotten that between the stage at which the Bill was considered by the Committee and the present stage, a further stage has supervened, namely, the Bill has been considered by the Council of State and certain clauses omitted. Now, the Bill before this House is the Bill not as considered by the Committee but the Bill as it has come from the Council of State and I maintain, Sir, that it is impossible for this House in consequence to deal with any of those clauses which having been omitted by the Council of State are not now part of the Bill. I quite admit that, if the Bill had come forward in this Assembly and had been considered by a Committee of this Assembly and certain clauses had been omitted by that Committee, then of course this Assembly might deal with the Bill as it originally came before it, i.e., with the whole Bill; but that is not the case. As I pointed out before, the House has before it the Bill as amended by the Council of State. I put it that this House can deal only with the Bill as it stands before it and it cannot consequently deal with any sections which have been omitted from the original Bill.

Mr. T. V. Seshagiri Ayyar: Sir, I think the Honourable the Home Member has taken a very narrow view of the powers of this Assembly. The two co-ordinate parts of the Legislature have power to deal with every Bill that is put forward by the Government. According to the Honourable the Home Member, if an amendment is made in the Council of State and that amendment is vetoed, this Assembly can do nothing in the matter. Apparently, he would say that once an amendment has been made there, you have no right to consider it. That would be the result of saying that if you omit a clause there, then you cannot consider that clause here. Then it must necessarily follow that if an amendment has been dealt with by the Council of State, we cannot deal with that amendment. Then the elaborate provisions by which differences between the two Chambers are to be settled by a Joint Committee would be useless. Surely, the idea is that, if a matter is before the one House, it is also before the other House, and whatever is before that House can be considered by the other House. There may be certain matters on which there is difference of opinion and when that happens the two Houses will have to consider it together. That implies that everything that is placed before one House must be regarded as being placed before the other House as well.

We will have to deal with the amendment of the Criminal Procedure Code as it is and it is our privilege and our duty to deal with the whole matter, and not to confine ourselves to what is said in the copy before us; and the fact that the Council of State has dealt with it in a particular manner can not affect the rights of this House.

The Honourable Sir Malcolm Hailey: Would the Honourable Member kindly inform us how we could have printed the Bill except in the form in which it was amended by the other House?

Mr. T. V. Seshagiri Ayyar: It is perfectly easy. You could have printed the omitted clauses in italics.

The Honourable Sir Malcolm Hailey: They would not be before the House nevertheless.

Sir Deva Prasad Sarvadhikary: It is an entirely new claim, Sir, that has been put forward on behalf of the Council of State. If any action by one Chamber was the final word on the subject, the Princes Protection Bill would never have come up before the Council of State and passed in the way in which it was done.

Mr. N. M. Samarth: But the rules provide that.

Sir Deva Prasad Sarvadhikary: I know. But the rules nowhere provide or suggest that, because the Council of State has chosen to throw out certain amendments or certain clauses, this Assembly, which, for this purpose, is its revising Chamber, is precluded from looking at them or saying their say. What happens to the Bi-chameral Scheme?

Sir, I do not quite follow Sir Malcolm when he says that the Bill is not before the Assembly in a form which would warrant its going into the matter. The Bill is in its entire form as introduced before both the Chambers. I do not want to labour that point for the position cannot be gainsaid. We can never forget that no Bill can have any legislative sanction till both the Chambers have either singly or jointly, as the exigencies of the case might require, dealt with it before it goes up to the Governor General. Therefore, I do not think that the proposition that has been put forward by Sir Malcolm will at all be tenable. You will not find corresponding precedents in Parliamentary practice, because the procedure here is entirely all our own. You have no corresponding two Chambers there which to the same extent act as a drag on one another as here and the position ought not to be worsened.

Bhai Man Singh: Sir, the question now before the House is, really speaking, a very important one from the point of view of the rights of this House and I would beg you, Sir, to give your most careful consideration before ruling out Mr. Agnihotri's point. In the first place, I will take up what is the principle underlying the questions of amendments. Why should new amendments be not allowed? The only thing that can be said in defence of this point is that perhaps the Government Members or the Non-Official Members may not be quite prepared to meet certain amendments if they are taken by surprise. And therefore since certain Members may not be prepared on those points, it would be quite unfair to put in quite new points that do not concern the matter that is before the House. This can be the only principle of limiting our right of putting amendments to a certain Bill. Now, I submit, Sir, in the case of a clause that has been considered by the Council of State and that has been omitted by that House, are not the Government Members expected to be fully prepared on those points and to have studied them carefully and to be ready to meet amendments about them? There is no reason on earth why they should shrink from it if we want to introduce those points. Therefore, the clauses that have been omitted by the Council of State are before us and there is no reason why we should not be allowed to bring in those clauses again or to move amendments in regard to those sections the clauses about which have been omitted by the Council of State, or I may go one step further, which were originally discussed by the Joint

[Bhai Man Singh.]

Committee. Really speaking, the way in which this question has been taken up on the Government side by the Honourable Sir Malcolm Hailey is wrong. The larger question of allowing amendments about sections that have not been considered in the Joint Committee Report or in the Bill as passed by the Council of State, the Chair this very morning has been pleased to give a ruling that this question would be decided when specific amendments come before the House and not before then. If as yet we have not decided whether we can or cannot take up amendments about sections that have not been touched either by the Select Committee or by the Council of State, if we do not know the fate of those amendments, how can we decide the narrower question as to whether we can take up clauses that were in the Code originally but have been omitted by the Council of State?

The other point, Sir, is that this Bill was originally moved in this House as well. My Honourable friend corrects me that originally it was moved in the Council of State and subsequently it was moved in this House also. Therefore it would be a very strange thing that a certain Bill is moved before us and still the House is debarred from discussing those questions simply because the other House has been pleased to omit certain clauses from that Bill. To quote instances, Sir, I remember that in the Income-tax Bill last year, a certain point, i.e., the clause about the insurance of the minors in a joint Hindu family was omitted by us. It was then renewed by the Council of State and again brought before us, and then again we omitted that clause. (*The Honourable Sir Malcolm Hailey*: "One word in that clause.") The question was not of one word, but of a certain point, whether that point was brought out in half a clause or one clause. The question is that there was a certain point, that was put in a certain form and had been omitted by us. The Council of State discussed that point and put it in. Similarly, certain amendments were made by us in the Finance Bill about post office rates in our first Session. That question was also discussed in the Council of State and amended and then brought forward to this House. I cannot understand why this stringent attitude should be taken up by the Government to debar us from discussing the sections the amendments to which have been omitted by the Council of State.

Mr. N. M. Samarth: Sir, I do not think with due respect to the Leader of the House that he has given us a correct view of the real point at issue and of the way in which it should be decided. The point at issue is this. There was the original Bill before the Council of State, the originating Chamber, and in the Bill as originally brought forward by the Government there were amendments to one clause of the Bill or to several clauses of the Bill. The originating Chamber deleted certain amendments and passed the Bill in a certain form and that Bill is now before the House. The question is: Is it open or it not open to this House to propose those amendments which were originally there in the Bill but which were deleted by the Council of State and to insert them in such form as we may like—in the same form or in a modified form? To my mind, the question is hardly open to any serious discussion having regard to the wording of clause (4) of Rule 95, which you will find in the Manual of Business and Procedure at page 32. That clause reads thus:

'The other Chamber may either agree to the Bill as originally passed in the originating Chamber (that is to say, this House which is the 'other Chamber' in

this matter may either agree to the Bill as originally passed in the originating Chamber, that is, the Council of State), or as further amended by that Chamber, as the case may be, or may return the Bill with a Message that it insists on an amendment or amendments to which the originating Chamber has disagreed.'

Now, there was an amendment in the original Bill, as introduced in the originating Chamber, which has been deleted by that body. We say that we insist that that amendment shall be inserted in the Bill, and it is quite open to us to do so. I, therefore, submit that the point of order must be decided in favour of the view which has been put forward by my Honourable friends over there.

Mr. P. P. Ginzwa (Burma: Non-European): I would invite your attention to Rule 85 at page 30 of the Manual and would point out to you that the motion, as it is put on the agenda paper, is not in accordance with that rule. The motion on the agenda paper is, 'Further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.' I submit that under that Rule they should not have inserted the words 'as passed by the Council of State' at all. Rule 85 says that 'At any time after copies have been laid on the table, any Member acting on behalf of Government in the case of a Government Bill, or in any other case, any Member may give notice of his intention to move that the Bill be taken into consideration, —the Bill itself—and not the Bill as passed by the Council of State. In any case, there are two points that the Home Member has got to remember. First of all, it is this. This House is entitled also to make amendments to this Bill. Supposing it deletes 15 clauses from this Bill and it goes back to the Council of State, will this House be entitled to ask the Council of State to confine its attention merely to the Bill as it is sent up to that Chamber by this House? The Council of State will insist upon, if it thinks fit, the re-insertion of those clauses which have been deleted by this House. Secondly, and this is what I am more concerned with that if the Honourable the Home Member insists upon putting this narrow interpretation upon the Rules, one thing this House will do, and that is, it will guard itself against any encroachment by the Council of State on any questions of legislation. It will insist, and it will be justified, I submit, in insisting, hereafter that any Bill of such importance as the Code of Criminal Procedure (Amendment) Bill shall not be originated in that Chamber, and I beg the Honourable the Home Member to remember that it is hardly worth his while on an occasion like this to create this sort of jealousy between the two Houses. On that ground alone I would ask the Honourable the Home Member to reconsider his position and not create a precedent which may hereafter lead to continuous disagreement between the two Houses.

Mr. Deputy President: With regard to the ruling which Mr. Agnihotri desires me to give, I have to say that I rule that it would be in order for Honourable Members to discuss the Bill as originally introduced in the Council of State and to move the necessary amendments.

The usual practice is to leave the Preamble and the long title of the Bill to the end. I will, therefore, put the following question:

"That Clause 1 do stand part of the Bill."

The motion was adopted.

Lala Girdhari Lal Agarwala (Agra Division: Non-Muhammadan Rural).
 Sir, I move my amendment which runs as follows:

"After clause 1, insert the following clause:

'1-A. For the words and figures 'Act V of 1898' wherever they occur in the Code of Criminal Procedure, 1898, the words and figures 'Act I of 1923' and for the figures '1898', wherever they occur in the said Code, the figures '1923' shall be substituted and all the necessary consequential amendments shall be made'."

The object of my amendment is this. The present Bill is a Bill for overhauling the Code of Criminal Procedure. There was a Code of Criminal Procedure of 1861 which was amended 11 years later in 1872. Then again, the whole Code was overhauled and was enacted in 1882, that is, 10 years later. Thereafter another Act came into force, namely, Act V of 1898, that is, 16 years later, which is the present law. That is going to be amended, and I should say it is being thoroughly overhauled. There is no reason why after a lapse of 25 years the same old name should continue. The labours of many Honourable Members of this House and other gentlemen who are not in this House have resulted in the present discussion and this matter has been going on for nearly 6 years. There is no reason why the old name should be continued. Then, Sir, there is another matter. Section 1 of the Code says 'It shall come into force on the 1st day of July 1898.' If the proposed amendments are made, and I see they are amendments of a very important and vital nature, some time should elapse before the new Act comes into force. If this clause is not amended, then the result would be that the amendments would come into force at once. Sir, for this reason I submit that my formal amendment, if it can be called a formal amendment, should be accepted and I would ask the Government and other Honourable Members of the House to accept my amendment.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I would deal with Mr. Agarwala's last point first. He says that one of the objects of his amendment is to secure that the amending Bill shall come into operation after some notice. He proposes that the amendments which we are making shall not come into force till the 1st July 1923. If that is his object, he should have proposed an amendment to clause 1 of the Bill, which now stands part of the Bill. In the commencement clause he should have proposed to insert the words 'This Act shall come into force on the 1st July 1923'. In any case the amendment which he suggests will not effect what he desires in any way. I am somewhat at a loss to understand what the effect of the amendment might be. He proposes first of all that the words and figures 'Act V of 1898', wherever they occur in the Code of Criminal Procedure, should be replaced by the words 'Act I of 1923.' Well, Sir, though I share his optimism that this may be the first Act to be passed in 1923, we do not know what number this Act will have. But the words 'Act V of 1898' do not occur anywhere in the Code of Criminal Procedure, 1898. I do not know what the Honourable Member is referring to. Perhaps he has been looking at an edition of this sort (showing a Volume) having the words printed at the top of every page 'Act V of 1898'. They are not part of the law. Therefore his first point disappears. His second amendment is that for the figures '1898' the figures '1923' be substituted. The object is to alter the title of the Act and, as he says, also to postpone its operation till the 1st July 1923. I do not know what the effect of that will be. Apparently his idea is to leave us without a Code of Criminal Procedure at all from the date this Bill

is passed until the Act comes into force in July. The Honourable Member said that in 1898 we started with a new law. We gave the law a new name under a new year. That was quite another matter. In 1898 we consolidated and amended the law. Here we are not consolidating, though we are going to consolidate, I hope, very soon. At the present moment we are merely amending and therefore we cannot alter the title of the law.

Mr. Deputy President: The question is :

‘ That the following amendment be made :

‘ After clause 1, insert the following clause :

‘ 1-A. For the words and figures ‘ Act V of 1898 ’ wherever they occur in the Code of Criminal Procedure, 1898, the words and figures ‘ Act I of 1923 ’ and for the figures ‘ 1898 ’ wherever they occur in the said Code, the figures ‘ 1923 ’ shall be substituted and all the necessary consequential amendments shall be made ’.

The motion was negatived.

Mr. Deputy President: The question is that clause 2 do stand part of the Bill.

Mr. J. Ramayya Pantalu (Godavari *cum* Kistna : Non-Muhammadian Rural) : Sir, I propose :

‘ That in clause 2, sub-clause (ii), for the figures ‘ 192 ’ and ‘ 528 ’, substitute the figures and words ‘ 192 sub-section (1) ’ and ‘ 528 sub-sections (1) and (2) ’, respectively, and insert the figures ‘ 437 ’ after the figures ‘ 436 ’.

The first part of this amendment is a drafting amendment, because the question of subordination in regard to sections 192 and 528 only occurs in regard to sub-section (1) of section 192 and sub-sections (1) and (2) of section 528 and I want these sub-sections to be specified for the sake of accuracy. Then I come to sections 437 and 436. Section 436 relates to the power to order commitments.

Sir Henry Moncrieff Smith: May I suggest that the amendments in regard to sections 436 and 437 be moved separately ?

Mr. J. Ramayya Pantalu: I agree to that suggestion. At present I move :

‘ That in clause 2, sub-clause (ii), for the figures ‘ 192 ’ and ‘ 528 ’ the figures and words ‘ 192 sub-section (1) ’ and ‘ 528 sub-sections (1) and (2) ’, respectively, be substituted.’

Sir Henry Moncrieff Smith: Sir, we have no objection to these amendments at all. The intention was to leave little things like this for the consolidation which, as I said just now, we hope will come very soon. But I think Mr. Pantulu has made one error. I think he has overlooked clause 143 of the Bill. Under that clause sub-sections (1), (2) and (3) are re-numbered (2), (3) and (5) and therefore the clauses which deal with subordination would now become (2) and (3) and not (1) and (2). Therefore if Mr. Pantulu will agree to sub-sections (2) and (3) for (1) and (2), I have no hesitation in accepting the amendment on behalf of Government.

Mr. J. Ramayya Pantalu: I accept that.

Mr. Deputy President: The question is :

‘ That in clause 2, sub-clause (ii), for the figures ‘ 192 ’ and ‘ 528 ’ the figures and words ‘ 192 sub-section (1) ’ and ‘ 528 sub-sections (2) and (3) ’, respectively, be substituted.’

The motion was adopted.

Mr. J. Ramayya Pantulu: My next amendment is:

'That after the figures '436' the figures '437' should be inserted.'

436 relates to the power to order commitment: It says that:

'When, on examining the record of any case under section 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may, thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Sessions Judge or District Magistrate, improperly discharged.'

The proposed clause, as drafted by Government, empowers the District Magistrate to order the commitment to a Sessions Court of a person who has been tried by an Additional District Magistrate. Section 437 refers to the power to order inquiry in a case in which the accused's complaint is dismissed under section 203 or section 204. If an Additional District Magistrate has dismissed a complaint under either of the sections, the question is whether the District Magistrate should not be empowered to order a further inquiry into the case; and if for the purpose of an order of commitment where a person has been discharged, the District Magistrate should have the power, I think he might also have the power to order a fresh inquiry into a case which has been dismissed. I think that my Honourable friend, Mr. Rangachariar, has got an amendment to omit section 436. If that is passed by the Assembly, I won't press my amendment in respect to section 437. But if the House retains 436, then I will press, for this; so I request the Chair to allow me to move this amendment after Mr. Rangachariar's amendment has been disposed of. (Cries of "Withdraw.") I have explained my views. If Mr. Rangachariar's amendment is approved by the House, then I shall withdraw my amendment. But if that amendment is not passed, then I shall press mine; and I request the permission of the Chair to put it off till after Mr. Rangachariar's amendment is disposed of.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, perhaps it will simplify matters if I point out that there is a mistake here. Sections 436 and 437 have been changed by the Bill. As Sir Henry Moncrieff Smith knows, the section was 437 in the previous Act; but in the Bill now it is 436. The numbers have been changed.

Sir Henry Moncrieff Smith: That is clause 116 of the Bill.

Bhai Man Singh: My amendment is:

'In clause (2), sub-clause (ii), substitute '437' for '436'.'

Of course the other portion has now been dealt with by the amendment of 435. The first portion is, 'in clause (2), substitute '437' for '436,' and after the word 'subordinate' insert the words 'and for the purposes of sections 435 and 436 inferior.' I would submit that the latter portion should be taken separately in two parts, so they would form two separate questions by themselves; for the present, I will only refer to my amendment for substituting 437, and my plainest reason for that is that in section 436 the word 'subordinate' nowhere occurs.

Sir Henry Moncrieff Smith: May I interrupt the Honourable Member. My friend, Bhai Man Singh, does not seem to have understood Mr. Percival. When we talk about what was 436 or rather what is at the present moment 436 in the Code, I would again invite attention to the fact that it has become 437, and 437 has become 436. If Honourable Members will look at

clause 116 of the Bill, they will find that the order of those sections has been changed. That is all. Therefore, the question of 'subordinate' arises in this Bill under section 436. It does not arise at all under section 437.

Bhai Man Singh: I withdraw it.

Rao Bahadur T. Rangachariar: Do I understand that the Honourable Sir Henry Moncrieff Smith means that 436, as it is now, becomes 437 and 437 becomes 436?

Sir Henry Moncrieff Smith: That is clause 116 of the Bill.

Rao Bahadur T. Rangachariar: Then the only question which remains would be whether even for the purposes of section 436, the Additional District Magistrate's proceedings discharging an accused person should be open to revision by the District Magistrate. I think, Sir, on principle. . .

An Honourable Member: May I ask whether the Honourable Member brings it under section 435 (revision)?

Rao Bahadur T. Rangachariar: 437 now, as it is in the present Code and 436 as it would be in the new Code, that is, the power of setting aside an order of discharge. Assuming, that 436 in the Bill means 437 as it is at present, that is, the power of revision of an order of discharge or the dismissal of a complaint, my point is that the District Magistrate should not have the power to set aside an order of discharge made by the Additional District Magistrate. That is the substance. The substance of the amendment now proposed in the Bill is that Additional District Magistrates should be assumed to be subordinate to the District Magistrate for the purpose of his exercising the power of revision which he has under section 437 as it is now and 436 as it is going to be. I do not think it is sound in principle that the Additional District Magistrate's proceedings, judicial proceedings, should be open to revision by the District Magistrate. They are men of equal authority,—and Additional District Magistrates are in this advantageous position that they do not combine in them generally executive functions. They are purely judicial Magistrates, and therefore they are welcome to the country, whereas the District Magistrate is the head of the police and is also mixed up with a number of police and executive matters and consequently have naturally an official bias in reference to judicial matters. Additional District Magistrates are in the fortunate position that they bring to bear upon the discharge of their duties a purely judicial mind; and therefore a proceeding which has been framed by a judicial officer should be subject to revision at the hands of judicial officers, and therefore it would be quite enough if the Sessions Judge has the power to revise the proceedings. If Honourable Members will look at the section, they will find that either the Sessions Judge or the District Magistrate may revise the proceedings of Magistrates referred to therein. Therefore, it is not the case that it would be without any revision. The Sessions Judge will revise the proceedings of the District Magistrate. If my proposal is accepted, the District Magistrate will not have the power. Therefore, no harm is done. On the other hand, the Additional District Magistrate is placed on a footing of equality with the District Magistrate, and therefore while it is sound that the District Magistrate should have powers of transfer, which is the proper operation of this clause, it is not equally sound to say that he should have revisionary powers over judicial proceedings made by Additional District Magistrates. The Additional District Magistrate's proceedings should be

[Rao Bahadur T. Rangachariar.]

subject to revision either by the Sessions Judge or by the High Court and not by the District Magistrate.

Therefore, the object of my amendment is not to give this power to the District Magistrate. I hope the Honourable House will agree to my suggestion.

I move, Sir:

'That in clause 2 (ii) the figures '436' be omitted.'

Sir Henry Moncrieff Smith: Sir, on the merits of this amendment I think I may say that the Government has no objection. There seems to be really no serious necessity to make the Additional District Magistrate, for the purposes of section 436 as it now is, subordinate to the District Magistrate. As my friend has pointed out, the Sessions Judge himself has the power of revision and I think that is sufficient.

Mr. Deputy President: The amendment moved is:

'That in clause 2 (ii) omit the figures 436.'

The motion was adopted.

Mr. J. Ramayya Pantulu: I wish to withdraw my amendment by the permission of the House in regard to inserting the figures '437' after the figures '436' in clause 2 (ii).

The amendment was, by leave of the Assembly, withdrawn.

Bhai Man Singh: I do not wish to move my amendment:

"In clause (2) (ii), substitute '437' for '436' and '528 sub-section (1)' for '528' and after the word 'subordinate' insert the words 'and for the purposes of sections 435 and 436 inferior'."

The amendment was, by leave of the Assembly, withdrawn.

Mr. Deputy President: The question is that clause 2, as amended, stand part of the Bill.

The motion was adopted.

Mr. Deputy President: The question is that clause 3 stand part of the Bill.

The motion was adopted.

Mr. Deputy President: The question is that clause 4 stand part of the Bill.

Mr. J. Ramayya Pantulu: I move, Sir:

"That for clause 4 the following be substituted:

'In sub-section (2) of section 21 of the said Code, the words from 'declare what...' to the words 'and may' shall be omitted, the word 'the' shall be substituted for the word 'their' and at the end the following words shall be inserted:

'Of the Presidency Magistrates including Additional Chief Presidency Magistrates to the Chief Presidency Magistrate'."

It seems to me quite unnecessary to say that Presidency Magistrates are subordinate to the Chief Presidency Magistrate. It ought to be taken for granted that all Presidency Magistrates are subordinate to the Chief Presidency Magistrate, as all Magistrates in a District are subordinate to the

District Magistrate. It is only necessary to define the amount of subordination in which they stand to the Chief Presidency Magistrate. That simply is the object of my amendment.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, in substance sub-section (2) of section 21 of the Code of Criminal Procedure deals with the relations which are to subsist between Presidency Magistrates and the Chief Presidency Magistrate. Now, in clause 8 of the Bill, we have provided for the appointment of an Additional Chief Presidency Magistrate, and therefore it is necessary to provide for the relations which should subsist between the Additional Chief Presidency Magistrate and the Chief Presidency Magistrate. The Bill proposes to do it in this manner. Sub-section (2) of section 21, as amended by the Bill, would read:

'The Local Government may for the purposes of this Code declare what Presidency Magistrates, including Additional Chief Presidency Magistrates, are subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.'

The Honourable Member proposes to substitute for these words the following words:

'The Local Government may for the purposes of this Code define the extent of the subordination of the Presidency Magistrates, including Additional Chief Presidency Magistrates, to the Chief Presidency Magistrate.'

I, Sir, have been pondering very considerably as to what was the object of the Honourable Member's motion. I gather now that the suggestion is that all Presidency Magistrates must be subordinate to the Chief Presidency Magistrate. Well, Sir, we have just been dealing with the relations between the Additional District Magistrate and the District Magistrate. There is a question there in the clause which we have just discussed of the extent of the subordination. But will the amendment moved by the Honourable Member secure that all Presidency Magistrates shall be subordinate to the Chief Presidency Magistrate. If you refer again to the amendment, you will find that it will give the Local Government power to define the extent of their subordination. They may say that that extent is *nil* and then the Additional Chief Presidency Magistrate and other Presidency Magistrates would not be subordinate to the Chief Presidency Magistrate at all. I would merely add, Sir, that this clause was exactly in its present form in the Bill introduced in the old Legislative Council in 1913. It was not touched at all by Sir George Lowndes' Committee; no one has suggested that any amendment to it was required in all the lengthy opinions that were received when that Bill was circulated for opinion, and it was not touched by the Joint Committee. I venture to suggest, Sir, that it is very undesirable at this stage to make a drafting amendment of this kind, and I hope that my Honourable friend will withdraw his amendment.

Mr. J. Ramayya Pantulu: In response to the suggestion made by my Honourable friend I beg to withdraw my motion.

The motion was, by leave of the Assembly, withdrawn.

Mr. Deputy President: The question is that clause 4 stand part of the Bill.

The motion was adopted.

Mr. Deputy President: The question is that clauses 5, 6 and 7 do stand part of the Bill.

The motion was adopted.

Mr. Deputy President: The question is that clause 8 stand part of the Bill.

Mr. J. Ramayya Pantulu: Sir, I confess I do not quite understand the amendment proposed to the original section 40 of the Code. The section as it stands seems to be quite clear and intelligible. It says:

'Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.'

That is quite clear to me. But the amendment says that instead of the word 'transferred' in both places where it occurs, the word 'appointed' shall be substituted and the words 'continue to' shall be omitted and for the words 'to which' the words 'in which' shall be substituted. I will take a very ordinary instance. A Deputy Collector in charge of a division is transferred from one district to another district as Deputy Collector. He was a Magistrate in the old station and when he is transferred out of the district, he continues to exercise those magisterial powers. Where is the advantage of altering the clause by taking away the word 'transferred' and putting in the word 'appointed'? He is simply transferred to a place of a similar nature in the same local area. There is no break in service between his former appointment and his latter appointment. When there is a break and when he is re-appointed, he has to be re-invested with magisterial powers. It is only when a man is transferred from one place to another without a break that his magisterial powers continue and he can exercise them. If that is the idea, where is the necessity for substituting the word 'appointed' for the word 'transferred'? And again take another case. A general duty Deputy Collector is appointed as a Treasury Deputy Collector. The question is whether he continues to be a Magistrate or not. Then take another case in which a Deputy Collector is appointed to exercise the powers of an Assistant Registrar of Co-operative Societies or when he is put on special duty for the acquisition of lands. The question that arises in these cases is whether the Deputy Collector continues to be a Magistrate in the new appointment. The section as it seems to suggest that when an officer who is appointed a Magistrate by virtue of holding a particular office is transferred to another appointment of the same nature, he continues to exercise magisterial powers. That supposes that there is no break in service. It is only a case of transfer from one appointment to another and I do not really see the necessity or even the desirability of substituting the word 'appointed' for the word 'transferred', and then taking away the words 'continue to exercise'. He will only exercise the powers which he already exercised. So, he continues to exercise them. He does not exercise any powers which he has not already exercised. If there is a break in his position as a Magistrate, he cannot exercise any powers unless he is re-invested with those powers by the Government. Therefore it seems to me that the section, as it is, is all right and the amendment is not intelligible to me. I therefore move that clause 8 be omitted.

Mr. Deputy President: Amendment moved:

"That clause 8 be omitted."

Sr Henry Moncrieff Smith: Sir, I think I can explain in a few words the necessity and desirability of this small amendment. It was pointed out about ten years ago by one Local Government and one High Court that they were in some difficulty about gazetting their officers' powers when they came back from leave. An officer went on leave and during the period of his leave he exercised no criminal powers. He came back automatically to the same district; he was not transferred. Therefore the word 'transferred' in section 40 did not quite cover his case. Well, it is a very small point. I do not know whether the difficulty has arisen in other Provinces, but some Provinces apparently are so extraordinarily conscientious in applying the provisions of the Act, that they proceed again to gazette the whole of the powers of that officer when he comes back from leave. The amendment therefore will relieve their difficulties and also will save a great deal of routine work in the Secretariat and in the Government printing press. Of course if the word 'transferred' is altered to 'appointed', the alteration will cover the transfer when the officer is transferred to another district. If the word 'appointed' is substituted for the word 'transferred', then the other small amendments in the section become necessary. As regards the omission of the words 'continue to', an officer who goes on leave and comes back does not continuously exercise the same powers, because there is an interval during which he exercises no criminal powers at all. In the same way, when an officer is transferred he takes joining time. Therefore the words 'continue to' are not exactly appropriate in these connections. I hope that my Honourable friend has understood this explanation and that he will see his way to withdraw the amendment.

Mr. J. Ramayya Pantulu: If it is found necessary to re-appoint an officer on return from leave—that is I believe what you mean—then he is not transferred; but as a matter of fact an officer who goes on leave is not appointed again on return from leave. He simply returns to his appointment.

Mr. Deputy President: I would draw the Honourable Member's attention to the fact that there is no reply for the mover of an amendment. The amendment moved is that clause 8 be omitted.

The motion was negatived.

Mr. Deputy President: The question is that clause 8 stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, my amendment is:

"After clause 8, insert the following as clause 9:

'9. Section 44 of the said Code shall be omitted'."

Clause 9 of the original Bill, as introduced in the Council of State, was about adding certain other sections to the sections already specified in section 44 of the Criminal Procedure Code. That clause was dropped by the Council of State. I now suggest an amendment, that section 44 should be omitted, and this omission should be put in, in clause 9. My object in putting this amendment is that section 44 put on the public the responsibility to report about the commission or the intended commission of certain offences that are specified in that section. My suggestion is that the members of the public should not be made liable to report excepting those that are particularised under section 45. Certain people

[Mr. K. B. L. Agnihotri.]

who are appointed to do certain duties or are remunerated for doing work or are connected with the Government may be burdened with the responsibility, but other persons who have no connection with the administration under any of the Statutes should not be made liable to make reports about any offences that may happen. It is an intrusion on the rights of the private citizen, and therefore I propose that section 44 of the Criminal Procedure Code should be omitted. Moreover, Sir, it is not only the commission of the offence that one is made liable to report, but even the intention of any other person to commit such an offence.

The intention is very difficult to be known. Even in criminal cases which come before the Courts of law the intention has to be judged from the circumstances appearing in the case, and after the offence has been completed and, here, one is expected to know whether or not any person is really going to commit an offence; this will be very difficult for any man to find. Moreover, if a man were to report about the intention of any other person to commit an offence, he also puts himself under the liability and risk of being prosecuted if the report turns out to be false or, in other words, if the intention of the offender is not proved. He puts himself within the clutches of sections 211 and 182 of the Indian Penal Code. As it is, at any rate, difficult to find out the intention of a person to commit any offence, it is better that this section should be omitted.

The Honourable Sir Malcolm Hailey: Mr. Agnihotri, Sir, has already availed himself of your recent ruling. He is referring here to a section which was included in the original Bill, but has since been excluded. As I say, he comes within the terms of your ruling. And what use does he make of it? He proposes to omit the whole of section 44, a section which has always been part of our law. It lays on the public certain obligations in regard to the reporting of serious crime. I am not aware that in any of the discussions that have taken place regarding the Bill or its amendments, any public association or any public body, or indeed any individual, has protested against this obligation, and it has been left to Mr. Agnihotri to find it unduly burdensome. Remember that he does not attempt to discriminate between the various offences in regard to which there is an obligation on the public to report. With a fine gesture he would sweep them all away. That is to say, that if Mr. Agnihotri sees himself an act of the kind referred to in section 121, namely, the waging of war, then he would not consider it his duty to report it to the authorities. Much more terrible than this, if Mr. Agnihotri sees anybody committing the nefarious offence, an offence almost beyond the benefit of clergy, of assaulting the Governor General, he would not think that it was his duty to tell the nearest policeman. But I will not pursue the list of these offences. The ordinary man, I think, is willing to co-operate with the State in the protection of the public peace. Mr. Agnihotri said that this statutory obligation is an invasion of the rights of the public. Has he forgotten that rights also connote responsibility, and that every member of the public has also a duty towards other members of the public in the State at large? (Mr. K. B. L. Agnihotri: 'Certainly.') I am glad that he admits so much. Then he goes on to argue that the provision is an additionally difficult one because it refers also to the obligation to report to authority if one knows of the *intention* to commit an offence. That may add to the difficulty of the provision, but he does not propose

to do away with this particular prescription of the section; he proposes to do away with the section as a whole, and that proposal will, I think, appear entirely objectionable to the House.

Mr. W. M. Hussanally: Sir, I have listened with some interest to the reply given by the Honourable Sir Malcolm Hailey to the proposal made by my friend Mr. Agnihotri regarding the doing away with section 44. In my opinion, Sir, section 44 and section 45 to a great extent overlap each other. I do not think that section 44 would be necessary if a little modification were made in section 45 to cover the difficulty pointed out by the Honourable the Home Member. For instance, if the words "village headman, village accountant, etc.," appearing in section 45 were removed and the words "every person" introduced in that section, and sections 121, 121A, 122, 123, 124, 124A, 125, 126, and 130 were introduced in clause (c) of section 45, I think to all intents and purposes section 45 would do by itself and then section 44 would not be needed. I commend the modification I suggest to the Honourable the Home Member.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I now move that section 124A be deleted from section 44. The Honourable Sir Malcolm Hailey has pointed out that it is the duty of every member of the public to assist and make a report to the police about the occurrence of any offence. I quite see the point, but it is only a moral duty and not a legal duty and my object in moving the amendment was that there should be no such legal duty. As that amendment has failed I now move that 124A be deleted from this section. If we refer to section 124A we find that that is a section meant for the offence of sedition. It is not possible for a man, at least an ordinary man, a lay man in the public, to know whether a speech delivered by any person is seditious or not. It is a very difficult point even for Courts of law to decide whether or not a speech comes within the purview of section 124A. Under this section it is also made compulsory and obligatory on the ordinary public to report whenever there is known any intention of any man to commit any specified offence. I would say that it is very difficult, nay even impossible, for a man to judge whether or not a speech delivered, or that is about to be delivered, will come within the purview of the definition of sedition in section 124A, and therefore section 124A should be omitted. Moreover, it is not such an emergent and important offence that it should be immediately reported or be included in this section.

Mr. Deputy President: May I point but to the Honourable Member that he has omitted to move his amendment?

Mr. K. B. L. Agnihotri: With these words, therefore, Sir, I move my amendment, viz.,

'Insert the following as clause 9:

'9. (a) In sub-section (1) of section 44 of the said Code omit the figures and letter '124-A'.

The Honourable Sir Malcolm Hailey: Mr. Agnihotri has come down from his original requirements. He started by refusing wholly to admit the legal obligation of the ordinary citizen to assist authority by reporting offences. Defeated on that issue, he now argues that the ordinary citizen should not be bound to report a case falling under section 124A, namely sedition; but he bases his arguments on somewhat curious grounds. He

[The Honourable Sir Malcolm Hailey.]

claims that 124A is a difficult section; the ordinary man cannot know when the matter is seditious and is likely to cause disaffection; that even the Courts have very great difficulty in deciding that point. But he has clearly forgotten the terms of the section itself. It refers to every person, *who is aware* of the commission or the intention, etc. A person therefore would not fall within the scope of the section now under discussion unless he was first aware that this offence of which he had cognizance was one under 124A. Again if Mr. Agnihotri will turn to section 176 of the Indian Penal Code, he will see the exact prescription of law under which a man can be punished for omission to comply with his duties under this section of the Criminal Procedure Code. I read it to the House:

'Whoever being legally bound to give any notice or furnish information on any subject to any public servant as such *intentionally* omits to give such notice.'

It is perfectly clear then that he would not come within the scope of this section unless he was aware first of all of the nature of the offence and intentionally omitted to give information on the subject. Now I claim that it is just as important that the ordinary member of the public should recognise his responsibilities in the matter of sedition as in regard to other matters. There are people who may object to the way in which section 124A has on occasions been applied, but even they I think would admit with me that the section, having as wide a scope as it has, does embrace also very serious and highly criminal offences against the State. If that is so, then the ordinary member of the public ought to be under an obligation to report such offences to authority.

Mr. Deputy President: The question is that that amendment be made.

The motion was negatived.

Mr. Deputy President: The question is that clause 9 stand part of the Bill.

The motion was adopted.

Mr. Deputy President: The question is that clause 10 stand part of the Bill.

Mr. K. B. L. Agnihotri: I beg to withdraw my second amendment, Sir, namely:

'In clause 10 (i) (a) insert the following at the beginning:

'After the word "occupier" where it occurs for the second time the words "in charge of management of that land" shall be inserted and in clause 10, sub-clause (ii), omit all words after the word "inserted", i.e., omit the words commencing from "and" to the words "other law".'

The amendment was, by leave of the Assembly, withdrawn.

Rao Bahadur T. Rangachariar: Sir, we have now dealt with section 44 on Mr. Agnihotri's amendment. Section 44 lays down upon every person, that is casting a duty upon every citizen, to inform the authority of the commission, or of the attempt to commit, an offence. Section 45 deals with a different class of cases, namely, persons who occupy the position of servants of the State. That is the main object of section 45. That is, every village headman, village accountant, village watchman, village police officer, those are the class of persons who are first dealt with and you will also notice one other person is included in that class who

ought not to be included, namely, the landowner or occupier of land and the agent of the owner of any land. He is classed on the same footing as the village headman, village accountant, village watchman and village police officer. Why on earth the owner of land in this country should be classed in a different category from any other citizen I am unable to see. There was a time perhaps when the British hold on the country was not so strong as it is to-day. The villages are now in the grip of the State. You have got an army of officials moving about, you have got your officers in every village, you have got the excise department, you have got the postal department, you have got the various other departments which are now ramifying the whole country. Why the landowner and the occupier of land? Mind you, not even the occupier and owner of houses. It has been held that the house owners do not come under the definition of landowners. House owners are free. They need not give any information. They are not classed on the same footing as the village headman, village accountant, village watchman and village policeman, but somehow or other it seems to be a venerable superstition attaching to the British Government that the landowner should come more under the grip of the Government than any other citizen. I know the landowner has to suffer a lot in this country. If any cess comes, 'Oh go on the land'. Education cess—'Go on the land'. Sanitation cess, district board cess—'Go on the land'. That is no doubt the burden he has to bear. But why should he be saddled with this? I could understand it if he had any special privileges, at least exemption from the Arms Act. If the landowner and the occupier of land is told 'Well, I exempt you from the Arms rules; you may bear arms and be a good citizen in the interests of the Government', I can understand this obligation on the owner of land. Now, there are persons who make crores and crores of rupees in trade and commerce. The landowners are only as much citizens of the country as these commercial and mercantile people and traders, and school masters—and what about other people? Why should they all be exempt and why should this poor landowner—he may be a zemindar, he may be a Maharaja, he may be a poor ryot—all of them are placed on the same footing, and you say "very well, you do the village watchman's work". I know the history of this. We had village communities. In those days, when village communities had control of villages and of the surrounding forests, when they could dispose of the communal lands for communal purposes, when we had the disposal of the village affairs in our hands, I can understand placing the burden on the landowners. But now you have got quite beyond that state of affairs. If you allow your cattle to graze, your cattle are taken and you are prosecuted. What is the privilege that landowners enjoy that they should be made to do this police duty for the Government? I resent it. Now, Sir, the ryotwari settlement has undone most of the ancient privileges attaching to the ancient village communities. You did wrong thereby. The village communities used to do a lot of work and enjoyed privileges; they saw to village medical relief, village sanitation and other things. Now, what have you done? You have parcelled the land out by survey—"here are your limits, you shall not go beyond those limits and you have no voice over communal matters. You have no voice over communal benefits at all". He may be the owner of half an acre of land. There are hundreds and hundreds of these villagers. If he is merely the owner of a house in a village, he is not made liable but it is only the owner of land that is made liable in this section. I say, Sir, this is an anachronism. I say it is a reflection cast on the landowner that this invidious distinction should be conferred upon the landowner to-day whereas other people are not subject to this burden.

[Bao Bahadur T. Rangachariar.]

By all means let the village headman, village accountant, village watchman, village police officer or any other person who receives salary—let him be made liable. Why should the landowner be made liable? I therefore move that these words which occur in this section 45 should be omitted. He is quite prepared to share the responsibility, as every other citizen, which section 44 impose upon every citizen. I move the amendment* as it stands in my name.

Mr. Deputy President: Amendment moved.

* In clause 10 (i) (a) before the word 'for' insert the following: 'the words 'owner or occupier of land and the agent of any such owner or occupier' shall be omitted and '."

Mr. P. E. Percival: My Honourable friend, Mr. Rangachariar, has put forward a humble motion, as it appears; but, as a matter of fact, it strikes at the root of whole rural administration in India. For years, landowners have been responsible equally with village officers and village servants. It seems to me that the Honourable Member is himself weakening the power of the landowner and of the village authorities, because where they have certain rights they have also certain duties, and this is one of the chief duties that the landowners always perform. It is nothing new. It was in the Code of 1872, in the Code of 1882, and in the Code of 1898. It has been there all through. There have been several Committees; Sir George Lowndes's Committee, the Select Committee, etc., and this question was not then raised. My Honourable friend brings it up as a new proposal at the last moment.—a matter of very great importance which will affect the whole administration of the country. I desire to point out that the Honourable Member refers to the ryotwari parts of the country. We have however to remember that the country is not *all* ryotwari. For instance, take the case of Sindh, of which I have some experience. They are all zemindars there and big landowners, and such landowners have very important duties in connection with the administration of justice and police administration; and I suppose it is very much the same in other parts of northern India. So you cannot entirely judge from southern India what is best in parts like Sindh or the northern portion of India, where the zemindars are very important personages and have not by any means lost either their rights or duties in connection with the administration of the country. I would also just like to point out, in regard to village officers, that, although the duty is cast on them, very often the village officer is about 6 miles away from where an offence is committed. Some of the villages in the southern part of the Bombay Presidency are very large, and offences are committed 6 or 7 miles away from where a village officer lives. In cases like that you cannot possibly have the matter brought to notice by the village headman or the village policeman or anyone else. Again the village policemen work very much under the orders of the zemindar, and it is strange that a village servant getting Rs. 10 a month should be taxed with an offence, while a big zemindar paying Rs. 10,000, or a smaller zemindar paying Rs. 1,000, should go scot-free. I submit that this is a subject of very great importance. It has never been proposed by any of these Committees up to this moment, and is brought forward at the last moment by my Honourable friend. The Honourable the Home Member has dealt with section 44, and section 45 is of a similar nature; and I suggest that the amendment should not be accepted by the House.

* In clause 10 (i) (a) before word 'for' insert the following: 'the words 'owner or occupier of land and the agent of any such owner or occupier' shall be omitted and '."

Dr. Nand Lal: Sir, I dissociate myself from some of the remarks, which the Honourable Mover of this amendment had the courage to make, meaning thereby, that the landowners and their agents should be on par with whom compared with tradesmen or commercial people. While dissociating myself from these remarks, I am yet in favour of the motion, that is, the main amendment. I think there is great force in it. According to section 54, which has already been passed, every person is responsible. Then, why is this additional responsibility thrust upon the shoulders of landowners? There is no justification for it. There is great force in the fact that a landowner who is quite an ignorant man—perhaps he does not know at all whether any undesirable person lives in that village or stays on the land, which is owned by him—is being held responsible for not giving this sort of information. To my mind, this duty, which is considered by some of my Honourable friends to be a kind of power, is a very onerous duty, and this imposition of duty, to my mind, seems to be misplaced. Therefore I am in favour of this amendment and I appeal to this House that this amendment may be carried.

The Honourable Sir Malcolm Hailey: I am sorry that Dr. Nand Lal, with whom I thought myself in the fortunate position of being in agreement, has announced that though he disagrees entirely with Mr. Rangachariar's reasons, he nevertheless accepts his conclusions. I am more logical for I differ both from his reasons and from his conclusions. I do not look at this section merely as an instance in which the landowner is singled out from his fellow-men and placed in the same category as a village officer. Let us look at it as a purely practical question. The reporting of offences is easy enough in towns. The police are near at hand; the person affected by a crime can as a rule speedily convey information to them; failing him somebody else is almost certain to do so. But in the villages where the police are not close at hand, where for the most part we have no responsible representative of law and order, where often such representative, if he exists at all, is only an ignorant village menial, it is, as I think everybody will admit, essential that some means should be provided of giving early information of crime? Obviously we can only effect this by placing responsibility on responsible persons resident in the village. That responsibility, as Mr. Percival has pointed out has always lain, has never been resented and has never been objected to.

Rao Bahadur T. Rangachariar: By the dumb millions.

The Honourable Sir Malcolm Hailey: It is objected to for the first time by Mr. Rangachariar. There are many landowners in the Council of State; it is curious that this provision of the law was not objected to when the Bill came before it. We have many landowners here. No other landlord has entered any amendment objecting to this obligation. As a whole, landowners in this country, I think, value their position, value their responsibility, and are prepared to discharge this obligation. I shall give another reason why this obligation should be laid on them. Taking the country at large, it is the landowners in the villages who have most to suffer from a breakdown of law and order. It is the landowner as a rule who is first hit by dacoity or disorder involving crime. It is on these double grounds that the obligation has always lain on the landowner. It is not an unduly onerous one; it is long-standing; it is perfectly justifiable to maintain it.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): I wish to say a few words to clear up what seems to me to be the underlying

[Mr. J. N. Mukherjee.] principle of my friend, Mr. Rangachariar's amendment. This section 45, Criminal Procedure Code, Sir, it seems was framed at a time when, as has been pointed out to some extent by my Honourable friend, Mr. Rangachariar, the owners of land used to remain on their estates or on their lands. Circumstances, however, have changed considerably since then. The big cities are drawing away the landowners from their estates and under existing circumstances they are not likely to know all that happens on their lands, which they might know at a time when they used to reside on their estates. Now, instances are not unknown where landowners see things that may have taken place in their villages. Such cases have been ventilated in the newspapers, of which they have had no information. Therefore the section as it stands now is unduly extensive in its operation, as the landowner even if he is not in his village or on his land or estate, may be brought within the purview of section 45, quite unwarrantably. Under this sweeping section, any landowner,—not occupier—may be brought within its purview and operation for no fault of his own. It seems to me a very important point for consideration whether, in view of the fact that circumstances in India have changed considerably since these sections were enacted, and, inasmuch as ordinarily speaking, the owner of a large tract of land is not supposed to know what is going on in the locality in question, he should not be excluded from the operation of section 45. An obligation having been laid upon him, by section 45, to obtain information, he breaks the law if he does not obtain the information contemplated by the section. Nobody ought to say that the landlord should obtain the information contemplated by the section for the Government. He is however put within the four corners of section 45 of the Criminal Procedure Code for failing to obtain information, which a Magistrate might think he might obtain and under section 176 of the Indian Penal Code, he becomes punishable. Therefore, Sir, it seems that there is a great deal in the amendment proposed by my Honourable friend, Mr. Rangachariar. The present is a time of absentee landlords. That is true not only in India, but, it will be admitted, in other civilized countries, as well. We cannot tie up the landowners with their lands in the way in which section 45 proposes to tie them up. I therefore, Sir, beg to support my friend's amendment.

Bhai Man Singh: Sir, I also rise to support the amendment proposed by my Honourable friend, Mr. Rangachariar. The law as it stands is undoubtedly very defective, and the highest Courts also have thought it very stringent, and they have tried to loosen it by what may be called, legal fiction. May I just read out an extract from one of the rulings:

"No doubt the words 'at or near such village' are not added but they must be evidently intended because the duty imposed of giving the information, etc., is intended to apply only when such occurrences take place at or near the villages".

A person is bound to give information if he owns land but residence in a house/a village does not come within the meaning of this section. Now, Sir, really speaking, it is a very stringent duty placed upon every occupier of land; the Honourable Judges have tried to confine that duty to the rear vicinity of the village where his land is situated. Really speaking the opinion of the Judges of the High Court too is against the spirit of this section. If, Sir, we read the section itself, we see how vast this duty is. Under the section it is imposed upon the occupiers of land, etc., to give information as to the permanent or temporary residence of any notorious receiver of stolen goods, etc., also of the commission, or intention to commit, a non-bailable offence. Now, Sir, if you look into the list of

non-bailable offences under the Criminal Procedure Code, one would be simply surprised to see how anybody can take this onerous duty of giving information of the commission or the intention to commit any such offences. Similarly, Sir, you will see that, as my Honourable friend remarks, there is no reason why such onerous duty should be placed on independent land-owners; why this differentiation and this imposition of duty on the zamindars. With all due deference to my learned friend, Dr. Nand Lal, why should there be any distinction between an occupier of land and any other citizen following any other profession in life.

Colonel Sir Henry Stanyon: Sir, I rise to oppose this amendment. I submit, with great respect for the opinions of those who have supported it, that these provisions of the Code have been mis-called a burden and a restriction. They involve a most important principle. They are in a way an aid to the growth and development of a public opinion against crime because it is crime, which, in the circumstances of India, is a most valuable asset. Speaking from a forensic and judicial experience, now extending over 42 years, I can go back to a time when unfortunately it could be said of this country that the public opinion against crime, as crime, was a weakling,—was not what it should be. If an offence was committed in a village, the general attitude of the village people towards it was that it was a matter between the accused, the police and the Government. It had nothing to do with them. When a respectable witness saw an offence being committed, his general procedure was to get out of the way as soon as possible so as to avoid having to give evidence in a Court of justice and elude trouble by the investigating police. That state of affairs is passing away. A strong public opinion against crime, as crime, is growing up, and my submission is that, far from these provisions being regarded as restrictions and a burden, they should be looked upon as a recognition of the honourable duty of all good citizens. It will be seen from section 45 that the burden which the onus of proof laid down in section 44 placed upon the people covered by it, is not included. All that the section wants is that, if any owner or occupier of land and the other people mentioned, have information, they shall give that information. Where is the burden? Where does the restriction come in? Surely, Sir, any Member of this House, who saw one of these serious offences being committed would feel it to be his duty, regardless of any provision of law, to go to the nearest police station, or whatever was the proper authority, to complain about it. Surely every Member is interested in the maintenance of order and obedience to law. If any of us saw one of these serious offences being committed before our eyes, or if we got anything like reliable knowledge of them, surely, if we had a proper feeling of citizenship and public opinion, we should be impelled, regardless of these provisions, to go and see that justice was done. That is all that this section provides. I think, the House should look at it in that way, remembering that in all the decades that this law has been in force there has not been a single case of the poor unfortunate owner of half an acre being dragged up for not reporting an offence. If the practice of this section is borne in mind, it will be seen that it would be a retrograde course to remove it now. We should invite people to help justice, to come forward with any information that they may receive of the commission of an offence. They should regard it as a privilege and the duty of citizenship to come forward and give information, and not look upon such assistance as either a restriction or a burden. With these few remarks, I venture to oppose the amendment.

Sir Henry Moncrieff Smith: Sir, I wish to refer briefly to one or two remarks that fell from my Honourable friend, Mr. Mukherjee. If I understood him rightly, he seemed to suggest that this obligation which is laid on the landlord was very suitable when this provision was enacted, but times have changed. This is the day of the big absentee landlord. How can you make him responsible? Well, in the first place I join issue with him in his statement that times have changed. In Northern India at all events there are innumerable petty holders of land who live on their land. This section does lay an obligation on them, an obligation which they can very easily fulfil. But apart from that, if there is a big absentee landlord, I do not find any obligation laid on him at all. In the first place he has got to be aware of the commission of an offence. If he is not there, he is obviously not aware of it. Secondly I would remind the House of what the Honourable the Home Member said when discussing section 44, *viz.*, that a penalty only arises in cases where there is an intentional omission to report. Here it is exactly the same as in the case of section 44. It was suggested too by my Honourable friend that this provision puts a weapon of oppression and vindictiveness into the hands of the police. Well, that may be so, but if we are going to cut out from the Code of Criminal Procedure every provision that enables the dishonest policeman to attempt to make a little money, I am afraid there will be very little of the Code left on the Statute Book.

Sir Deva Prasad Sarvadhikary: Sir, may I be permitted to draw attention to the difference in language between sections 44 and 45 and also in the classes of offences covered by each section. Section 44 applies to a person 'if he is aware' of an offence. Section 45 applies to certain classes of persons 'who may obtain information' respecting certain other classes of offences. What is now attempted by the proposed amendment is to extend the scope of section 45 by introducing the word 'possess' in addition to the existing word 'obtain'. I do not know whether sufficient attention has been drawn to this matter. There is another matter to think about. Is this one of the matters with regard to which your ruling was necessary when we started the discussion? The Government amendment is for the purpose of changing the situation by adding to the word 'obtain' the word 'possess' because of certain Madras 'decision.' The amendment now before us touches the whole of the scope of the section, by deleting certain persons and classes of persons now within the purview of the section. I do not know how your ruling will go with regard to that. If the amendment is admissible, as it undoubtedly is, the word 'obtain' should stand out and the better and more comprehensive word 'possess' should be introduced. There is no amendment in that way.

The Honourable Sir Malcolm Hailey: We understood, Sir, that we were subsequently to discuss Mr. Seshagiri Ayyar's amendment regarding the words 'possess or obtain'; and that we were at present to discuss Mr. Rangachariar's amendment.

Sir Deva Prasad Sarvadhikary: Both these amendments cover what I am referring to. The existence of the word 'obtain' in section 44 does appear to be strongly objectionable from the point of view of Mr. Rangachariar, because a person has obligations cast upon him even if he is not aware of certain things and the objection would largely disappear if he is not obliged to have to 'obtain' information because he happens to have land. As Mr. Seshagiri Ayyar has pointed out, this section has a long history behind it. When the zemindary system became a part of the original organisation for British Indian administration in certain parts

of the country, certain duties were cast on zamindars in connection with policing, postal and road making arrangements and the section came in its present shape. The village chaukidar was entirely under the zemindar and the zemindar, as owner of the land as well as head of village organisation, was a powerful individual without whose assistance detection and prevention of crime would be, if not impossible, certainly difficult. Mr. J. N. Mukherjee has referred to the latter-day absentee landlord and his woes. He had much sympathy wasted on him. He has no business to absent himself. When police duties have been otherwise dealt with, is it right that the landowner as such should be continued to be charged with obligations otherwise than an ordinary citizen. We have heard about police abuse. There is zemindar abuse also. This provision has been sometimes a powerful weapon in the hands of landowners who want to abuse it, by lodging information against unoffending but disagreeable neighbours, with regard to whom even the police would be normally powerless. There are therefore two sides to the question, and one cannot say that the landlord has not sometimes availed himself of this, to the detriment of his enemies. There is a well known story in Bengal about a powerful zemindar who had a weak neighbour in whose zemindary there was a murder. The neighbour in question disowned the zemindary to get rid of the immediate police trouble and the powerful man knowingly came in and said 'This is my zemindary and I will take the responsibility about the crime and will find out.' He thus laid the foundation of a title which secured him that zemindary ultimately. But these are abuses that need trouble us for the present, for things have changed considerably. We are interested in bringing sections 44 and 45 in a line and whatever citizen obligations there are should be of the same stamp and kind. If we later on agree that the word 'obtain' shall stand out, the objection that has been sought to be pressed home against section 44 by Mr. Rangachariar will stand.

Mr. B. C. Allen (Assam: Nominated Official): Sir, I think the Honourable Mr. Rangachariar and possibly the last speaker have supported this amendment under the impression that landowners and occupiers of land have been asked to discharge duties for which there is fully competent machinery. The section as it stands is rather formidable. If the village headman, the village police officer, the village accountant and the village watchman are all bound to report offences, why should we trouble the landlords and raiyat to report? But as a matter of fact this high-sounding staff in real life comes down to very little. I have to mention that in the province of Bengal there are no village accountants, there are no village headman and the village watchman and the village police officer are the one humble individual, the village chaukidar. Everyone knows the village chaukidar occupies a humble position. Everyone knows he is not a wealthy man. Everyone knows he is a simple man. It is not obvious that supposing that an offence has been committed by an influential person in the village, the village chaukidar will have very strong inducements to say nothing in regard to that offence? Apart from this, the village chaukidar is not an ubiquitous person. Supposing a raiyat finds a corpse lying on his land. The chaukidar may know nothing about it. If this duty of reporting were not imposed upon the raiyat, the body would be left lying in the jungle. There may be presumptive evidence of murder, and yet, if this duty were removed, there will be no means by which the information can be brought to the notice of the authorities. Apart from this, Sir, as has been already pointed out, the law has been in force for very many years. The Bill has been under

[Mr. B. C. Allen.]

consideration for at least six years, and, as far as I am aware, amongst the immense mass of authority consulted, not a single person, not a single body has complained of these duties or responsibilities, which have been laid upon them. Now, Sir, I submit that the one thing that a legislative body should not do is to legislate *a priori*. In certain circumstances we have to act to some extent on a *priori* knowledge. We have no experience here. We are dealing with an Act of very long standing, an Act that is not occasionally brought into use but is being used every day, almost every hour, and we are proposing to alter it, without a request from any outside authority.

For this reason I venture to ask the House to turn down this proposal.

Mr. Jamnadas Dwarkadas: I rise, Sir, naturally with the diffidence of one who is a lay man and not a lawyer and therefore perhaps not quite competent to deal with a subject that seems to be rightly the monopoly of lawyers. However, I rise at the same time with the confidence, if I may say so, of a citizen who claims his rights and at the same time recognises his responsibilities. Now, what is the issue before us? Mr. Rangachariar has moved an amendment to the effect that the responsibility that has hitherto devolved on the landowner or the occupier of land should now be removed from his shoulders and that the task of finding out a criminal or an would-be offender should be left entirely to those who are in authority. Mr. Rangachariar has made it a grievance, on behalf of the landowners themselves that they should be saddled with this responsibility. I have been at pains, Sir, to find out whether there is any grievance on the part of the landowners. If at all there is a grievance, it may be on the part of those who might fall victims to the devices of dishonest landowners who might make use of these powers vested in them to put others to trouble. (*Rao Bahadur T. Rangachariar:* 'There is no power.') Well, there is no doubt that this responsibility carries with it a certain amount of privilege. You can go to the villager and say to him 'Look here, if you don't do this I am going to inform the authorities. I am called upon by my position here to go and inform the authorities and I shall give information against you.' If at all, it seems to be a privilege in favour of the landowner as against a villager. However, I have been at pains to think very carefully over this matter, and I feel from the point of view of the future to which we aspire at any rate, that it would be the proper thing to do to keep the clause as it is. For this reason, Mr. Rangachariar has, of course, tried to paint the picture of the ideal village community that we had in the past. I entirely agree with him on that point, that we had a wonderful system of village communities, the system of village *panchayats*, which, unfortunately, is now practically ruined. As one who wishes that this system should be restored at an early date, as one who is desirous of seeing this transitional stage go through very rapidly, and as one who wishes that self-government should be established in this country, I hesitate to deny the responsibilities that must come as a result of the achievement of freedom. Suppose you have self-government. You cannot then afford to have in every village a large number of chaukidars and a large number of officers who will, if they are left without assistance from certain sections of responsible people in the villages, find out criminals and offenders. You may have self-government, but you will not be able to remove crime altogether from this country; you will not be able to remove offences altogether from this country, and you cannot afford to engage officers,—all of us who are anxious about retrenchment—we cannot afford to engage

the services of officers and chaukidars even to the extent to which we now have to engage. Well, in that case on whose shoulders will the responsibility fall? If we want freedom, the responsible section among us should be prepared to face the responsibility that freedom necessarily brings with it, and therefore I feel that landowners being a section which has got a stake in the villages, which has got a certain amount of responsibility in the villages and which is considered to be a sensible and educated section in the villages ought to be prepared to take this responsibility of assisting the authorities in finding out criminals and offenders. They will thus secure the safety of the village and assist in keeping crime and offence far away from the village without throwing the burden of maintaining an efficient police and officers on the villagers themselves. I suppose, therefore, if we are aiming at self-government—at the restoration of village communities—it should be also our desire to see to it that those who hold a responsible position in the village, for instance, the landowners, should be prepared to bear responsibilities as citizens of the village.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadian Rural): I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is that Mr. Rangachariar's amendment* be made.

The Assembly then divided as follows:

AYES—29.

Agarwala, Lala Girdharilal.
Agarhotri, Mr. K. B. L.
Asjad ul-Lah, Maudai Moya.
Ayyar, Mr. T. V. Seshagiri.
Bajpai, Mr. S. P.
Chandhara, Mr. J.
Dae, Babu B. S.
Gulab Singh, Sardar.
Jaffar, Mr. B. H. B.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nabi Haddi, Mr. S. M.

Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Rohli, Mr. M. K.
Sae, Mr. N. K.
Singh, Babu B. P.
Sul, C. Bhai Andhia Prasad.
Sircar, Mr. N. C.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanyan, Mr. C. S.
Venkatapuriga, Mr. B.
Vishindas, Mr. H.

NOES—43.

Abdul Mapd, Sheikh.
Ayyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Blackett, Sir Basil.
Bradley Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridounji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

Hullah, Mr. J.
Hussanally, Mr. W. M.
Jones, the Honourable Mr. C. A.
Layar Swan, Munshi.
Lunnades Dwarakadas, Mr.
Josh, Mr. N. M.
Loy, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Percival, Mr. P. E.
Ranayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Savvadikary, Sir Deva Prasad.
Singh, Mr. S. N.
Spence, Mr. B. A.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 16th January, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 16th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President.

Mr. Deputy President then took the Chair.

QUESTIONS AND ANSWERS.

BIHAR AND ORISSA PROVINCE.

43. ***Mr. B. N. Misra:** (a) Has the attention of the Government been drawn to the Despatch of Lord Hardinge about the formation of the Bihar and Orissa Province in 1911?

(b) Is the Government aware that Orissa had no affinity to Bihar and was attached to Bihar to offer an opening to the Province because Orissa had considerable facilities for sea ports.

The Honourable Sir Malcolm Hailey: The Government of India are acquainted with the despatch of Lord Hardinge's Government, dated the 25th August 1911. They are aware that in that despatch it was stated that it was believed that the junction of Orissa with Bihar would be welcome to Bihar as presenting a sea board to that province.

RAILWAYS AND PORTS IN BIHAR AND ORISSA.

44. ***Mr. B. N. Misra:** Has the attention of the Government been drawn to the Report of the Director of Industries, Bihar and Orissa, regarding his observations:

(a) to extend the Amala-Jamda Railway line to further South;

(b) to open a port at False Point in the Cuttack District;

(c) and to join the said port to Cuttack by a railway line to facilitate trade in coal, iron and other products of Central India, Orissa and her Feudatory States?

The Honourable Mr. C. A. Innes: Yes.

PORTS ON ORISSA COAST

45. ***Mr. B. N. Misra:** (a) Has the Government made any enquiries regarding the suitability or otherwise of opening a port at False Point or at any other place on the Orissa Coast?

(b) If so, will the Government be pleased to lay on the table of this House the result of such enquiries?

(c) If not, does the Government propose to make enquiries and take steps to open a port at False Point or at any other place on the Orissa Coast?

The Honourable Mr. C. A. Innes: The Devolution Rules distinguish between Major Ports which are the concern of the Government of India and Minor Ports which are controlled by Provincial Governments. There is at present no port in Bihar and Orissa of sufficient importance to be notified as a Major Port and any steps therefore which are to be taken to develop the ports in that Province must be taken by the Local Government and not by the Government of India.

Mr. Braja Sundar Das: Has the Government received the report of Mr. Arkwright who was deputed by the Local Government as a port expert to express his views on the opening of a port at False Point or any other place on the Orissa coasts?

The Honourable Mr. C. A. Innes: I cannot say offhand whether any copy of the report has been furnished to the Government of India, but as I have said, if such report has been made, it is for the Local Government to consider it in the first instance.

ASSISTANT INCOME-TAX OFFICERS, UNITED PROVINCES.

46. ***Haji Wajihuddin:** Will the Government be pleased to state how many Assistant Income-tax Officers were selected by the Selection Board, United Provinces and how many were nominated directly by the Local Government in the United Provinces during the year 1921-22 and how many of them belong to each community—Hindus, Muslims, Sikhs and Christians?

The Honourable Sir Basil Blackett: Nine Assistant income-tax officers were selected by the selection committee and appointed by the Government. Nine direct appointments were also made by the Government. They comprised

Hindus	.	.	.	.	.	.	.	.	.	9
Muhammadans	.	.	.	.	.	.	.	.	.	7
Indian Christian	.	.	.	.	.	.	.	.	.	1
Anglo-Indian	.	.	.	.	.	.	.	.	.	1

ASSISTANT INCOME-TAX COMMISSIONERS, UNITED PROVINCES.

47. ***Haji Wajihuddin:** How many Assistant Income-tax Commissioners, according to the scheme published in 1921 were to be appointed in the United Provinces and have all of them duly been appointed, and to which community do they belong? If all the appointments have not been made why are some of them lying vacant and when are they likely to be filled up?

The Honourable Sir Basil Blackett: Four posts of Assistant Commissioner were sanctioned by the Secretary of State. There are at present two vacancies. It is hoped to make a third appointment shortly. The fourth post will remain vacant as it is not required at present. The two Assistant Commissioners appointed are Hindus.

EXAMINATION OF ASSISTANT INCOME-TAX OFFICERS, UNITED PROVINCES.

48. ***Haji Wajihuddin**: When and under whose control was the first examination of Assistant Income-tax Officers in the United Provinces held and with what result?

The Honourable Sir Basil Blackett: The first departmental examination was held in October 1921 under the control of the United Provinces Central Examination Committee. I lay a copy of the result on the table.

EXAMINATION DEPARTMENT.

MISCELLANEOUS.

The 4th November 1921.

No. 22 Exam—8:21.—The undermentioned assistant income tax officers are declared by the Central Examination Committee to have passed the departmental examination of junior officers held on the 24th October 1921, and following days in the subjects specified below :—

URDU.

Passed by the higher standard.

Babu Binoy Krishna Mukerji.	Babu Avatar Krishna.
Pandit Ram Naram Sharma.	Babu Banke Bihari Lal Kapur.

Passed by the lower standard.

Pandit Dina Nath Sapru.

HINDI.

Passed by the higher standard.

Babu Binoy Krishna Mukerji.	Babu Avatar Krishna.
Maulvi Naz Ahmad.	Babu Sukhdarshan Dayal.
Sayid Muhammad Murtaza.	Babu Dwarka Nath Dhowm.
Pandit Dina Nath Sapru.	Sayid Abdul Hasan Rizvi.
Pandit Ram Naram Sharma.	Sayid Mustafa Husain.
Mr. J. E. Edwards.	Babu Rotti Raman Bhargava.
Munshi Hafiz ud din Khan.	Babu Banke Bihari Lal Kapur.

Sayid Bashir Husain.

Passed by the lower standard.

Mr. W. A. Hardie.	Babu Babu Lal Vaish.
Sayid Shafaat Husain.	

MAHAJANI.

Passed by the higher standard.

Mr. J. E. Edwards.	Babu Dwarka Nath Dhowm.
Munshi Hafiz ud din Khan.	Sayid Mustafa Husain.
Babu Sukhdarshan Dayal.	Babu Banke Bihari Lal Kapur.

Sayid Bashir Husain.

Passed by the lower standard.

Babu Binoy Krishna Mukerji.	Babu Avatar Krishna.
Maulvi Naz Ahmad.	Babu Babu Lal Vaish.
Pandit Ram Naram Sharma.	Sayid Abul Hasan Rizvi.

INCOME TAX LAW AND RULES.

Passed by the lower standard.

Mr. W. A. Hardie.	Babu Babu Lal Vaish.
Babu Banke Bihari Lal Kapur.	

BOOK KEEPING.

Passed by the lower standard.

Mr. W. A. Hardie.	Babu Avatar Krishna.
Babu Banke Bihari Lal Kapur.	

PRACTICAL TEST.

Passed by the higher standard.

Mr. W. A. Hardie.	Babu Babu Lal Vaish.
Babu Sukhdarshan Dayal.	

Passed by the lower standard.

Maulvi Niaz Ahmad.
Pandit Ram Narain Sharma.
Mr. J. E. Edwards.

Saiyid Abul Hasan Rizvi.
Babu Dwarka Nath Dhowan.
Saiyid Mustafa Husain.
Babu Banke Bihari Lal Kapur.

●RIDING.

Mr. W. A. Hardie.
Babu Sukhdarshan Dayal.
Maulvi Niaz Ahmad.
Babu Dwarka Nath Dhowan.
Sd. Md. Murtaza.
Saiyid Mustafa Husain.
Babu Babu Lal Vaish.

Babu Bmoy Krishna Mukerji.
Pandit Dina Nath Sapru.
Mr. J. E. Edwards.
Pandit Ram Narain Sharma.
Babu Avatar Krishna.
Babu Banke Bihari Lal Kapur.
Saiyid Shafaat Husain.

Saiyid Abul Hasan Rizvi.

By order, etc.,

T. SLOAN.

*Secretary, Central Examination Committee,
United Provinces.*

EXAMINATION OF ASSISTANT INCOME-TAX OFFICERS

49. ***Haji Wajihuddin:** (a) When and under whose control did the second examination of Assistant Income-tax Officers in the United Provinces take place and how were the successful candidates of each community disposed off?

(b) Is it true that one of the successful candidates was declared (by a responsible officer) to be appointed to Dehra Dun before the result of the examination was out?

(c) To what extent is it true that after the second examination was over, one of the high officers of the Income-tax Department, United Provinces, in contemplation of his being appointed the head of the Department under the Income-tax Act of April, 1922, collected all the young officers before him and said, "Mind that I shall be all in all from April next and that you people having no other opening like Deputy Collectors must be very careful" and that he lectured to certain Mohammedan officers individually that they would make good executive officers instead of entering into the Income-tax Department which was meant for the Hindus, especially "Vaishes"?

The Honourable Sir Basil Blackett: (a) The second departmental examination was held in March 1922 under the control of the United Provinces Central Examination Committee. A copy of the result is laid on the table.

(b) The officer in question was transferred to Dehra Dun as assistant income-tax officer, a position which he held at Cawnpore prior to the examination and, when the result of the examination has been declared, was appointed by the Local Government to be income-tax officer.

(c) No such language as that described in the question was used.

EXAMINATION DEPARTMENT.

MISCELLANEOUS.

The 16th March 1922.

No. 57-Exam.—The undermentioned Assistant Income-tax Officers are declared by the Central Examination Committee to have passed the departmental examination of

junior officers held on the 6th March, 1922, and following days in the subjects specified below :—

URDU.

Passed by the higher standard.

Pandit Dina Nath Sapru.

HINDI.

Passed by the higher standard.

Mr. W. A. Hardie.

Babu Babu Lal Vaish.

Saiyid Shafaat Hussain.

MAHAJANI.

Passed by the higher standard.

Babu Binoy Krishna Mukerji.

Pandit Ram Narain Sharma.

Maulvi Niaz Ahmad.

Babu Babu Lal Vaish.

Saiyid Muhammad Murtaza.

Babu Avatar Krishna.

Pandit Dina Nath Sapru.

Saiyid Abul Hasan Rizvi.

Mr. W. A. Hardie.

Babu Reoti Raman Bhargava.

INCOME TAX LAW AND RULES.

Passed by the higher standard.

Mr. W. A. Hardie.

Babu Sukhdarshan Dayal.

Babu Babu Lal Vaish.

Saiyid Abul Hasan Rizvi.

Babu Avatar Krishna.

Babu Banke Bihari Lal Kapur.

Passed by the lower standard.

Pandit Dina Nath Sapru.

Mr. J. E. Edwards.

Pandit Ram Narain Sharma.

Saiyid Mustafa Husain.

Babu Reoti Raman Bhargava.

BOOK-KEEPING.

Passed by the higher standard.

Mr. W. A. Hardie.

Babu Sukhdarshan Dayal.

Babu Babu Lal Vaish.

Babu Reoti Raman Bhargava.

Babu Banke Bihari Lal Kapur.

Passed by the lower standard.

Babu Binoy Krishna Mukerji.

Mr. J. E. Edwards.

Saiyid Muhammad Murtaza.

Babu Avatar Krishna.

Pandit Dina Nath Sapru.

Babu Dwarka Nath Dhowan.

Pandit Ram Narain Sharma.

Saiyid Abul Hasan Rizvi.

PRACTICAL TEST.

Passed by the higher standard.

Babu Binoy Krishna Mukerji.

Babu Avatar Krishna.

Pandit Ram Narain Sharma.

Saiyid Abul Hasan Rizvi.

Mr. J. E. Edwards.

Saiyid Mustafa Husain.

Babu Banke Bihari Lal Kapur.

Passed by the lower standard.

Maulvi Niaz Ahmad.

Babu Dwarka Nath Dhowan.

Pandit Dina Nath Sapru.

Babu Reoti Raman Bhargava.

Munshi Hafiz-ud-din Khan.

Saiyid Bashir Husain.

RIDING

Munshi Hafiz-ud-din Khan.

Saiyid Bashir Husain.

ASSISTANT COMMISSIONER, INCOME-TAX, MEERUT.

50. ***Haji Wajihuddin**: Is it a fact that a civilian was appointed to the post of an Assistant Commissioner in December, 1921 who was called back after a short time, that no one has been appointed in his place as yet and that the staff is still lying idle at Meerut? If so, why was one of the seniormost Income-tax Officers not promoted to fill up the vacancy?

The Honourable Sir Basil Blackett: The answer to the first part of the question is in the affirmative. No staff is lying idle at Meerut. The posts of Assistant Commissioners have only been gradually filled up as competent men became available. These posts carry great responsibility and are not automatically filled up on the basis of seniority.

POPULATION OF MEERUT.

51. ***Haji Wajihuddin**: Will the Government be pleased to lay on the table a statement showing the civil population of each community in each Bazar of Meerut Cantonment respectively?

Mr. E. Burdon: In order to obtain the information desired by the Honourable Member, it would be necessary to carry out a special census at considerable expense, and this could not be justified.

Only the total population of each bazar is known. The figures according to the census of 1921 are:—

Sadar bazar	11,840
British Infantry bazar	8,490
British Cavalry bazar	8,926
Royal Artillery bazar	1,476

WHARFAGE CHARGES ON FIRE ARMS.

52. ***Haji Wajihuddin**: (a) Will the Government be pleased to lay on the table a statement showing rates of wharfage charges recovered by the Port Trusts at Bombay, Calcutta, Karachi and Madras, respectively on Fire Arms, Percussion Caps and shot, also the reason of difference in rates?

(b) Do the Government propose to consider the advisability of fixing universal rates in all the Indian Ports?

The Honourable Mr. O. A. Innes: The information is being collected and will be supplied to the Honourable Member on receipt. It may be mentioned that under the various Port Trusts Acts the legal responsibility for fixing wharfage charges rests with the Port Trusts and the different Local Governments and not with the Government of India.

PURCHASE OF QUININE AND CINCHONA BARK.

53. ***M. K. Reddi Garu**: Will the Government be pleased to state—

(a) If it is a fact that the Government of India have been purchasing or negotiating for the purchase of large stocks of quinine and cinchona bark?

(b) If so, in what market and by what agency are these arrangements made?

Mr. J. Hullah: (a) Yes.

(b) Purchase of cinchona bark and quinine are made in Java and arrangements for these purchases were made by the Secretary of State

for India who executed agreements with Messrs. Howards of London and with a combine of Dutch Manufacturers for the purchase of cinchona bark and quinine sulphate respectively.

QUININE AND CINCHONA BARK.

54. ***M. K. Reddi Garu:** (a) Will the Government be pleased to put on the table a statement showing for each year since the inception of the scheme:

(i) the quantity of quinine actually received and the amount paid or payable for the same in rupees per lb.;

(ii) the quantity of cinchona bark received and the amount paid or payable?

(b) Will the Government of India be pleased to furnish a statement showing what further quantities, if any, of quinine and cinchona bark are deliverable under existing contracts and the price?

(c) Do the prices above referred to include the cost of delivery in India?

(d) What is the present stock of Government of India quinine (including quinine in bark form)?

(e) Is it the intention of the Government of India to increase this stock by further purchases and, if so, up to what limit and at what estimated cost?

Mr. J. Hullah: (a) The information required is as follows:

(i) *Quinine Sulphate.*

Year.	Quantity received.	Amount paid.
	Lbs.	Rs.
1921-22	52,910·4	20,78,763
1922-23	26,455·2*	8,78,601
Total	79,365·6	29,55,364

*Up to end of December 1922.

(ii) *Cinchona Bark.*

Year.	Net weight of bark in lbs.	Amount paid.
		Rs. A. P.
1920-21	85,213	... †
1921-22	1,482,890	1,58,959 10 8
1922-23	653,186	1,11,833 8 8
Total	2,221,379	2,00,793 3 4

†Payment for bark received in 1920-21 was made in 1921-22.

(b) and (c). Quinine and Cinchona bark are being purchased under the following two contracts:

- (i) *Contract with Howards*.—This agreement came into force in July 1920 and will expire in 1928. It provides for an annual supply of cinchona bark sufficient to produce a maximum of 37,500 kilos (82,500 lbs.) and a minimum of 6,666 kilos (14,665 lbs.) of quinine sulphate. The actual quantity to be supplied during a year varies according to the amount of bark supplied to Messrs. Howards by the producers in Java. The price also varies with the price to be paid by Messrs. Howards to the producers. It is payable in London in sterling and does not include the cost of delivery in India.
- (ii) *Contract with the Java Combine*.—This agreement provides for the supply of 60,000 kilos of sulphate during the years 1921 to 1923, after which it will come to an end. The quantity to be supplied each year is 20,000 kilos (44,000 lbs.). 30,000 kilos had been received up to the end of September 1922, leaving 30,000 kilos still to be delivered.

The price payable is the official London quotation of the Kina Bureau, Amsterdam, minus 10 per cent. The price is *c.i.f.* Calcutta payable in rupees at the current rate of exchange. According to our latest information this works out to about Rs. 24-6-0 per lb., after deducting the 10 per cent., and with the rupee at 1s. 4d.

(d) The stock of Government of India quinine, including quinine in bark form was 293,172,794 lbs. on 22nd December 1923.

(e) It is not the present intention of Government to make any further purchases of quinine or bark over and above the quantities provided for in the agreements already referred to.

PRICE OF QUININE.

55. ***M. K. Reddi Garu:** Will the Government of India be pleased to state whether any loss will accrue on the purchase of quinine in respect of the quinine purchased, and if so, how much, if the Government of India sell at to-day's wholesale price in India?

Mr. J. Hullah: The price charged for quinine issued from Imperial stocks is the same as that fixed by the Governments of Madras and Bengal from time to time for supplies from their Provincial stocks. These prices are based on the current rates quoted for Howards quinine in the open market. The present price is Rs. 27 per lb. Sales of quinine from Imperial stocks during the two years 1919-20 (there were no sales prior to that year) and 1920-21 resulted in a net profit of Rs. 4,12,300 to the Central Government. There were no issues from Imperial stocks during 1921-22. During the two years 1922-23 and 1923-24 allowing for an anticipated demand of 10,000 lbs., per annum and a fall in price during the latter year from Rs. 27 to Rs. 20 per lb., it is estimated that a net profit of about Rs. one lakh will accrue. It should be understood that the object of Government in making these purchases of foreign quinine and bark was to build up a reserve of quinine sufficient for India's needs in all emergencies and not for the purpose of making as big a turn over and as big a profit as possible in as short a time as possible. It is quite impossible to say at present whether these transactions will ultimately result in a profit or loss to Government as this will depend entirely upon the course of prices.

QUININE AND CINCHONA.

56. ***M. K. Reddi Garu:** Will the Government be pleased to state—

- (a) If the Government of India before deciding to accumulate stocks, consulted the Governments of Bengal and Madras regarding provincial resources in the matter of quinine supplies?
- (b) If it is a fact that the Government of India have undertaken from the funds of the Central Government a large scheme for growing cinchona bark in Tavoy in Burma?
- (c) If so, will the Government of India be pleased to state the object of this scheme?

Mr. J. Hullah: (a) No. The plantations in Bengal and Madras are unable to supply the normal demand for quinine in India, still less to build up a reserve, and the Government of India have therefore taken steps to build up the reserve of quinine stocks which had been depleted by the war.

(b) Yes.

(c) The scheme for the establishment of large cinchona plantations in Burma was undertaken in consequence of a suggestion of the Home Government made during the war that the Government of India should examine the possibilities of extending the cultivation of cinchona and increasing the production of quinine within the Indian Empire on a scale sufficiently large to meet the future needs of the British Empire and the Allied countries. About 2/3 of the quinine consumed in the Empire is obtained from foreign sources. The Department of Public Health has advocated that malaria should be fought throughout India by active propaganda advocating the use of quinine and by the supply of quinine at reasonable cheap rates and has pointed out that if the population of India were to use quinine on the scale reached in Italy their consumption would exhaust the whole existing world production. In most of the provinces cinchona cannot be grown, and even if it could, it is more economical to grow it on a large scale. The Government of India therefore regard the provision of adequate supplies of quinine as a matter of first-rate importance, and for this reason they have started the new plantations in Burma.

REPRESENTATION OF COMMUNITIES IN THE PUBLIC SERVICES.

57. ***M. K. Reddi Garu:** Has the attention of the Government been drawn to the General Orders Nos. 613 and 658-Public of the Government of Madras, regarding the appointment of various communities not already adequately represented in the Public Services; and do this Government propose to consider the advisability of giving effect to the said General Orders as far as the Presidency of Madras is concerned, with reference to Services directly under the Government of India?

The Honourable Sir Malcolm Hailey: Yes.

The conditions contemplated by the orders quoted are radically different from those of the services under the direct control of the Government of India and the Government of India do not consider it practicable to adopt the course suggested in the question.

EXPENDITURE ON SALT FOR FISH CURING.

58. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state:

- (a) why the expenditure of Rs. 1,31,000, as stated in demand for grant No. 3, under the heading "Charges in connection with

export, import, etc., of salt for fish curing purposes", in page 17 of the detailed estimates and demands for grants for 1922-23, is incurred;

(b) what the income against this expenditure is;

(c) how the income is derived; and

(d) if the cured fishes are sold, whether they are sold in India or abroad?

Mr. A. H. Ley: (a) "The item of Rs. 1,31,000 is the budget estimate of the Central Government's share of the expenditure incurred in transporting salt from the factories to the fish-curing yards, where it is utilized in the fish-curing industry.

(b) and (c). The salt is sold to the fish-curers at a uniform rate of 10 annas per maund, the whole of the sale proceeds being credited to imperial revenues. The income on this account varies from year to year in accordance with the quantity of salt taken by the fish-curers; the estimated receipts for the current year are Rs. 1,63,000.

(d) The cured fish are the property of the curers and are sold both in India and abroad. Government has no information as to the local consumption, but understands that in the year 1921-1922 some 15,800 cwts. were exported coastwise and 172,400 cwts. to foreign countries.

APPOINTMENTS TO MEDICAL SERVICE IN INDIA.

59. ***Mr. T. V. Seshagiri Ayyar:** (a) Will the Government be pleased to state how many new appointments were made recently to the Medical service in India without the candidates undergoing any examination in that behalf?

(b) Will the Government be pleased to state the terms on which such appointments were made? Will the Government be pleased to lay on the table of the House a copy of a contract or letter of appointment, if any, in connection with these appointments?

Mr. E. Burdon: It is presumed that the Honourable Member's question refers to the Medical Service. If so, the answer is as follows:

(a) The number of new appointments made in the Indian Medical Service by nomination in the last 2 years is:—

1921 . . . 27; 1922 . . . 19.

(b) I will furnish the Honourable Member with a copy of the 'Regulations for the appointment of candidates to His Majesty's Indian Medical Service.' A copy of the 'letter of appointment' which is issued to those granted permanent commissions in the Indian Medical Service, is placed on the table.

From—The Director-General, Indian Medical Service.

I have the honour to inform you that the Right Hon'ble the Secretary of State for India has approved your appointment to a permanent commission in the Indian Medical Service, which will bear the date of this letter.

You are requested to complete and forward to this office, three copies of India Army Form Z-2041, forwarded herewith.

It should be distinctly understood that not having undergone the usual probationary course, you will not be permitted to remain in the service, if as the result of any course of instruction on probation which may be arranged for you, your retention is considered undesirable (vide page 6, paragraph 6, of Memorandum attached to the regulations applying to the Indian Medical Service.)

Mr. T. V. Seshagiri Ayyar: A supplementary question, Sir. The Honourable Member would remember that yesterday I asked him whether any of these men would supersede the men from the Provincial Service who had been put to act in the Imperial Service. Is he in a position to give the information to the House now?

Mr. E. Burdon: Not at the moment. I will furnish the Honourable Member with the information in the course of the day.

CONSTITUTIONAL REFORMS IN INDIA.

60. ***Mr. T. V. Seshagiri Ayyar:** (a) Will the Government be pleased to state what action was taken on the resolution of Rai Bahadur Muzoomdar, C.I.E., about further constitutional reforms in India?

(b) Were the resolution and copies of the speeches made on the occasion forwarded to the Secretary of State for India as promised at the time of the discussion?

(c) Did the Government forward any recommendations of their own with reference to the resolution?

(d) Has any reply been received from the Secretary of State for India on the subject?

(e) Would Government be pleased to lay on the table of the House all the papers connected with the subject?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to the reply given by me on behalf of Sir William Vincent to Mr. Chaudhuri's question No. 231, dated the 7th September 1922, on the same subject and to the reply given by Sir William Vincent to Mr. Kamat's question No. 127 on the 16th January, 1922. The Secretary of State's despatch which has now been received by the Government of India will be laid on the table of this House on the 24th instant.

Mr. T. V. Seshagiri Ayyar: May I ask a supplementary question, Sir? Will the Honourable the Home Member be good enough to lay on the table of the House the despatch from the Government of India to the Secretary of State in respect of this Resolution? That is also one of the questions.

The Honourable Sir Malcolm Hailey: There was no despatch. The Resolution was merely forwarded to the Secretary of State.

OPIMUM CHARGES.

61. ***Mr. Manmohandas Ramji:** Will the Government be pleased to lay on the table the details for the following items of expenditure, contained in demand No. 4, "Opium", in the detailed estimates of demands for grants for 1922-23.

(1) Travelling allowance of Rs. 1,27,000, under District staff.

(2) Tour charges of Rs. 15,000, under the same heading.

(3) Travelling allowance of Rs. 10,000, under the heading "Opium Research Laboratory"?

The Honourable Sir Basil Blackett: A statement is laid on the table giving the details asked for:

	Rs.
(1) (a) Travelling allowance of officers	54,000
(b) Travelling allowance of establishment	71,000
Total	1,27,000

Note.—The amount represents the ordinary charges incurred when travelling on duty in districts as well as the cost of transfers.

(2) Under tour charges (Rs. 15,700) are included cost of carriage of tents and records, cost of coolie hire and other incidental expenses connected with touring. It has not been found possible to obtain separate details of each of these.

(3) The amount of Travelling allowance under 'Opium Research Laboratory' is Rs. 1,000 and not 10,000 as stated in the question. The former comprises the lump allotment to cover the travelling allowance of the Agricultural Chemist and his staff. The total expenditure up to date is:

	Rs.	A.	P.
Agricultural Chemist	176	14	0
Staff	59	8	0
Total	276	6	0

GOVERNMENT ACTION ON RECOMMENDATIONS OF THE ASSEMBLY.

62. ***Dr. H. S. Gour:** Will the Government be pleased to state what action it has taken on the following recommendations made to it by this House, namely:

No.	Subject of Resolution.	Date of decision.	REMARKS.
1	Codification of Hindu Law	26th March 1921.	Resolution withdrawn on the Government giving assurance of sympathetic consideration.
2	Creation of an Indian Bar	24th February 1921.	
3	Resolution regarding equality of status of Members of the two Houses.	2nd March 1921.	
4	Resolutions on the Esher Committee's Report	28th March 1921.	
5	Increase of listed posts	17th February 1921.	
6	Establishment of a Supreme Court in India	26th March 1921.	
7	Abolition of racial distinctions		
8	Grant of further reforms	29th September 1921.	
9	Removal of racial distinctions in criminal trials	20th September 1921.	
10	Abolition of the distinction between votable and non-votable items in the Budget.	26th January 1922.	
11	Abolition of the Posts of Commissioners	23rd March 1922.	
12	Revision of Arms Act rules—report to be submitted before the September session of the Assembly, 1922.	8th February 1922.	
13	Appointment of a Retrenchment Committee to effect economy in the cost of Central Government.	3rd February 1922.	
14	Equality of the status of Indians in Africa	9th February 1922.	
15(a)	Indianization of the services	11th February 1922.	
(b)	Provision for technical education in India to enable Indians to enter the technical services.	11th February 1922 and on 23rd February 1922.	

Sir Henry Moncrieff Smith: The information is being collected and will be laid on the table?

Mr. T. V. Seshagiri Ayyar: May I ask a question, whether, having regard to the fact that this Assembly will disperse in the course of this year, any opportunity will be given for the discussion of the reports sent in by the various Committees appointed at the instance of this House.

The Honourable Sir Malcolm Hailey: Will the Honourable Member kindly specify the reports for which he wishes us to give time for discussion?

WHITEHALL'S REFUSAL OF GOVERNMENT OF INDIA RECOMMENDATIONS.

63. ***Dr. H. S. Gour:** (a) Is it a fact as reported in the press that Whitehall have refused to accept the recommendations of the Government of India on several Resolutions passed by this House?

(b) If so, will the Government be pleased to lay on the table the entire correspondence between itself and the Secretary of State?

(c) And will it disclose to the House the action it proposes to take with a view to insure the acceptance by the authorities in England of its recommendations?

(d) And will the Government be pleased to state what further action, if any, it has taken or intends to take?

The Honourable Sir Malcolm Hailey: The Honourable Member will I think recognize that it is impossible for me to answer a general question of this nature regarding what is said to be the attitude of His Majesty's Government towards recommendations made by the Government of India. I am further in doubt as to what the Honourable Member means when he refers to the action to be taken by the Indian Government to ensure the acceptance by His Majesty's Government of recommendations made by it. His Majesty's Government have definite statutory powers in regard to the Government of India and the Honourable Member does not, I assume, intend to suggest that these powers have been in any way exceeded. I may perhaps add that when the action which has been taken on various recommendations of the Government of India comes more fully to the knowledge of Honourable Members they will see that the alleged conflict of opinion between the Government of India and the Secretary of State in Council, if there is such a conflict, has been exaggerated in the Press.

Rao Bahadur T. Rangachariar: May I ask a supplementary question, Sir? Is the principle insisted upon, namely, that where the Legislature and the Government of India agree, the Secretary of State should not ordinarily interfere? Is that principle being acted upon?

The Honourable Sir Malcolm Hailey: That is a very general question; but if the Honourable Member can specify instances within his knowledge in which that principle is not acted upon, I shall be glad to answer the question as far as it is in my power.

ATTITUDE OF WHITEHALL.

64. ***Dr. H. S. Gour:** Is the Government aware of the widespread feeling of distrust caused in the country by the reported attitude of Whitehall towards the reasonable demands of the two Houses?

The Honourable Sir Malcolm Halley: The Honourable Member is referred to my reply to his question No. 63 on the same subject.

SUPREME COURT IN INDIA.

65. ***Dr. H. S. Gour:** (a) Has the Government now considered the opinions of the Local Governments and the High Courts on the necessity of a Supreme Court in India?

(b) If so, have the Government formulated their views on the subject?

(c) And what action do they propose to take thereon?

The Honourable Sir Malcolm Halley: The opinions are still under consideration but if the Honourable Member repeats his question later in the Session I may be able to supply him with more information.

ASSISTANT SECRETARIES AND REGISTRARS.

66. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state what the duties of the Assistant Secretaries and the Registrars, in the different departments of General Administration in the Government of India, are?

The Honourable Sir Malcolm Halley: A detailed statement giving the information asked for by the Honourable Member has been prepared and will be supplied to him separately.

ADVISER TO LABOUR BUREAU.

67. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state what the duties of the Adviser to the Labour Bureau, in the Department of Industries, are?

Mr. A. H. Ley: The appointment of the Adviser (Labour Bureau) in the Department of Industries will be, as a measure of retrenchment, abolished on the termination of a short period of leave that has been granted to the present incumbent.

ECONOMIES IN STATIONERY AND PRINTING.

68. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state:

(a) what the result is of the enquiry made by the officer who investigated into the economies that could be effected under 'Stationery and printing'?

(b) what the total amount of annual saving effected is, if any?

(c) whether the officer has made any report or recommendation, and

(d) if he has, will the Government be pleased to lay on the table a copy of the same?

Mr. A. H. Ley: (a) Mr. F. D. Ascoli, I.C.S., who was placed on special duty for six months to examine all possible avenues of economy in the expenditure of the Central Government on stationery and printing has made various suggestions for the control of the issue of stationery and forms, the curtailment of the printing work of Government Departments and the re-organisation of the Government of India presses.

Effect has already been given to some of his proposals and others are still under consideration.

(b) The total amount of annual saving that he expects to result from his proposals has been estimated at approximately Rs. 23½ lakhs but until some experience has been gained of the working of his schemes it cannot be said how far this estimate is correct.

(c) and (d). Mr. Ascoli has furnished Government with a number of detailed reports dealing with the different subjects which he had under examination. As they are very voluminous, Government do not propose to lay a copy of them on the table of the House, but I shall be very glad to show them to the Honourable Member.

OPINIONS ON O'DONNELL CIRCULAR.

69. ***Mr. Jamnadas Dwarkadas:** Will the Government be pleased to state whether the opinions of all the local Governments have been received on the O'Donnell Circular issued by the Government of India as a result of the resolution moved by myself in February last and what further action it is proposed to be taken to give effect to the recommendation contained therein?

The Honourable Sir Malcolm Halley: The replies of all the Local Governments have not yet been received but it is expected that all replies will soon be complete and Government intend taking up the case without delay.

Mr. Jamnadas Dwarkadas: Are the replies of the Local Governments likely to be received while this Assembly is in session? If so, will the Government lay the replies on the table?

The Honourable Sir Malcolm Halley: As regards the first part of the Honourable Member's question, the Honourable Member might perhaps get more certain information from the local Governments who will send the replies, than from us who receive them. I cannot say at this stage whether they will be laid on the table or not. I must remind the Honourable Member that it was a confidential circular addressed to local Governments; he may draw some indications from that reply of how far it is possible that the replies should be laid on the table.

Mr. Jamnadas Dwarkadas: One more question. The Circular was sent as a result of a Resolution moved in the Assembly, and the amendment suggested by the Honourable Home Member was accepted on the ground that the opinions of the local Governments should be invited; and I thought that they should be made known to the Members of the Assembly.

The Honourable Sir Malcolm Halley: It does not necessarily follow. However, as I have told the Honourable Member, I can give no definite reply; and I hope that he will not at this stage of the proceedings try to bind me down to any definite course of action. Such action can of course only be settled after due consideration by the Government of India when the replies have been received.

SHIPPING COMMITTEE—NON-APPOINTMENT OF.

70. ***Mr. Jamnadas Dwarkadas:** (a) Are the Government aware that considerable dissatisfaction has been produced as a result of the non-appointment of a Shipping Committee this cold weather in spite of the fact that

a resolution on the subject was moved so early as January by Sir Sivaswamy Aiyer and accepted by the Government?

(b) Will they be pleased to state whether it is still their intention to carry out this recommendation at an early date?

The Honourable Mr. C. A. Innes: (a) As the Honourable Member knows a supplementary grant was necessary and it was obtained last September. Since then considerable difficulty has been experienced in getting gentlemen to serve on this Committee.

(b) I hope to be able to make an announcement in the course of the next few days.

Mr. K. Ahmed: (Inaudible.)

The Honourable Mr. C. A. Innes: Will the Honourable Member repeat his question. I did not catch him.

Mr. K. Ahmed: (Inaudible.)

The Honourable Mr. C. A. Innes: I am afraid I must ask the Honourable Member to put his question in writing.

MR. KEATINGE'S DISSENT TO REPORT OF BRITISH GUIANA DEPUTATION.

71. ***Mr. Jamnadas Dwarkadas:** (a) Will the Government be pleased to state whether it is a fact that Mr. Keatinge's minute of dissent to the report of the British Guiana Deputation was sent direct to the Government of India and not, as in the usual manner, through the Chairman of the Deputation?

(b) If the answer to (a) be in the affirmative, will they be pleased to explain whether there were any special circumstances to justify this departure from normal procedure?

Mr. J. Hullah: (a) Mr. Keatinge has neither signed the Report drafted by his Indian colleagues nor written a minute of dissent. He has submitted a separate minority report to the Government of India through the India Office.

(b) His reasons for adopting this procedure were as follows. In spite of the instructions of the Government of India that in order to prevent delay and facilitate agreement the Indian members of the delegation should remain in England till the report had been drafted and signed. Diwan Bahadur Kesava Pillai and Mr. Tewari left the country without even agreeing to draw up and sign a Memorandum of conclusions as a basis on which the report could be drafted. A draft report was prepared by the Indian members in this country and forwarded by them in September to Mr. Keatinge for signature with a request that he would make any corrections or suggestions of a verbal nature and append any notes of dissent that he wished to write. Mr. Keatinge found that there were many statements and opinions with which he could not agree. Owing to the impossibility of conferring personally on the points at issue, he declined to sign the report. During the period of six months which elapsed between the departure of the deputation from British Guiana and his receipt of the draft report, Mr. Keatinge, who was due to leave England for Rhodesia in October, prepared, with the approval of the India Office an independent report, while the results of the enquiry were fresh in his memory, for use in case he should find himself unable to sign the main report. It is this report that he has now submitted to the Government of India.

Mr. Jannadas Dwarkadas: Can the Honourable Member cite a precedent where a member of a Commission has submitted a minute of dissent without letting it go through the Chairman of the Commission?

Mr. J. Hullah: I cannot recall any instance.

DOOR-KEEPER IN BOMBAY PORT ESTABLISHMENT.

72. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state why is it found necessary to maintain one European Door-keeper in the Bombay Port Establishment?

The Honourable Mr. C. A. Innes: The Government of Bombay consider that a European Door-keeper is absolutely essential. Hundreds of seamen, European, African and Indian attend the office daily and are not easy to control. In fact when the late incumbent of the post died and before the vacancy was filled, the police had constantly to be called in to keep order.

DRAWING OFFICE, GOVERNMENT OF INDIA SURVEY.

73. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state:

(a) why six European Draftsmen are maintained in the Drawing Office at Simla, under the Government of India Survey?

(b) whether there is any difficulty in obtaining Indians to do those duties?

Mr. J. Hullah (a) Six British non-commissioned officers have been maintained in the Drawing Office at Simla since 1911, when this section was transferred to the Survey of India from the General Staff Branch, because they were found to be in regard to quality of outturn the cheapest agency available. The technical skill of Indian ex-soldier surveyors is not sufficiently high to enable them to turn out work of the standard demanded with the rapidity of execution which is essential to military requirements.

(b) The question of employing either Indian ex-soldier surveyors or Indian members of the Survey of India in this Office is again under consideration, and one post of European draftsman, which has fallen vacant has been kept unfilled pending a decision.

COUNCIL CHAMBER, LUCKNOW.

74. ***Lala Girdharilal Agarwala:** (a) Have the Government noticed a paragraph in the *Pioneer* of Allahabad, dated 30th November, 1922, at page 1, column 3, regarding the Council Chamber at Lucknow, the foundation of which is proposed to be laid by His Excellency the Governor of the United Provinces on the eve of his departure?

(b) Have the Government any power of control over Provincial Governments in such a case?

(c) If the reply be in the affirmative, will the Government be pleased to state what action if any, have they taken or propose to take in the matter?

The Honourable Sir Malcolm Hailey: (a) Yes.

(b) and (c) The expenditure of funds on the erection of a Legislative Council Chamber is expenditure on the transferred subject of Public Works

and the question is therefore one for the local Government and its Legislative Council to determine. I would invite a reference by the Honourable Member to the powers of control vested in the Governor General in Council in relation to transferred subjects which are retained by Devolution Rule 40.

ALLOCATION OF EXPENDITURE ON INDIA OFFICE.

75. ***Mr. K. O. Neogy:** (a) Will Government be pleased to state the details of the allocation of expenditure on the India Office, between India and the British Treasury, under the Government of India Act, 1919?

(b) Is it a fact that it was arranged that for a period of five years from the 1st April, 1920, the British Treasury should make to the India Office an annual lump sum contribution of £136,000 in addition to the salaries of the Secretary of State and the Parliamentary Under-Secretary, making a total of £142,500 per annum?

(c) Is it a fact that, as stated at page 96 of the Second Interim Report of the Committee on National Expenditure (Geddes Committee), in spite of the said arrangement, India has voluntarily offered to accept a reduced grant of £120,000 for 1922-23, and this offer has been accepted?

(d) If answer to clause (c) be in the affirmative, will Government be pleased to state when and on what grounds was this offer made on behalf of India, and to lay on the table a copy of the communication addressed to them in conveying the said offer?

The Honourable Sir Basil Blackett: Before I answer this question, I should like, with your leave and with the leave of the House, to express my sincere thanks for the very kind and flattering welcome which was extended to me yesterday. I should not have myself let 24 hours elapse had I realized that none of my questions would be reached yesterday. It is a great encouragement to be received in your midst as I was received yesterday, but my natural optimism, great as it is, will not rise to the idyllic picture of every Member of the House agreeing with every other Member and with the Finance Member on revenue and expenditure, or of a Finance Member who is loved by all. Nonetheless I look forward with great pleasure to sharing the labours of this House with them and facing with them the many financial problems which confront India at the present time: and I take the words that were spoken as an augury that, while we may sometimes perhaps differ after all on some points of detail, we shall all work together with one object, that is, to serve India.

(a) and (b) The arrangements under section 30 of the Government of India Act are as follows:

- (1) The salaries of the Secretary of State and the Parliamentary Under Secretary, amounting to £6,500 a year are borne by His Majesty's Treasury and included in the Home Civil Service vote.
- (2) The Treasury makes to the India Office an annual contribution equivalent to that part of the total estimated cost of the India Office (exclusive of the salaries of the Secretary of State and the Parliamentary Under Secretary) which is attributable to the administrative, as distinct from the agency, work of the Office.
- (3) Of this annual contribution, a sum of £40,000, which the Treasury was contributing towards the cost of the India Office

previous to the Government of India Act of 1919, in accordance with the recommendations of the Welby Commission, does not take the form of a direct payment, but has been indirectly allowed for in adjustments between the two departments in respect of certain divisible charges.

The direct contribution by the Treasury, *i.e.*, exclusive of the salaries of the Secretary of State and the Parliamentary Under Secretary and of the indirect contribution of £40,000 was fixed in 1920 at £90,000 a year for the period of five years from 1st April, 1920. It was subsequently raised with the concurrence of the Treasury to £136,000 a year. Contributions were made at the latter rate for the years 1920-21 and 1921-22.

(c) and (d) In pursuance of their policy of retrenchment in public expenditure the Treasury asked in 1921 that the above agreement should be modified in view of the reduction then anticipated in the cost of the India Office, as compared with the cost on which the contribution was previously fixed. The Secretary of State agreed to accept a contribution of £113,500 per annum (exclusive again of the salaries of the Secretary of State and the Parliamentary Under Secretary and of the indirect payment of £40,000) for 1922-23, 1923-24 and 1924-25 on the Treasury undertaking that no further reduction would be pressed for. The latest estimates for 1922-23 show that the direct contribution should have been about £122,000 for that year, the economy and reduction of staff anticipated by the India Office not having been fully realised. The provisional estimate of India Office expenditure for 1923-24 shows, however, a reduction of £20,000 in the above figure and this, together with the anticipated further reduction in 1924-25, should enable the deficiency in the contribution for 1922-23 to be fully recouped.

GRANTS REJECTED BY LOCAL LEGISLATIVE COUNCILS.

76. ***Mr. K. C. Neogy**: With reference to the answer to my starred question No. 40 of the 6th September, 1922, will Government be pleased to state the result of their examination of the extent of the authority of the Governor General in Council to instruct a Governor in regard to the exercise of his statutory powers for the restoration of grants rejected by the local Legislative Council?

The Honourable Sir Malcolm Hailey: The matter is still under consideration.

BILL RELATING TO EMPLOYMENT OF FIREARMS FOR DISPERSING ASSEMBLIES.

77. ***Mr. K. C. Neogy**: Will Government be pleased to state their intention with regard to the "Bill to provide that, when firearms are used for the purpose of dispersing an assembly, preliminary warning shall, in certain circumstances be given", which was passed by the Council of State on the 19th September, 1921, withdrawn from the Legislative Assembly on the 26th September, 1921, and stated by Sir William Vincent on the 6th February, 1922, to be still under consideration of Government?

The Honourable Sir Malcolm Hailey: The Bill has been withdrawn because further examination has shown that it is not possible to provide satisfactorily by legislation for a principle which has hitherto been regulated by executive orders not only in India but also in England.

Mr. K. Ahmed: Is it a fact that in England 24 hours before firing takes place a proclamation is read that the mob must disperse?

The Honourable Sir Malcolm Halley: No, Sir, it is most emphatically not the case.

Mr. N. M. Joshi: May I ask whether the executive order has been issued in regard to this question?

The Honourable Sir Malcolm Halley: If I am correct, the discussion in the Council of State will show what executive orders have issued in this respect.

Mr. K. Ahmed: Isn't it stated in the text-books of constitutional law in England that firing will only take place after a lapse of certain time which is generally notified in a public place warning people to disperse within a certain time?

The Honourable Sir Malcolm Halley: No, Sir, that again is quite inaccurate.

Mr. K. C. Neogy: How is it that this particular point as to the undesirability of having legislation of this character was not examined before the Bill was actually introduced and passed in the Council of State?

The Honourable Sir Malcolm Halley: I think, Sir, that if Sir William Vincent was still here he would be better able to reply to that question than I.

WITHHOLDING OF PRESS TELEGRAMS.

78. *Mr. K. C. Neogy: (a) Will Government be pleased to refer to the answer to Unstarred Question No. 211 asked in the Bengal Legislative Council on the 31st August, 1922, and state the number of Press Telegrams offered for booking at the Barisal Telegraph Office by the accredited correspondent of the Associated Press of India and certain daily newspapers, that were refused to be sent or withheld by the Telegraph Master during the last two years?

(b) What is the total number of Press telegrams similarly refused or withheld in all the other places in the province of Bengal during the same period?

(c) Is it a fact that at Barisal no action was taken under section 5 (b) of the Indian Telegraph Act empowering censorship of telegrams under orders of the local Government, but that the Telegraph Master purported to act under clause 374 of the Post and Telegraph Guide which requires telegraph offices to refuse to accept any telegram which may be of a decidedly objectionable or alarming character?

(d) Is it a fact that the Telegraph Master of Barisal used to submit all Press telegrams to Mr. P. H. Waddel, I.C.S., the then District Magistrate, for censorship, and acted entirely under his instructions in this matter?

Colonel Sir Sydney Crookshank: (a) and (b) Telegraph Offices are required to report by telegram to the Postmaster-General concerned the fact of any telegram being refused or withheld and to forward a copy of the objectionable message to the Postmaster-General by post. But no separate record of such telegrams is maintained and the information required is consequently not available. The departmental rules require that the sender should be informed when transmission of a telegram has been withheld. If the withholding office has acted irregularly or indiscreetly, the Postmaster-General is empowered to take necessary action. If the Honourable Member

will give details of any instance in which a telegram is considered to have been improperly refused or withheld, the necessary enquiries will be made.

(c) Clause 374 of the Post and Telegraph Guide is for the information of the public. Telegraph Offices act under rule 15 of the Statutory Rules made by the Governor General in Council under section 7 of the Indian Telegraph Act and published in the *Gazette of India* dated September 16th, 1909.

(d) Under the Statutory Rule quoted above, the head of the Telegraph Office at Barisal was required, if the character of a telegram was open to doubt, to refer the telegram to the District Magistrate at Barisal and to act under his instructions.

Mr. K. Ahmed: In this particular question, Sir, I do not understand how they say they are 'decidedly objectionable and alarming in character,' in (c) and (d)?

Colonel Sir Sydney Crookshank: Sir, I do not quite follow what information the Honourable Member requires me to give him.

Mr. K. Ahmed: See the last line Sir, of the paragraph 3 'decidedly objectionable or alarming in character' Will you kindly discuss the justification for withholding them?

Colonel Sir Sydney Crookshank: Sir, that would be a matter of opinion.

GOVERNMENT STORES IMPORTED FROM ENGLAND

79 **Mr. Manmohandas Ramji:** Will the Government be pleased to state,

- (a) what arrangements as regards freight are in existence at present to bring Government stores from England to India?
- (b) whether there is any contract?
- (c) if so, with which line of steamer?
- (d) at what rate?
- (e) if there is no existing contract, whether they have considered or propose to consider the question of inviting tenders?
- (f) if there is no existing contract, what is the average rate of freight paid last year?
- (g) whether Government has considered the advisability of entrusting this work to an Indian Steamship Company? and
- (h) if not, whether they propose to consider the question now?

Mr. A. H. Ley: (a), (b), (c), (d) and (e) The attention of the Honourable Member is invited to the discussions which took place in the Council of State on the 15th March, 1922, in connection with a Resolution moved by the Honourable Mr Lalubhai Samaldas on this subject. The system on which arrangements are made for the carriage of Government stores from England was fully described by the Honourable Mr. Lindsay in reply to that Resolution. There is no standing contract with any particular line of steamers and tenders are, as a matter of fact, invited on each occasion. Further particulars of the procedure followed are described in paragraph 9 of Appendix E to the Stores Purchase Committee's Report.

(f) The attention of the Honourable Member is invited to the reply given to the question asked by the Honourable Mr. Lalubhai Samaldas in the

Council of State on the 23rd March, 1922. Government have not the figures of the average freight rates paid during the last year. These rates are variable not only week by week, but also according to the nature of the material to be carried: they are, however, nearly always considerably below the open market rates.

(g) and (h) In a letter dated the 13th April 1922 Government communicated to the High Commissioner for India the Resolution which was carried in the Council of State on the 15th March, 1922, and instructed him specially to give Indian Shipping Companies opportunities of tendering for the carriage of Government Stores, where possible

RAILWAY RISK NOTES

80. ***Mr. Manmohandas Ramji**: Will the Government be pleased to state whether their attention has been drawn to the remarks made by Mr. Justice Stuart about railway risk notes in a recent appeal case before the Allahabad High Court, in which 184 bags of wheat flour sent by Lala Banarsi Das, proprietor of B. D. Flour Mills, from Ambala to Ballia, were concerned?

Mr. C. D. M. Hindley: The reply is in the affirmative

The Honourable Member is aware that the Committee, appointed to consider the revision of Railway Risk Note Forms of which he was a Member, has submitted its report, copies of which have been placed in the Library. The recommendations of the Committee are under the consideration of the Government of India

Mr. K. Ahmed: In view of the remarks which have fallen from the mouth of that distinguished judge Mr. Justice Stuart of Allahabad High Court, do Government propose to give effect to it in all other cases?

Mr. C. D. M. Hindley: I have already explained that the matter has been dealt with by the Committee and the recommendations of the Committee are under the consideration of Government

APPOINTMENTS TO INDIAN MEDICAL SERVICE ON SPECIAL TERMS

81. ***Rai Bahadur Bakshi Sohan Lal**: (1) Will Government be pleased to state how far is it correct that it is proposed to appoint 30 Europeans in the Indian Medical Service on special terms which include the right to retire on a gratuity of £1,000 with free return passages on the completion of five years service if they no longer desire to remain in the service?

(2) If so, will the Government be pleased to lay on the table for the information of this Assembly the proposal on the subject together with the legal authority for the same and all the correspondence between the Government of India and the Secretary of State which has led to the proposal?

(3) Will the Government be pleased to state:

(a) for whose special benefit and at whose application or suggestion this special form of Indian Medical Service reserved for Europeans exclusively is to be introduced in this country,

(b) whether any Indian or Anglo-Indian holding equal or higher qualifications is eligible for this service,

(c) from what date men belonging to this service are to be engaged and whether they are to be engaged under the Covenanted

Indian Medical Service Regulations or under special contracts to be entered into with each individual?

(4) Whether it is proposed to obtain the sanction of any of the Indian or Provincial Legislatures in the matter before it is enforced in India.

(5) Whether the cost of this special Indian Medical Service is to be borne by the Indian Exchequer or by any European Exchequer.

Mr. E. Burdon: (1) The facts are as stated by the Honourable Member in this part of his question. The gratuity of £1,000 which is to be paid if the officer ceases to remain in the service after 5 years, will be in lieu of pension.

(2) The Government of India do not propose to lay the correspondence on the table. No special legal authority for the measure is required.

(3) (a) and (b) No special Indian Medical Service is being introduced. The measure which forms the subject of the Honourable Member's question is designed purely and simply to remedy the very serious deficiency in current recruitment of European officers for the Indian Medical Service.

(c) Officers will be selected and engaged under the special terms mentioned in the first part of the Honourable Member's question, as candidates present themselves. Apart from these special terms the officers appointed will serve under the Indian Medical Service regulations as regards pay, allowances, &c.

(4) The answer is in the negative.

(5) The cost of these 30 officers for the Indian Medical Service, if obtained, will be borne by Indian revenues and will be met from the normal provision for expenditure on the service. They will be within the authorised cadre.

Mr. T. V. Seshagiri Ayyar: Why was it considered necessary to dispense with the ordinary examination in recruiting for this year?

Mr. E. Burdon: Because candidates were not forthcoming.

Rao Bahadur T. Rangachariar: Were the Ministers in charge of this Department consulted in this matter?

Mr. E. Burdon: Questions of recruitment do not come before the Ministers.

Rao Bahadur T. Rangachariar: Were they consulted?

Mr. E. Burdon: No.

Mr. T. V. Seshagiri Ayyar: If it was considered that by examination the Government would not be able to get a large number of men from England, why did they not have recourse to filling these posts by qualified men in this country and why should they have gone to England to recruit men without examination?

Mr. E. Burdon: As I have already explained, the sole reason for the measure was the necessity to remedy the very serious deficiency in current recruitment of European officers for the Indian Medical Service.

Mr. K. O. Neogy: Is there any fixed maximum proportion for Indians in the permanent cadre of the service?

Mr. E. Burdon: No; not at the moment, but I may mention that during the past 4 years 91 Indian officers have been appointed to the Indian Medical Service and 59 European officers.

Mr. K. O. Neogy: Will the Honourable Member refer to question No. 170 of the 15th of September 1921 and Question No. 485 of the 21st of September 1921 in reply to which it was stated that the question of fixing the maximum proportion for Indians in the permanent cadre was under the consideration of the Government of India and the Secretary of State. I want to know what has happened with regard to that matter.

Mr. E. Burdon: The matter is still under consideration.

Mr. K. O. Neogy: Is the Honourable Member aware that in reply to Question No. 485 of the 21st September 1921 it was stated that the policy of the Government of India is towards the liberal employment of Indians in the Indian Medical Service? How far has the present recruitment of Englishmen by nomination been in conformity with that principle?

Mr. E. Burdon: As I stated a few moments ago, in the last four years, 91 Indian officers and 59 European officers have been appointed to the Indian Medical Service.

Mr. K. O. Neogy: That adds nothing to my knowledge, I am afraid.

Mr. Harchandrai Vishindas: Is it not a fact that these 91 Indian officers were appointed as a special measure during the war and some of these officers have now been done away with?

Mr. E. Burdon: No. The 91 officers whom I mentioned have been given permanent Commissions in the Indian Medical Service. They are quite distinct from those temporarily employed in the Indian Medical Service, the number of whom is much greater.

Sir Deva Prasad Sarvadhikary: Will the Government state what their reasons were for giving these special terms, apart from the question of candidates not presenting themselves in sufficient number? Were there any special reasons why these markedly special terms had to be offered?

Mr. E. Burdon: It was merely a question of the market rate which it is necessary to give in order to obtain the officers.

Mr. B. S. Kamat: Were these appointments made with the full concurrence of the Government of India?

Mr. E. Burdon: The facts have already been fully stated.

Mr. K. B. L. Agnihotri: How long will this matter about the proportion of Indians in Indian Medical Service appointments be under the consideration of the Government.

The Honourable Sir Malcolm Hailey: Until we arrive at a decision.

Mr. N. M. Samarth: Is the beginning of the end of the consideration in view?

The Honourable Sir Malcolm Hailey: Of course the beginning is in view.

FOREST COLLEGE AT DEHRA DUN.

82. ***Mr. Jamnadas Dwarkadas:** Will the Government be pleased to state what action, if any, has been taken to give effect to the recommendation of the Legislative Assembly for the development of the Forest College at Dehra Dun into a Research Institute for higher education in Forestry?

Mr. J. Hullah: The recommendation of the Legislative Assembly has been communicated to the Secretary of State and is under the consideration of the Government of India.

AMENDMENT OF CODE OF CRIMINAL PROCEDURE.

83. ***Lala Girdharilal Agarwala:** (a) Has the attention of the Government been drawn to the decision of the Hon'ble Mr. Justice Stuart of the Allahabad High Court reported in the Allahabad Law Journal, Volume 20, page 909, *Narain Prasad Nigam versus Emperor*?

(b) Do the Government propose to amend the Code of Criminal Procedure so that the powers of the High Court may be extended in cases of revision and the High Court may interfere when totally wrong or illegal sentence or order is passed by a subordinate Court, although the High Court is moved by a person not party to the proceedings, as is the case of 55 Congress people referred to in the ruling of the High Court mentioned above?

The Honourable Sir Malcolm Halley: (a) Yes.

(b) The Honourable Judge who decided the case in question did not find, as appears to be suggested by the question of the Honourable Member, that it was not possible for a High Court in the exercise of its powers of revision to interfere unless moved by a party to the proceedings with a totally wrong or illegal sentence or order. He found in fact that—I quote his words here—'there is nothing to show me that there has been any miscarriage of justice' and that it was—I quote again from the order in the case—'perfectly clear that under the very extensive powers contained in section 435 I can call for and examine the record of proceedings if the necessity for doing so has been brought to my notice in any manner.' In these circumstances the Government of India think that the decision affords no ground whatsoever for the amendment of the law in the direction suggested by the Honourable Member.

REPORT OF ARMS ACT COMMITTEE.

84. ***Dr. H. S. Gour:** (1) Will the Government be pleased to state when the Report of the Arms Act Committee will be published?

(2) And whether before taking any action an opportunity will be afforded to this House to express its opinion thereon?

The Honourable Sir Malcolm Halley: 1. The Report will be published on the 20th January 1928.

2. Government do not propose to give any official time to the discussion of this report, but it is open to Honourable Members to call attention to any of its features by question or resolution.

IMPERIAL LIBRARY, CALCUTTA.

85. ***Dr. H. S. Gour:** (1) Will the Government be pleased to state whether it is a fact that the contents of the Imperial Library, Calcutta, are reported to be irretrievably perishing owing to the influence of climate thereupon?

(2) If so, what action does the Government propose to take to save them?

(3) Is the Government aware that a proposal has been made to transfer the Library to Delhi or some other more salubrious centre?

(4) Is the Government aware that the Library is maintained out of funds voted by the Legislative Assembly?

(5) Will it state what facilities do Members of this House enjoy in obtaining books from the Library for consultation?

(6) How many books were sent out from the Library to persons residing out of Calcutta?

(7) Is it a fact that the Library is scarcely patronized by any readers and that it does not serve the purpose of justifying its continuance as a charge upon the Imperial Revenues?

The Honourable Mr. A. C. Chatterjee: (1) and (2) The climatic conditions of Calcutta, as of most places in the tropics and sub-tropics, are bad for paper, and several of the older books in the Imperial Library have perished through decay. The same fate has befallen an old library at Meerut. The Government of India have the matter under scientific enquiry. Meanwhile every effort is made by careful supervision to curtail the damage.

(3) No such proposal is under consideration.

(4) The expenditure on the Imperial Library is voted expenditure.

(5) There are no special rules for Members of the Legislative Assembly. They enjoy the same rights and privileges in the matter of obtaining books as the general public.

(6) In the year 1918-19, 3,653 books were lent to the general public. Further or later information is not readily available.

(7) The answer is in the negative. The number of readers in the Imperial Library during the quarter ending 31st March 1922, was 11,445.

Mr. K. C. Neogy: Will the Honourable Member inquire from the Vice-Chancellor of the Delhi University as to what his experience is regarding the climatic effects of Delhi upon the books in the Delhi University Library which does not yet exist?

Mr. J. Chaudhuri: Is the Honourable Member aware that there is a department of the Bengal Government called the Bengal Historical Records, and also a department of the Government of India called the Imperial Record Department where records from the year 1773 are being preserved, and they are in good condition, and they are now being exhibited by the Asiatic Society?

The Honourable Mr. A. C. Chatterjee: I am aware of the existence of the two Departments, but I cannot say anything about the exact condition of the records.

Mr. J. Chaudhuri: May I ask a question? Is it not a fact that the Imperial Library was originally called the Calcutta Public Library, and the building in which it was accommodated was called Metcalfe Hall, and the Library was founded and the building erected by citizens of Calcutta as a memorial to Sir Charles Metcalfe who was Governor General of India in 1835 and Governor of Bengal also, and Lord Curzon took it over for the purpose of maintenance, and that the Government of India is only in the position of trustee with regard to the Library? Is he also aware that it is sadly wanting in accommodation?

The Honourable Mr. A. O. Chatterjee: May I ask whether I am expected to remember such a long question in order to answer it?

Mr. J. Chaudhuri: It is a fact which ought to be in the knowledge of the Education Member that it was the Calcutta Public Library and was taken over by Lord Curzon. That is in the Government of India records and the Education Member ought not to be ignorant of it.

Mr. K. C. Neogy: May I ask whether the Department of Education will ascertain from the citizens of Calcutta whether they would be willing to take back the Library?

Mr. J. Chaudhuri: Did I not show him (the Education Member) a letter from the Education Minister of Bengal saying that he was willing to take over the Library if the Government of India would transfer it?

(No reply was given.)

Mr. J. Chaudhuri: Am I not entitled to an answer?

Mr. K. C. Neogy: Will the Honourable Member inquire from the Vice-Chancellor of the Delhi University as to whether the Delhi University is expected to provide in Delhi a reading public much wider than exists in Calcutta?

Mr. J. Chaudhuri: Sir, I am entitled to an answer as to whether the Government of India are willing to transfer the Library to the Government of Bengal if the Government of India are not going to maintain it and provide additional accommodation for the Library. It is for want of accommodation that the books are suffering.

The Honourable Mr. A. O. Chatterjee: Sir, I have already said that no proposal for the transfer of the Library is under consideration. I do not know what led the Honourable Member to make the long speech which he has delivered. If the Government of Bengal offer to take the Library over, the matter will certainly be considered.

Mr. K. Ahmed: Sir, in view of the fact that there is no attraction for the Imperial Library, will the Government take proper steps to keep a Librarian at a moderate salary, say 250 rupees per month?

Mr. J. Chaudhuri: May I ask whether it is not a fact that books were lying in the godowns of Messrs. Thacker Spink for a number of years because there was not enough accommodation in the Imperial Library at Metcalfe Hall. If it is within the knowledge of the Honourable Member will he provide additional accommodation?

The Honourable Mr. A. O. Chatterjee: The answer is in the negative.

Mr. B. S. Kamat: When this Imperial Capital of Delhi is fully built up, will the Government consider the advisability of transferring this Imperial Library from Calcutta to Delhi?

The Honourable Mr. A. C. Chatterjee: The matter will be considered in due course.

Mr. J. Chaudhuri: The Government of India are only the trustees of the Library.

FACILITIES FOR STUDY OF MUSIC.

86. ***Dr. H. S. Gour:** (1) Is the Government aware that there is no facility for the study of music in this country?

(2) Is it aware that the faculty of music finds a place in almost all important universities of the United Kingdom such as Cambridge, Oxford and London?

(3) Is it aware that it was intended to open a faculty of music in connection with the University of Delhi?

(4) If so, will the Government be pleased to give effect to its intention?

The Honourable Mr. A. C. Chatterjee: (1) If, as appears to be the case, the question refers to the study of music in Indian Universities, the answer is in the affirmative.

(2) Yes.

(3) and (4) It is for the authorities of the University, after considering its financial position, to take the initiative in this matter by submitting the necessary amendment to the statutes. Any such proposal will receive consideration.

DELAY IN PUBLICATION OF INDEX OF DEBATES.

87. ***Dr. H. S. Gour:** (a) Is the Government aware that inconvenience is caused to Members of this House by the fact that the Index to the Debates is not published for months after conclusion of the session?

(b) Is it aware that the Index to the September Debates was not published till December 5th when this question was sent in?

(c) Do the Government propose to take steps that the Title page and Index are got ready to be issued with the last number of the Debates or as soon thereafter as possible?

The Honourable Sir Henry Moncrieff Smith: (a) Government is not aware of any real inconvenience caused to Members of this House. There has hitherto been no complaint on the subject.

(b) Yes.

(c) Every endeavour is being, and will be, made to publish the Index as early as possible. Government recognise that there is room for some improvement.

DEVELOPMENT OF RAILWAYS.

88. ***Dr. H. S. Gour:** (1) Has the attention of Government been drawn to a statement reported to have been made in the course of his speech on unemployment in the House of Commons by Sir L. Worthington-Evans to the effect that 'it was possible to spend usefully anything between 80 and

50 millions pounds in developing and improving Railways in India, which would bring Britain enormous direct employment ?

(2) (a) Will the Government state to what development and improvement of the Railways does this statement allude?

(b) And whether it does not refer to the expenditure in England of the 80 crores of rupees voted by this House for the betterment of the Indian Railways?

(3) Will the Government state how much of this 80 crores has been spent and upon what objects, and how much of it has been spent in making purchases in England?

The Honourable Mr. O. A. Innes: (1) Yes.

(2) (a) and (b) The Government have no exact information. They were not consulted before the statement referred to was made. Sir L. Worthington-Evans is probably aware that Rs. 30 crores a year have been earmarked for the rehabilitation of Indian Railways and the Government of India presume that in the course of the debate he threw out a suggestion that it might help to relieve the problem of unemployment if arrangements could be made whereby the development of railways in India could be further facilitated.

(3) The Honourable Member is referred to the Demand Statement of Capital Expenditure for 1922-23 (Appendix C to the Demands for Grants) presented to the Assembly in March last. The actual expenditure follows the Demand Statement as far as circumstances permit. The total expenditure against capital and revenue works incurred up to the end of September last is Rs. 946 lakhs. Of this amount, roughly £4 million is in respect of purchases made in England and of this £4 million it is estimated that about £2 million is expenditure against the capital grant.

EMPIRE CONFERENCE

89. **Dr. H. S. Gour:** (a) Will the Government be pleased to state what is the object of the proposed Empire Conference?

(b) When will it be held?

(c) And will India be represented thereon?

(d) If so, will any of its cost be chargeable to the revenues of India?

The Honourable Mr. O. A. Innes: (a) The intention is that the proposed Imperial Economic Conference should study the possibility of co-operation in the development of the resources of the British Empire and the strengthening of economic relations between its constituent parts.

(b) As far as the Government of India are aware, nothing definite has yet been decided.

(c) The Government of India have informed the Secretary of State that if other Dominions agree to the proposed Conference India will also agree to take part.

(d) The question of cost has not yet been considered.

Mr. T. V. Seshagiri Ayyar: If a representative from India is appointed, will he be appointed after consultation with the Legislative Assembly?

The Honourable Mr. O. A. Innes: That question will require consideration.

COUNCIL OF STATE AND RESERVING OF COMPARTMENTS.

90. ***Dr. H. S. Gour:** Will the Government be pleased to lay on the table a statement showing the names of the Members of the Council of State and the amounts drawn by them on account of reserved compartments allowed to them, session by session, since the inauguration of the Council of State?

CHARGES OF MEMBERS OF INDIAN LEGISLATURES.

91. ***Dr. H. S. Gour:** Will the Government be pleased to lay on the table a statement showing the amounts drawn by Members of the Council of State and of the Legislative Assembly on account of travelling and halting allowances paid to them, session by session, since the inauguration of the reformed Councils, and for their attendance on the various committees?

The Honourable Sir Henry Moncrieff Smith: The information required is being collected and will be laid on the table in due course.

MR. ANDREWS' SPEECH AT ALL-INDIA RAILWAYMEN'S CONFERENCE
REGARDING COMFORTS OF 3RD CLASS PASSENGERS.

92. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Has the attention of Government been drawn to the presidential speech of Mr. Andrews (as published in *The Tribune*, dated the 26th November 1922), at the second All-India Railwaymen's conference?

(b) If so, will the Government be pleased to state what steps have been or are being taken to increase the comforts of third class passengers?

(c) Will the Government be pleased to state when was the present pay of the menial staff of Railways fixed and whether Government propose to take any action to ameliorate their hardships.

Mr. C. D. M. Hindley: (a) Yes.

(b) Information on this point will be found in the Administration Report for 1921-22, copies of which have been placed in the Library.

(c) The pay of most of these servants was revised in 1920 and the wages bill in respect of this class has gone up 75 per cent since 1913-14. Apart from pay proper railway menials get free quarters, free passes, free medical attendance, etc., and in some cases free clothing.

EMPLOYEES ON NORTHERN INDIA RAILWAY.

93. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Is it a fact that Government employs on principle a larger proportion of Anglo-Indians and Europeans on Northern Railways for strategical purposes of defence?

(b) If the answer be in the affirmative, do Government propose to appoint more Indians on those Railways in vacancies created by retirement or otherwise of Europeans and Anglo-Indians.

(c) Is it a fact that in both the Traffic and Loco Branches of the Railway staff there are two different grades of pay for Indians and Anglo-Indians? If so, will the Government give reasons for such differences on racial basis?

Mr. C. D. M. Hindley: (a) The reply is in the negative.

(b) The policy of Government is stated in the preamble to the Government of India Act of 1919.

(c) I would refer the Honourable Member to the reply given on the 6th September 1922 to question No. 92 asked by Lala Girdharilal Agarwala.

PROBATIONARY PAY IN SECRETARIAT.

94. *Rai Bahadur Lachmi Prasad Sinha: (a) Is it a fact that Rs. 80 is the minimum probationary pay and Rs. 100 on confirmation for a Lower Division clerk in the Government of India Secretariat?

(b) If so, will the Government be pleased to state the number of Anglo-Indians actually drawing this pay in each of the Departments of the Government of India Secretariat?

The Honourable Sir Malcolm Hailey: (a) Yes, except in the case of girl-clerks who draw Rs. 100 per mensem during probation and Rs. 120 per mensem on confirmation.

(b) The information asked for is given in the statement laid on the table.

Department.	No. of ANGLO-INDIANS.		No. of EUROPEANS.		TOTAL.	
	On Rs. 80 per mensem.	On Rs. 100 per mensem.	On Rs. 80 per mensem.	On Rs. 100 per mensem.	On Rs. 80 per mensem.	On Rs. 100 per mensem.
Home	...	1*	...	...	...	2
Revenue and Agriculture	1	...	...	...	1	...
Industries	1	...	...	...	1	...
Finance	...	...	...	...	...	...
Legislative	...	...	...	...	...	...
Education and Health	...	...	...	...	...	...
Foreign and Political	...	...	...	...	...	...
Public Works	Nd.	Nd.	Nd.	Nd.	Nd.	Nd.
Commerce	...	...	...	...	...	...
Army	...	...	...	...	...	...
Railway	...	...	...	...	...	...
Military Finance	...	...	...	...	...	...
Total	2	1	...	1	2	2

* Girl clerks.

QUESTIONS REFERRED TO STANDING COMMITTEES.

95. *Rai Bahadur Lachmi Prasad Sinha: Will the Government be pleased to state whether all establishment questions either of selection or of promotions in the Ministerial Staff of the Government of India Secretariats are going to be placed before the respective Standing Committees which have been attached to each of the Departments of the Government of India Secretariat?

The Honourable Sir Malcolm Hailey: The answer is in the negative.

POSTAL SUPERINTENDENTS.

96. *Rai Bahadur Lachmi Prasad Sinha: (1) Is it a fact that the duties of the Superintendents of the Post Offices have considerably increased since

the amalgamation of the Post and Telegraph Offices and that they have been invested with greater power and responsibilities in the matter of postal administration?

(2) Is it a fact that recruitment of such officers is conducted almost in the same way as in the other Provincial Services, i.e., Provincial Educational Service, Excise Service, Income Tax, etc., and that the selection is made from the same class of candidate with similar qualifications?

(3) Is it a fact that the scale of pay of the Postal Superintendents is much below the scale of officers of the Provincial Services; if so, will the Government be pleased to state the reason of such difference?

(4) Is it a fact that a memorial had been submitted by the Superintendents of the Post Offices to His Excellency the Viceroy praying for a revision of the time scale pay of their posts; will the Government be pleased to state what action has been taken thereon?

Colonel Sir Sydney Crookshank: 1. The reply is in the negative. Prior to the amalgamation of the Post and Telegraph Departments, Superintendents of post offices were required to inspect combined post and telegraph offices, and in order to enable them to perform this work efficiently, a short training in telegraphy was made compulsory. With the amalgamation there was no material change in this respect; but they have since been relieved of half of their purely postal inspection. Their duties and powers in respect of postal matters have been revised, but such revision has not added appreciably either to their powers or responsibilities, and will, it is anticipated, decrease their work.

2. For the appointment of Superintendent of post offices the procedure is to fill up half the vacancies in the cadre by the promotion of qualified officials from the subordinate ranks, leaving the remaining half for persons who are recruited direct as Probationary Superintendents. The educational standard required of a candidate for the post of Probationary Superintendent is a university degree or its equivalent. The conditions of service of Superintendents of post offices are not the same as those of other Provincial Services.

3. Superintendents of post offices were formerly on graded rates of pay with Rs. 200 minimum and Rs. 600 maximum. In June 1920, a time-scale of Rs. 250—700 was introduced with retrospective effect from the 1st December 1919 with due regard to the recommendations of the last Public Services Commission and in view also of the increase of pay sanctioned for other services. In April 1921, the matter was very carefully reviewed by Government but it was decided not to make any further improvement in pay. An exact parallel cannot be drawn between Superintendents of post offices and officers of similar position in other Provincial Services.

4. Yes; the Government of India have given careful consideration to the representations and have decided that the scale of pay which was introduced with effect from December 1st, 1919, is adequate.

Rai G. C. Nag Bahadur: Is the Honourable Home Member aware that in my Province of Assam two months ago, while the people were crying for abolition of the Divisional Commissioner, there were in one Division actually two officers working as Commissioners simply because there was no room for one, and the other was expected to come to this Assembly as a Member.

The Honourable Sir Malcolm Hailey: I was not aware of the fact and I am afraid I cannot take it from the Honourable Member without examination; but it is in any case a question for the Assam Government and not for us.

DATES OF GOING ON AND RETURNING FROM LEAVE OF HIGHER GRADE OFFICERS.

97. ***Rai G. C. Nag Bahadur:** Has the attention of Government been drawn to the fact:

- (a) That in those departments of the public service which in the higher grades are officered wholly or mainly by Europeans, the practice is that these officers while going on long leave are allowed to consult their own convenience rather than that of the State as to the date of going on, and returning from, leave;
- (b) That none of these high officials will, if they can help it, ever go on long leave except from the close of the cold weather, nor will any such, if they can possibly help it, return from such leave except at the beginning of the cold weather;
- (c) That as the result of the above practice there is a surplus of officials in every cold weather?

The Honourable Sir Malcolm Hailey: (a) and (b) The fact is not as stated by the Honourable Member. Officers are not allowed to consult their own convenience, and leave cannot be claimed as a right. As far as the Government of India are concerned, leave is only granted with due regard to the public interests and at a time and for periods convenient to the State. The grant of leave is mainly the concern of Local Governments, who may be trusted to exercise a similar discretion.

(c) This fact is not as stated. Recruitment to the public services is so ordered as to provide for the periodical absence of officers on leave. If the Honourable Member will supply me with any facts which would substantiate the imputation contained in this part of his question, in regard to the services under the Government of India, I shall be glad to investigate them; in the meanwhile I can only repudiate it.

REGULATION OF LEAVE RULES OF OFFICERS.

98. ***Rai G. C. Nag Bahadur:** Do Government propose in the interest of economy:

- (a) to insist, as practically all private employers do, on their servants going on, and returning from leave on dates which suit their employers, and which may be so arranged as to prevent overlapping; and
- (b) to guard against such arrangements being upset by the existing practice of the Secretary of State granting extensions of leave, on medical certificate or otherwise, to officers on leave in Europe, to rule that officers who so obtain extensions shall not be allowed to return to duty until such date as the Government, under which they are serving, shall direct, or in the event of their being permitted to return to duty, that they shall continue to draw leave-pay until a vacancy for their re-employment occurs?

The Honourable Sir Malcolm Hailey: (a) The Honourable Member's attention is invited to the reply just given to question No. 97.

(b) Extensions of leave are in practice only granted after the Local Governments concerned have been consulted, except extensions on medical certificate which entail appearance before the Medical Board at the India Office. The further safeguards mentioned by the Honourable Member are not therefore required. The Honourable Member appears to overlook the fact that ordinarily an officer on leave must hold a lien on a post, and that frequently officers are compulsorily recalled from leave.

COBRA ANTI-VENOM.

99. ***Rai G. C. Nag Bahadur:** (a) Are the Government aware that the Cobra anti-venom made at the Pasteur Institute at Saigon, Indo-China, has been developed to a high degree of certainty, and has been saving many lives in that country?

(b) Is it true that the Pasteur Institutes in India are in possession of the Cobra anti-venom? If so, how is it that the knowledge of its use, or even of its existence is not widespread enough to do any substantial good?

(c) Regard being had to the fact that the yearly toll of lives taken by venomous snakes is so very great in India (a hundred people dying in India from snake-bite to one from hydrophobia), do Government propose to see that the Pasteur Institutes in India at Kasauli, Coonoor, and Shillong are enlarged and made to give more attention than they seem to do at present to the manufacture and distribution of the Cobra anti-venom?

The Honourable Mr. A. C. Chatterjee: (a) The Government of India are aware that cobra anti-venine is made at the Pasteur Institute at Saigon, Indo-China, but have no information as to how many lives are saved by the use of this anti-venine.

(b) Pasteur Institutes in India are in possession of cobra anti-venine. This anti-venine in which are combined both cobra and viper anti-venine has been in use in India for nearly 20 years and has been supplied during that period to all large civil and military hospitals which require it.

(c) Anti-venine is prepared for the whole of India at the Central Research Institute, Kasauli, which is at present capable of dealing with all demands. The Government of India have at present a special research officer inquiring into the possibility of reducing the bulk of the anti-venine that has to be administered and of improving the serum so as to make it available throughout India and suitable for use by inexperienced persons.

BIRKMYRE'S CONTRACT—INDIAN STORES DEPARTMENT.

100: ***Mr. Manmohandas Ramji:** Will the Government be pleased to state:

(a) the reason why a commission of Rs. 60,000 is allowed on purchases under Birkmyre's Contract, in Demand 86, for 1922-23, under the head "Indian Stores Department",

(b) the rate of commission,

(c) what the nature of the Contract is, and what is the article for which the contract was made, and

(d) what the total value of the Contract is?

Mr. A. H. Ley: Messrs. Birkmyre have acted since 1919 as the agents and advisers of the Central Government in respect of the purchase of certain classes of textile goods.

(a) The provision represents the amount expected at the time of the preparation of the estimates to be payable to the firm during the current year. Owing to a revision of the contract with the firm and to purchases falling short of anticipation the actual sum payable will be substantially less than the amount provided.

(b) The rate fixed by the original contract was $1\frac{1}{2}$ per cent. on the actual invoiced price of goods supplied through the firm, other than goods manufactured in their own mill, after the deduction of all discounts, rebates and brokerage received by them. Goods manufactured by Messrs. Birkmyre Brothers themselves were, under the original contract, to be supplied to Government free of commission at the rate at which the firm were supplying the outside market at the date of the purchase by Government.

During the course of the current year Government revised the contract with the firm. Under the new terms commission is now payable to the firm at 1 per cent. on articles manufactured from jute by the Calcutta jute mills other than goods manufactured in the firm's own mill on which no commission is paid.

(c) The contract represents a temporary arrangement which was devised to obviate the necessity of employing a Government purchasing staff. It is proposed to review it again when the Indian Stores Department has developed further. Under the original contract the firm arranged for the supply to Government of their requirements in respect of:

- I.—Articles manufactured from jute by the Calcutta jute mills,
- II.—Articles manufactured from flax, hemp and cotton canvas.

Under the revised agreement now in force the firm act as advisers and purchasers for Government only in respect of articles manufactured from jute by the Calcutta jute mills. The other classes of goods covered by the original contract are now obtained in the open market by the Indian Stores Department.

(d) The value of the contract is indefinite and depends on the demands of the consuming Departments of Government. The value of goods purchased through the firm from April to November 1922, inclusive, was Rs. 15,05,184.

URDU FOR INDIAN CIVIL SERVICE EXAMINATIONS.

101. ***Khan Bahadur Sarfaraz Hussain Khan:** With reference to the following reply to my question re: "Urdu for Indian Civil Service Examination syllabus" No. 57, page 1563 asked in the Assembly on the 16th January, 1922, given by the Hon'ble Sir William Vincent: "The Government of India agree that Urdu is a better term and will convey to the Secretary of State, who frames the rules under Section 97 (1) of the Government of India Act, the suggestion that the term 'Urdu' should be substituted for 'Hindustani'":

(a) Will the Government be pleased to state if the suggestion referred to has been conveyed to the Secretary of State?

(b) If so, has any reply been received?

The Honourable Sir Malcolm Halley: (a) and (b) The term 'Urdu' has been substituted for 'Hindustani' in the regulations.

PILGRIMS DURING THE HAJ SEASON.

102. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to state:

(a) the number of Indian pilgrims during the last Haj Season?

(b) the number of such pilgrims as have not returned to India as yet?

The Honourable Mr. A. C. Chatterjee: (a) According to information furnished by the Government of Bombay, 8,575 pilgrims left Bombay and 3,975 Karachi for the Hedjaz during the last Haj season, making 12,550 in all. Of those leaving Bombay 6,953 were from India (including Burma) and Indian States. No information is available from Karachi.

(b) According to figures furnished by the Government of Bombay 11,410 pilgrims returned from the Hedjaz to Bombay and Karachi during the last season. No information is available as to how many of these were Indians. The mere comparison of outgoing and returning figures does not however give a correct indication of the number of pilgrims yet to return since a certain number of pilgrims who do not touch India on the outward journey return this way.

FUND FOR HAJ PILGRIMS.

103. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to state:

(a) If a fund from the Mohammedan Community for the benefit of pilgrims has actually been started as proposed?

(b) If so, what amount has been collected and where has it been deposited?

The Honourable Mr. A. C. Chatterjee: (a) Yes.

(b) According to information furnished by the Honorary Secretary of the Central Haj Committee of India, the amount collected up to the 31st December, 1922, is Rs. 32,067-12-6. Out of this Rs. 10,270-11 have already been paid to the British Agency in Jeddah for the repatriation of 359 destitute Indian pilgrims and a draft for a further sum of Rs. 19,394 has also been received for payment from the same Agency on account of the repatriation of 695 additional pilgrims. When this sum has been paid the balance available will be Rs. 2,403-1-6. The funds of the Central Haj Committee have been deposited with the Imperial Bank of India, Delhi.

COMPLAINT OF MR. SAHNEY AGAINST A GUARD.

104. ***Khan Bahadur Sarfaraz Husain Khan:** With reference to the reply given to the question of Mr. Jarnnadas Dwarkadas, No. 3, Volume III, page 23, by the Hon'ble Mr. C. A. Innes that "Departmental action has been taken against the guard of the train and the Stationmaster," will the Government be pleased to state as to what was the Departmental action that was taken against the guard of the train and the Stationmaster?

Mr. C. D. M. Hindley: The guard and stationmaster were reduced.

ADMISSION OF INDIANS INTO THE ROYAL AIR FORCE.

105. ***Khan Bahadur Sarfaraz Husain Khan:** With reference to the answer given by Sir Godfrey Fell, to question No. 58 asked by me on the 16th January, 1922, in this Assembly that "no reply has yet been received from the Secretary of State for India":

- (a) Will the Government be pleased to state if the reply has been received?
- (b) If so, will it be pleased to communicate the reply to the Assembly?

Mr. E. Burdon: (a) and (b) No reply has yet been received from the Secretary of State.

"PRINCIPAL PLACE OF BUSINESS" AS USED IN INCOME TAX ACT.

106. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to state whether the question of the interpretation to be placed on the words "Principal place of business" used in the Income-Tax Act is under the consideration of the Government of India?

- (a) If so, will the Government be pleased to state whether they have come to any decision in the matter?
- (b) If so, will it be pleased to state what that decision is?

The Honourable Sir Basil Blackett: The question was considered by the various Committees which dealt with the amendment of the Income-tax Act, 1922, and their recommendations are embodied in section 64 of that Act. Under the provisions of that section where any question arises as to the principal place of business, the question is determined by the Income-tax Commissioner of the province, or where the question is between places in more than one province, by the Commissioners concerned, or if they are not in agreement, by the Board of Inland Revenue. But before any such question can be determined, the assessee must be given an opportunity of representing his views.

LISTED POSTS.

107. ***Khan Bahadur Sarfaraz Husain Khan:** With reference to the reply given to the starred question 141 asked by Rai G. C. Nag Bahadur, in the meeting of the Assembly held on the 6th February, 1922, by the Hon'ble Sir William Vincent that "the Local Government had submitted certain proposals regarding listed posts which were under consideration"—

- (a) Will the Government be pleased to state whether they have come to any decision in the matter?
- (b) If so, will it be pleased to state what that decision is?

The Honourable Sir Malcolm Hailey: (a) The answer is in the affirmative.

(b) Two superior posts on the executive side have been notified as open to members of the Assam Civil Service.

GULZARIBAGH STATION PLATFORM.

108. ***Khan Bahadur Sarfaraz Husain Khan:** (a) Are the Government aware that at Gulzaribagh station of the East Indian Railway the platform

is much lower than the foot-board and many people, specially females, and children feel great inconvenience in alighting from the train?

(b) Do the Government propose to consider the advisability of making raised platform on this station for the benefit specially of women and children?

Mr. C. D. M. Hindley: (a) and (b) The general question of providing high level platforms at all stations on Broad Gauge Lines has recently had the careful consideration of Government. They are of opinion that the expenditure involved is so great that at present, with money so difficult to obtain and with so many other works more essentially required to increase traffic facilities, it would not be advisable to embark on the scheme. Railway Administrations provide high level platforms wherever passenger traffic is sufficiently heavy to justify their provision. The convenience of this form of platform for passengers who are old and feeble and for females and children is fully recognised, but Government propose for the present to leave it to the discretion of Railway Administrations to provide high level platforms at stations where the requirements of the passenger traffic justify them.

STEAMER SERVICES BETWEEN JEDDAH AND YAMBOO.

109. ***Khan Bahadur Sarfaraz Husain Khan:** With reference to the reply given to the starred question No. 247 (b), asked by Haji Wajihuddin in the meeting of the Assembly held on the 6th March, 1922, by Mr. Denys Bray that enquiry will be made whether any Company is prepared to undertake a fortnightly Steamer Service between Jeddah and Yamboo as a commercial value, will the Government be pleased to state whether enquiry had been made; and if so, what is the result?

Mr. Denys Bray: The Government of Bombay were asked to make enquiries, but could find no Steamship Company willing to undertake a service between Jeddah and Yamboo as a commercial venture.

PUSA AGRICULTURAL INSTITUTE.

110. ***Khan Bahadur Sarfaraz Husain Khan:** With reference to the reply given to the starred question No. 70, regarding the Pusa Agricultural Institute put by Rao Bahadur Lachhmi Prasad Sinha, in the meeting of the Assembly held on 6th September, 1922, by Mr. Hullah that "The information asked for is being collected, and will be furnished to the Honourable Member as soon as possible:

(a) Will the Government be pleased to state whether the information has been collected, and furnished to the Honourable Member?

(b) If so, will Government be pleased to lay the information furnished on the table?

Mr. J. Hullah: (a) Yes.

(b) Our papers containing the information are at present with the Agricultural Adviser at Pusa; on return from him the papers containing the information will be laid on the table.

BARRISTERS AND VAKILS IN HIGH COURTS.

111. ***Mr. K. O. Neogy:** (a) Have Government ascertained the opinions of the Local Governments, the High Courts, the legal profession and other authorities, in regard to the question of removing all distinctions enforced by statute or by practice between Barristers and Vakils in pursuance of the resolution of this House on the creation of an Indian Bar, or otherwise?

(b) If so, will Government be pleased to publish the said opinions, or circulate them to the Members of the legislature, at an early date?

The Honourable Sir Malcolm Hailey: The Government have received the opinions of the local Governments and others consulted and these opinions are now under consideration. It is hoped the examination of the matter will be concluded without much delay, and the question of placing copies of the opinions received in the Assembly library will then be considered.

CITY CIVIL COURT IN CALCUTTA.

112. ***Mr. K. O. Neogy:** (a) Will Government be pleased to refer to a resolution adopted by the Bengal Legislative Council on the 7th April, 1915, recommending the establishment of a City Civil Court in Calcutta for the trial of suits valued at Rupees ten thousand, or under, which may be instituted within the original civil jurisdiction of the Calcutta High Court; and state whether the said resolution formed the subject of any correspondence between the Government of Bengal and the Government of India?

(b) Is it a fact that in 1902, the Secretary of State suggested the establishment in Calcutta of a Court on the lines of the Madras City Civil Court, and that the Government of India were favourably inclined at that time towards the said proposal?

(c) Will Government be pleased to indicate their present attitude towards this question, particularly in view of the resolution of the Bengal Legislative Council referred to above?

The Honourable Sir Malcolm Hailey: The Resolution referred to was forwarded by the Government of Bengal to the Government of India. The opinions of the Calcutta High Court were obtained by the Government of India and submitted to the Government of Bengal in April 1917. Since then there has been no correspondence on the subject. The matter is one on which the initiative should come from the local Government and Government therefore do not propose to make any statement with regard to (b) and (c) of the question.

REDUCTION IN DELHI PROVINCIAL GRANT.

113. ***Dr. H. S. Gour:** (1) Will the Government be pleased to state how the Assembly's cut of one lakh of rupees in the Delhi Provincial Grant was effected?

(2) Is it a fact that 14 District Board Schools have been closed down during the current year and if so, why?

(3) Will the Government be pleased to state what reductions were made in the Grants-in-Aid to educational institutions in the Delhi Province in consequence of the Assembly's retrenchment?

The Honourable Sir Malcolm Halley: (1) A statement is laid on the table.

(2) 15 newly opened schools were closed by the Delhi District Board through want of funds to maintain them. District Board schools are, of course, maintained from the funds of the District Board itself.

(3) The information is contained in the statement to which I have just referred.

DEMAND No. 48.

DELHI.

Modifications in grant.

Net modification in the grant as finally passed in Budget.

	Rs.
Non-voted . . .	—14,000
Voted . . .	+26,000
Total . . .	+12,000

	Non-voted.	Voted.	TOTAL.
5. Land Revenue—			
Land Records—Pay of Establishment . . .	...	—2,000	—2,000
23. General Administration—			
Heads of Provinces, Executive Councils, etc.—			
Allowances, etc. . . . .	...	—400	—400
Supplies and services . . . . .	...	—200	—200
Contingencies . . . . .	...	—1,000	—1,000
	...	—2,100	—2,100
District Administration—			
Pay of Officers	13,500	—3,000	—16,500
Pay of establishment . . . . .	...	—7,500	—7,500
	—13,500	—10,500	—24,000
Total	—13,500	—12,600	—26,100
24. Administration of Justice—			
Civil and Sessions Courts—			
Pay of establishment . . . . .	...	—2,000	—2,000
Criminal Courts—			
Pay of Officers . . . . .	...	+5,720	+5,720
Total . . . . .	...	+3,720	+3,720

	Non-voted.	Voted.	TOTAL.
25. Jails and Convict Settlements—			
Jails—Supplies and Services	— 4,120	—4,120
26. Police—			
District Executive Force—			
Pay of establishment	+ 58,000	+ 58,000
30. Scientific Departments—			
Museums—			
Pay of establishment	—4,440	—4,440
Allowances, etc.	—2,100	—2,100
Contingencies	—3,130	—3,130
Hydro-Electric Surveys	—6,000	—6,000
Total	—15,670	—15,670
31. Education—			
University. Grants-in-aid, etc.	—35,000	—35,000
Secondary. Grants-in-aid, etc—			
Building and furniture grants	—10,000	—10,000
General—Pay of Officers	—9,000	—9,000
Allowances, etc.	—1,000	—1,000
Total	—55,000	—55,000
33. Public Health—			
Expenses in connection with bubonic plague —			
Pay of Officers	—3,000	—3,000
Pay of establishment	—1,000	—1,000
Total	—4,000	—4,000
34. Agriculture —			
Establishment charges payable to the Punjab Government	—100	—100
Veterinary charges—			
Establishment charges payable to the Punjab Government	—1,200	—1,200
Total	—1,300	—1,300

	Non-voted.	Voted.	TOTAL.
35. Industries—			
Establishment charges payable to the other Government . . . . .	...	-1,171	-1,171
41. Civil Works—			
In charge of Civil Officers—			
Grants-in-aid, etc.—			
Additional contributions to local bodies . . . . .	...	-20,000	-20,000
47. Miscellaneous—			
Contributions . . . . .	...	-20,000	-20,000
Total	-13,500	-74,141	-87,641
For rounding	-500	+141	-359
GRAND TOTAL	-14,000	-74,000	-88,000
Omit—			
Lump reduction shown in the original demand . . . . .	...	+1,00,000	+1,00,000
Total net modification in the previously sanctioned allotments	-14,000	+26,000	+12,000

Mr. Jamnadas Dwarkadas: Will the Honourable Member inform the House whether it did or did not affect the grant of Rs. 75,000 made to the newly started Delhi University?

The Honourable Sir Malcolm Hailey: It was reduced to the best of my recollection by Rs. 35,000.

DIVISIONAL COMMISSIONERSHIPS, C. P.

114. ***Rai G. C. Nag Bahadur:** (a) Is it true that the Secretary of State for India has rejected the proposals of the Central Provinces Government regarding abolition of the Divisional Commissioners of that Province?

(b) If so, will the Government kindly lay the correspondence between Government of India and the Secretary of State for India on the subject on the table?

The Honourable Sir Malcolm Hailey: The Secretary of State has not yet been addressed on the subject.

AMALGAMATION OF ASSAM WITH BENGAL.

115. ***Rai G. C. Nag Bahadur:** (a) Has the attention of the Government of India been drawn to the Memorandum regarding amalgamation of Assam with Bengal presented to the Inchaape Committee by certain leading men of Assam?

(b) Do Government propose to consult the local Governments concerned as to the feasibility of carrying out the proposals?

The Honourable Sir Malcolm Hailey: (a) The Government of India have seen the memorandum.

(b) They do not propose to take the action suggested. The matter is one in which the initiative should come from the local Governments concerned.

EUROPEAN VAGRANTS.

116. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state under what circumstances is it necessary to incur the following charges in the Demand for Grants for 1922-23:

1. Demand 47.—Baluchistan: Under 47 Miscellaneous, charges on account of European Vagrants, Rs. 220.
2. Demand 48.—Delhi: Under 47 Miscellaneous, charges on account of European Vagrants, Rs. 400.
3. Demand 50.—Ajmer-Merwara: Under 47 Miscellaneous, charges on account of European Vagrants, Rs. 50.

The Honourable Sir Malcolm Hailey: The information asked for by the Honourable Member is being collected and will be communicated to him when available.

POSTAGE INCOME.

117. ***Munshi Mahadeo Prasad:** Will the Government be pleased to state what was the income from Postage in the current financial year up to December, 1922, and for the same period up to December, 1921, in the last financial year?

Colonel Sir Sydney Crookshank: The necessary information is being collected and will be supplied as soon as it is available.

STATISTICS OF RAILWAY EMPLOYEES.

118. ***Mr. B. N. Misra:** (1) Will the Government be pleased to state:

- (A) the number of employees in the (a) Officer's grade, (b) Upper Subordinate grade, (c) Lower Subordinate grade, in the years 1910 and 1920, respectively, in the (i) East Indian Railway, (ii) Bengal-Nagpur Railway, (iii) Great Indian Peninsula and (iv) North-Western Railways;

- (B) the total amount spent on each grade referred to above in the years 1910 and 1920 respectively by each of the Railways?

(2) Will the Government be pleased to state the number of (a) Europeans, (b) Anglo-Indians, (c) Indians, in grades referred to in (a) and (b) to question (1) in each Railway?

Mr. C. D. M. Hindley: It is not known what the Honourable Member means by Upper and Lower Subordinate grades and the question, therefore, cannot be answered.

Mr. B. N. Misra: I wish to put a supplementary question. Generally, there is the officers' grade and then the drivers, conductors and guards are regarded as being in the subordinate grade; as upper subordinates and

lower subordinates. They begin in the lower subordinate grade and rise to the upper subordinate grade in the railways.

Mr. C. D. M. Hindley: May I ask what the question is? If the Honourable Member will specify the different grades in which he wants the employees classified, we will be able to supply him with the information, but there is no definite difference between the upper and lower subordinate grades.

Mr. B. N. Misra: What will be the total number of employees in the lower and upper subordinate grades?

Mr. C. D. M. Hindley: I can have that information collected and given to the Honourable Member.

RAISED PLATFORMS AND WAITING ROOMS ON RAILWAYS.

119. ***Mr. B. N. Misra:** (1) Does (a) a raised platform or (b) provision for waiting room depend on the income of a Railway Station?

(2) If so, will the Government be pleased to state if the different companies have a uniform standard of income for the purposes of (a) and (b) in question (1)?

(3) If not, will the Government be pleased to state what amount of income induces each of the said companies to provide (a) a raised platform, (b) a waiting room in a station?

Mr. C. D. M. Hindley: (1) (a) and (b) The provision of a raised platform or waiting room accommodation at a station does not directly depend upon its income. These facilities are provided as the number of passengers using the particular station justifies them and it is generally left to the Railway Administrations concerned to decide whether such facilities are or are not required at individual stations on their systems.

(2) and (3) In view of the answers given to (1) (a) and (b) these questions do not arise.

RAISED PLATFORMS AND WAITING ROOMS BETWEEN HOWRAH AND PURI.

120. ***Mr. B. N. Misra:** Will the Government be pleased to state.

(A) the total number of stations between Howrah and Puri, and

(B) the number of stations which have not got (a) a raised platform, (b) a waiting room and the reason in the latter cases?

Mr. C. D. M. Hindley: (A) There are 61 stations between Howrah and Puri.

(B) (a) 15 stations are without raised platforms.

(b) All the stations have third class waiting halls, while 9 of them have also first and second class waiting rooms.

High level platforms or waiting room accommodation at a station are provided when the number of passengers using the particular station justifies their use.

WIRE FENCING ON RAILWAYS.

121. ***Mr. B. N. Misra:** Will the Government be pleased to state how many railways have got a wire fencing throughout the line for the protection of cattle?

Mr. C. D. M. Hindley: There are no railways which are provided with wire fencing for the protection of cattle throughout their entire length.

GRIEVANCES OF TELEGRAPH CHECK OFFICE STAFF.

122. ***Mr. K. Ahmed:** (a) Are the Government aware of the article in the editorial column of the "Amrita Bazar Patrika" dated the 18th October, 1922, and a number of other correspondences that appeared in the issues of that paper dated the 6th and 23rd October, 1921, the 2nd November, 23rd September, 14th April and 12th March, 1922; of the "Bengalee" dated 15th October, 20th September, 2nd September, and 31st March, 1922; of the "Indian Daily News" dated 7th December, 22nd November, 20th August and 27th July, 1922 and of the "Servant" dated the 30th August, 1922, regarding the grievances of the Telegraph Check Office staff?

(b) If so, do Government propose to enquire into the matter and take immediate steps for the removal of the grievances, if there be any?

The Honourable Sir Basil Blackett: The information is being collected and will be supplied to the Honourable Member as early as possible. This answer applies not only to question No. 122, but to all the questions down to No. 133 inclusive.

TYPISTS IN TELEGRAPH CHECK OFFICE.

123. ***Mr. K. Ahmed:** (a) Is it a fact that in accordance with the Auditor General's Circular letter, typists in all offices excepting the Telegraph Check Office, under the Accountant General, Posts and Telegraphs, were placed on the Upper Division Time Scale of pay and allowed the benefit of their entire length of service on that scale with effect from the 4th November, 1919, the date of the introduction of the New Time Scale of pay, and that in the Telegraph Check Office alone, typists have been placed in the Upper Division Scale of pay not earlier than 16th July, 1921, and without the benefit for their past length of service on that scale?

(b) If the answer be in the affirmative, will the Government be pleased to state the reason for such deviation from the General Rule in the case of typists in the Check Office only?

(c) Do Government propose to recognise that the nature of typists work in the Check Office is similar to that of all other offices under the Accountant General, Posts and Telegraphs?

RECRUITMENT OF CLERKS IN UPPER AND LOWER DIVISIONS.

124. ***Mr. K. Ahmed:** (a) Is it a fact that some outsiders as well as clerks though failed in the competitive examination for recruitment of clerks for the Upper Division, have directly been given appointment in, or promoted to, that Division in preference to some successful candidates and that the latter are being retained in the Lower Division?

(b) If so, will the Government be pleased to state:

- (i) the circumstances under which the same has been done, and
- (ii) the numerical position of the successful and the unsuccessful candidates in the several examinations held since the introduction of the "Recruitment Examination," showing which and how many of them were selected for the Upper and how many for the Lower Divisions; and in the cases of those promoted to the Upper Division without any further departmental test the references as to the antecedents regarding their past services, educational qualifications, the conditions of appointments when they were first taken in and the reason for their promotion to the Upper Division?

(c) Is it a fact that amongst the successful candidates some were recruited for the Upper Division and some for the Lower Division?

CLERKS APPOINTED AFTER RECRUITMENT EXAMINATION.

125. ***Mr. K. Ahmed:** (a) Are the Government aware that in the cases of the clerks, selected for the Upper Division on the result of the competitive Recruitment Examination, who could not be provided in that Division, it was ruled by the Auditor General that they should have their initial pay fixed on the Upper scale when promoted to the Upper Division, as if their entire services had been rendered in that (Upper) Division?

(b) If the answer be in the affirmative, are the Government aware that clerks selected for the Upper Division, but sent to the Telegraph Check Office and subsequently transferred to Upper Division, have been deprived of the benefit?

GRIEVANCES OF UPPER DIVISION CLERKS.

126. ***Mr. K. Ahmed:** Is it a fact that a memorial was submitted to the Viceroy and Governor-General on the 16th August 1922, stating that the clerks employed on the Upper Division work, got the Lower Division rates of pay; and that the Auditor General remarked in his letter to the Government of India that the grievances of the clerks were "legitimate and long standing"?

TIME SCALE IN CHECK OFFICE.

127. ***Mr. K. Ahmed:** (a) Is it a fact that in July 1921, Government sanctioned an Upper Division Time Scale of pay for 140 of the clerical appointments in the Check Office and that it was intended by the Auditor General that this change should come into operation at once?

(b) If so, what steps, if any, were taken till January, 1922 to give effect to that change and whether it was with the concurrence of the Accountant General, Posts and Telegraphs?

(c) Is it a fact that about half the number of the Upper Division appointments were not filled up till November, 1922 and that some clerks submitted a representation dated 16th August, 1922 stating their grievances that the Auditor General had already recommended for promoting clerks to the Upper Division according to the efficiency and length of service actually rendered, as will appear from the said representation in paragraph 2, *vis.* "I should like to add that this is not a revision of establishment in the

ordinary sense my proposals are designed to secure that pay should bear some relation to the nature of work done and thus remove a long-standing and legitimate grievance of the clerks ""?

RECRUITMENT OF TELEGRAPH CHECK OFFICE.

128. ***Mr. K. Ahmed:** Will the Government be pleased to state under what circumstances the new method of departmental examination has been brought in for filling up the vacancies in the Telegraph Check Office when a memorial was pending regarding the grievances of the clerks and when the orders are that the present incumbents may be brought on to the new scales ""?

CANDIDATES FOR DEPARTMENTAL EXAMINATIONS.

129. ***Mr. K. Ahmed:** In the matter of the departmental examination held on the 26th and 27th October 1922, will the Government be pleased to state:

- (a) The number of clerks who abstained from the examination, and
- (b) The number of clerks appearing in the examination specifying whether " Permanent " or " Temporary " with the dates of their original appointments and how many of them were recruited for the Lower Division?

CANDIDATURE OF TEMPORARY CLERKS.

130. ***Mr. K. Ahmed:** (a) Is it a fact that under the rules only such clerks as have rendered not less than 4 years' service and can reasonably be expected to pass, are eligible for appearing at the departmental examination?

(b) If so, will the Government be pleased to explain how and under what circumstances the candidature of temporary hands, if any, for the examination was approved?

POSTAL AUDIT OFFICES MANUAL.

131. ***Mr. K. Ahmed:** (a) Is it a fact that the rules in the Manual for guidance of Postal Audit Offices framed by the Accountant General, Posts and Telegraphs, regarding the filling up of substantive appointments in the Audit Offices under his control as embodied in paragraph 1457 of Chapter XVIII of the Postal Account Code, Volume II, provide that promotions in the clerical establishment should be given to men who will, in the judgment of the Deputy Accountant General be found qualified by

- (1) Efficiency
- (2) Suitability by temper.
- (3) Ability to draft clearly.
- (4) Command over subordinate clerks, and
- (5) Seniority.

and that one of the conditions *inter alia*, is that unless one possesses these qualifications, he cannot be promoted though he may have passed the departmental examination?

(b) If so, will the Government be pleased to state whether these rules have since been abolished?

(c) If not, was it followed in the Telegraph Check Office in making the selection of suitable candidates for filling the 140 posts for the Upper Division sanctioned for that office in July, 1921?

GRIEVANCES OF CLERKS IN TELEGRAPH CHECK OFFICE.

182. ***Mr. K. Ahmed:** (a) Will the Government be pleased to enquire whether there were representations regarding their grievances submitted by the clerks of the Telegraph Check Office in the months of September and October 1921, and March, July, August and October, 1922, and state what replies were given thereto, if there be any?

(b) Do Government propose to lay on the table a copy of each of those representations if there had been any?

RECRUITMENT IN CHECK OFFICE.

183. ***Mr. K. Ahmed:** If the Check Office clerks have been styled as "specifically recruited lower grade clerks", will the Government be pleased to state at whose instance the remark has come to be applied?

LIGHTING OF RAILWAY STATIONS.

184. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Has the attention of Government been drawn to the judgment of the Madras High Court against the Madras and Southern Mahratta Railway published in the *Tribune*, dated the 7th December, 1922?

(b) Is the Government aware that in most of the Railway Stations on all the Railways, the station premises are kept unlighted?

(c) If not, will the Government be pleased to state what steps do they propose to take in the matter so that station premises may be kept well lighted?

Mr. G. D. M. Hindley: (a) The reply is in the affirmative

(b) and (c) The Honourable Member is referred to the answer given on 15th September 1921 to item (u) of question No. 220 asked by Mr. K. Ahmed in a similar connection

ANGLO-INDIANS IN GOVERNMENT DEPARTMENTS.

185. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state the number of Anglo-Indians employed in each of the Departments of the Government of India and the number of them employed solely in the lower division without even getting a chance of officiating in the Upper Division?

The Honourable Sir Malcolm Hailey: The information asked for is given in a statement which is being sent to the Honourable Member.

PROVISION OF GOVERNMENT QUARTERS

186. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state the percentage of Anglo-Indians provided with Government quarters either for self or for family and the percentage of Indians provided with quarters either for self or for family?

Colonel Sir Sydney Crookshank: The number of Anglo-Indians and Indians employed as Assistants and Clerks in the Government of India is 546 and 1,450 respectively.

The building scheme for New Delhi now makes no distinction between unorthodox Indians and Europeans and Anglo-Indians. The number of quarters for migratory clerks built and under construction is 641, of this number 385 are for those who live in the orthodox style and 256 are those who are unorthodox.

RAISINA CHUMMERIES.

137. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Is it a fact that four nice Chummeries well fitted and well furnished have been built at Raisina for European clerks and Assistants of the Secretariat living single?

(b) If so, will the Government be pleased to state whether any such chummeries have been built for Indian clerks and Assistants living single? If not, why not?

(c) Will the Government be pleased to state the reasons why two of these cannot be reserved for Indian clerks living single?

(d) Is the Government aware that if such a step is taken then scarcity of quarters for Indians will to a great extent be obviated?

Colonel Sir Sydney Crookshank: (a) Four chummeries accommodating 72 bachelors have been built. These are available for occupation by unorthodox Indians and Europeans.

(b), (c) and (d) Four chummeries accommodating 104 bachelors are under construction. These are meant for occupation by orthodox Indians but one or more blocks will, if necessary, be used for unorthodox Indians.

RENTS IN DELHI.

138. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Is it a fact that the rent of the quarters at Delhi either of officers or of clerks of the Imperial Secretariat have been raised abnormally?

(b) If so, will the Government be pleased to state the percentage of increase in rent in each type of quarters at Raisina for the officers and for the clerks (Indian and European)?

(c) Is it a fact that such increase in rent was announced to the tenants after they occupied the quarters (either of officers or of clerks and Assistants)?

Colonel Sir Sydney Crookshank: (a) and (b) The statement laid on the table shows the assessed rents and recoveries in 1921-22 and 1922-23.

The increase in recoveries is due to the introduction of the Fundamental Rules which have superseded the concession rates of rent which prevailed last year. These concessions gave a rate of rental recovery of 4 to 6 per cent. of the salary of the occupants, whereas the rental recoveries are now based upon 10 per cent. of the minimum pay of each class.

(c) Yes.

Statement showing the assessed rents and the rents sanctioned for recovery in respect of officers' bungalows and clerks' quarters in New Delhi during the winter of 1922-23 as compared with the last year's rents :

	1921-1922.				1922-23.				
	Class.	Average salary.	Assessed rent.	Rent fixed for recovery.	Class.	Average salary.	Assessed rent.	Rent fixed for recovery.	
		Rs.	Rs.	Rs.		Rs.	Rs.	Rs.	
Officers' bungalows at Raisina	I	3,500 and upwards.	250	From 5 to 6 per cent. of salary.	A	4,000 to 5,000	301	315	
	II	2,500 to 3,499	222		B	2,750 to 2,999	218	250	
	III	1,750 to 2,499	185		C	2,000 to 2,749	194	206	
	IV	1,250 to 1,749	138		D	1,350 to 1,999	143	154	
	VI	Below 1,250	96.8		40	E	900 to 1,349	121	103
						F	700 to 899	116	83
						G	600 to 699	98	72
10 per cent. of the maximum pay of class.									
Clerks' quarters, New Delhi	I	350 to 500	54	21.8	A	425 to 500	55	52	
Unorthodox	II	251 to 319	41	16.8	B	300 to 424	43	37	
	III	250 and below	No quarters	...	C	200 to 299	No quarters	...	
Orthodox	Type—B	350 to 500	45	From 3.9 to 5.5 per cent. of salary.	A	425 to 500	41	41	
	C	251 to 349	29.8		11.12	B	300 to 424	27	27
	D	151 to 250	21.8		8.8	C	200 to 299	21	21
	E	150 and below	13.14		5.8	D	100 to 199	14	13
	10 per cent. of the minimum pay of class.								

N.B.—There has been no increase whatever in the assessed rents of the quarters at Timarpur. The rate of recovery in each year is based on the floor area basis with reference to the rents of the quarters in the New Capital.

INDIANS ON I. C. S. CADRE.

139. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state what steps do they propose to take to bring the Indians belonging to the Indian Civil Service Cadre as Secretary, or Deputy Secretary of the different departments of the Government of India?

The Honourable Sir Malcolm Hailey: The Government of India follow the principle in the appointment of Secretaries and Deputy Secretaries, that the man best fitted for the post should be selected regardless of racial considerations. Indians have been and are appointed to these posts.

APPOINTMENT OF INDIANS TO REVENUE AND INDUSTRIES DEPARTMENTS.

140. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state whether they propose to bring Indians belonging to Indian Civil Service Cadre as Secretary of the Department of the Revenue and Agriculture, *vice* Mr. Hullah about to retire and of the Industries Department *vice* Mr. Chatterjee appointed Member of His Excellency's Executive Council. If not, why not?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to the answer given to his other question on the same subject.

INDIANS IN RAILWAY COMPARTMENTS RESERVED FOR EUROPEANS.

141. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Will the Government be pleased to state whether Indians with European dress are allowed to travel in the compartments reserved for Europeans on Railways?

(b) If the answer is in the affirmative, will the Government be pleased to lay on the table a copy of the orders issued to different Railway authorities on the subject?

(c) If the answer is in the negative, will the Government be pleased to state the reasons?

(d) Is it a fact that Indians even with European dress when travelling by European compartments can be evicted out of the compartment by a Railway Guard according to his sweet will or when a so-called European objects to travel with an Indian in European costumes?

(e) If so, is the Government aware that such cases of evictions of literate and high class Indians are one of the main causes for the movement for the abolition of such reserved compartments for Europeans?

Mr. O. D. M. Hindley: Government have no information what the practice in this matter on the different railways is.

APPOINTMENTS TO RAILWAYS.

142. ***Rai Bahadur Lachmi Prasad Sinha:** Is it a fact that Anglo-Indians and Europeans will henceforward be taken to be Indians for the purposes of appointments on Railways as a result of the resolution about Indianisation of appointments?

Mr. O. D. M. Hindley: I would refer the Honourable Member to the reply given in this Assembly to Question 201 put by Mr. K. Ahmed on the 7th September 1922 on the subject.

IMMOVABLE PROPERTIES IN INDIA.

143. ***Mr. K. Ahmed:** (1) Is it a fact that there is no compulsory registration of judgment and decree recognized by any Act of Legislation regarding the immovable properties in India?

(2) Are the Government aware that in England, the Land Charges Act, 1900, lays down that unless the judgment or decree concerning immovable properties be registered under the Act of 1888, the judgment or the decree will not operate as a charge on the immovable properties?

(3) Do Government propose to introduce such Legislation in the country immediately for the benefit of the public?

The Honourable Sir Malcolm Hailey: The Honourable Member will excuse me if I do not enter into an exposition of the law of registration in answer to a question. It will be sufficient to say that Government do not propose at present to introduce legislation amending the existing law relating to the registration of decrees or orders of a Court.

Mr. K. Ahmed: Is not that system in existence in the civilised western countries, for instance, England?

The Honourable Sir Malcolm Hailey: I hope that the Honourable Member will not deny to India the title of a civilised country.

Mr. K. Ahmed: Is it not a fact that that system is in existence in England?

The Honourable Sir Malcolm Hailey: It is. The Honourable Member is well aware that it is, without asking me this question.

Mr. K. Ahmed: Will the Government be pleased to take any steps to introduce that system without any more denial to India?

The Honourable Sir Malcolm Hailey: I have already replied that the Government does not propose to do so.

12 NOV.

INCONVENIENCES ON EASTERN BENGAL RAILWAY.

144. ***Mr. K. Ahmed:** (a) Are the Government aware that in the Southern Section of the Eastern Bengal Railway most of the carriages are in damaged and dilapidated condition, that rain-water falls inside through the roof of the carriages, the trains are seldom lighted, especially the Inter class and Third class carriages, the Railway platforms are not properly lighted, no latrines are provided in most of the Inter class and Third class carriages, and the trains seldom run punctually and that in general, the Southern Section is uncared for and not properly looked after and that the passengers are greatly inconvenienced thereby?

(b) Do Government propose to take proper steps for removing the above defects and thus redressing the grievances of the travelling public?

Mr. C. D. M. Hindley: (a) and (b) Government is informed that while some of the carriages on the Southern Section of the Eastern Bengal Railway are in need of repairs and re-painting, the statement that most of the carriages are in a damaged and dilapidated condition conveys an unduly pessimistic impression.

The provision of new rakes for this section is contemplated, and when these are completed the new stock should bear favourable comparison with the stock of any Railway in India.

Complaints were received at the beginning of the rains of leaky carriage roofs, and the carriages were immediately attended to, and the complaints ceased.

The statement that carriages and platforms are not properly lighted is incorrect, and owing to the short length of the train runs on this section, the Diamond Harbour run being only 37 miles, the Canning Branch 28 miles and the Budge Budge Branch 16½ miles, the provision of bathrooms and latrines in the carriages of the trains over these suburban lines is not considered necessary.

During the first half of 1922, the punctual running of the trains over this section was affected unfavourably by the failure of water supply and prevalence of high winds. Consequently it was found advisable to revise the time table from the 15th July 1922 to a lower rate of speed.

Mr. K. Ahmed: May I ask what sort of light gas, kerosene oil or electric lights are supplied to these places, and if there be electric light, will the Honourable Member be good enough to state from the statistics of units the exact amount of the consumption of current?

Mr. C. D. M. Hindley: I shall require notice of that question.

UNSTARRED QUESTION AND ANSWER.

WORKING OF RAILWAYS WITH REGARD TO FINANCIAL RESULTS.

86. Rai G. C. Nag Bahadur: With reference to the answer given on 5th September 1922 to my unstarred question No. 14, do Government propose to modify the conditions so as to reserve power in the case of future railways to assume working, if the railway entails payment of guaranteed interest for three consecutive years?

Mr. C. D. M. Hindley: Government are afraid that the suggestion contained in the Honourable Member's question is impracticable.

THE INDIAN MINES BILL.

The Honourable Mr. O. A. Innes (Commerce and Industries Member): Sir, I beg to present the report of the Joint Committee on the Bill to amend and consolidate the law relating to the regulation and inspection of Mines.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I beg to move:

‘That Rao Bahadur T. Rangachariar be nominated to serve on the Select Committee to consider and report on the Bill to amend sections 362 and 366 of the Indian Penal Code.’

The necessity for my making this application to the House, and for further calling on Mr. Rangachariar for an increase of the heavy labours

[Sir Malcolm Hailey.]

which he already undertakes on our Select Committees, is this—that under the rules we need a Chairman for our Committee. He must be either the Law Member, if he is a Member of the Assembly, or the Deputy President if he is a Member of the Committee. Neither of these requirements being complied with, the rules next provide that we should have as Chairman a gentleman who is a Chairman of the House. But unfortunately there is no such gentleman on the Select Committee, and it is for that reason that I have had to make an application to the House to add to the Committee the name of Rao Bahadur Rangachariar.

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: We will now proceed with the further consideration of the amendments to the Bill further to amend the Code of Criminal Procedure.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move:

“That in clause 10 (i) (a), insert the following at the beginning:

“After the word ‘occupier’ where it occurs for the second time, the words ‘in charge of management of that land’ shall be inserted and.”

Sir, my amendment refers to the agents of the owners or occupiers of land. So far as the owners and occupiers are concerned, it has been found necessary that they should have connection with the land and that has been provided for in the section; but as far as the word ‘agent’ is concerned, there is no qualification put down in that section; ‘Agent’ as it stands in the clause and as is well known is a very wide and comprehensive term. Sometimes it extends even to vagueness. It may apply, for example, even to servants. I therefore suggest to the House that the word ‘agent’ should be qualified and made definite in such a way, that only such agents be made liable to give information under section 45 as may be connected with the land, or be in charge of the management of that land the occurrence on which is to be reported. The word ‘agent’ is very comprehensive and vague, for instance there may be agents for various purposes, they may be for the collection of land revenue, they may be for looking after the cultivation of that land, they may be for the construction of buildings on that land or for conducting and defending suits for title of such lands and so on. And to make any such agents liable would be to make the term very wide and troublesome, so it is necessary to restrict it only to such persons as are in charge of the management of the land, and who may be in a better position to know about the occurrences on that land. I therefore put my amendment for the consideration of this House.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, the Honourable Member has explained that the object of his amendment is to restrict the application of the word ‘Agent’ in section 45 of the Code. I venture, Sir, to suggest that it is quite unnecessary to take this course. We have had this word in the Code in its present position exactly since 1872. There have been numerous rulings of the Courts to indicate what persons are covered by that term, and I would submit, Sir, that all the Courts now have the case-made law on the subject, and that it is most

undesirable to introduce such words as those proposed by the Honourable Member in this case. He has suggested that the word standing by itself may have too wide an application. I will merely remark that in one of the rulings it has been held that the liability of a resident Agent arises only when the owner is absent. In these circumstances, Sir, I would venture to suggest that it is quite unnecessary to accept the amendment moved by the Honourable Member.

Mr. Deputy President: The question is that the amendment* moved by Mr. Agnihotri be made.

The Assembly then divided as follows:

AYES—40.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahmed Baksh, Mr.
Akram Hussain, Prince A. M. M.
Asad Ali, Mir.
Asjad-ullah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Chaudhuri, Mr. J.
Das, Babu B. S.
Ghulam Sarwar Khan, Chaudhuri.
Ginwala, Mr. P. P.
Gulab Singh, Sardar.
Ibrahim Ali Khan, Col. Nawab Mohd.
Ikramullah Khan, Raja Mohd.

Jatkar, Mr. B. H. R.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sen, Mr. N. K.
Sircar, Mr. N. C.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Yamin Khan, Mr. M.

NOES—33.

Aiyar, Mr. A. V. V.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haugh, Mr. P. B.
Haley, the Honourable Sir Malcolm.
Hartley, Mr. C. D. M.
Hodine, Mr. H. F.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Jannadas Dwarakadas, Mr.

Joshi, Mr. N. M.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moucrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Pyari Lal, Mr.
Samarth, Mr. N. M.
Sanyal, Sir Deva Prasad.
Singh, Mr. S. N.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Tomkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was adopted.

Mr. K. B. L. Agnihotri: I beg to withdraw my second amendment†

The amendment was, by leave of the Assembly, withdrawn.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadas Rural): Sir, in clause 10 (i) (a) I propose to omit the words 'or obtain. . .

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Mine has not been moved yet—No. 11 on the list.

* Vide p. 1114 of these Debates.

†In clause 10, sub-clause (ii), omit all the words after the word 'inserted', i.e., omit the words commencing from 'and' to the words 'other law'.

Mr. Deputy President: I think it will be more convenient to take Mr. Pantulu's amendment first.

Mr. J. Ramayya Pantulu: The clause provides that for the word 'obtain' the words 'possess or obtain' shall be substituted in section 45; under the Code as it is, a person is bound to give any information that he may obtain; clause 10 amends it by substituting 'obtain or possess' for the word 'obtain.' I propose that the words 'or obtain' should be omitted; so this clause will read, as I amend it, 'bound to give information which he may possess.' We had a good deal of discussion upon this clause yesterday on the amendment proposed by my friend, Mr. Rangachariar. He objected to landholders being called upon to give information to the police, and the offending portion of the section so far as that is concerned is that the landholder would be called upon to give information which he may possibly obtain but which he may not have in his possession. Now, if we take away the words 'or obtain' and simply leave the word 'possess,' it comes to this, that the landlord is bound to give information which he possesses and not information which he may possibly obtain by making inquiries. If my amendment is carried, it will be incumbent upon the prosecution to show that the accused had that information in his possession and not merely that he might have obtained it. Therefore, I think that, if this amendment is carried, the sting will be taken out of that section. So, I submit my amendment very strongly to this House for its acceptance.

The Honourable Sir Malcolm Hailey (Home Member) Sir, I will explain to the House in the first instance how we came to suggest an alteration in the existing law. The word in the existing law, as the Mover has explained, is simply 'obtain.' In 1904 the Madras Government found that this did not cover information obtained by personal observation. There was therefore some difficulty in making certain that information obtained by personal observation such as for instance, the discovery of a corpse on the ground, came within the scope of the law. At the same time I am quite willing to agree with Mr. Pantulu that on the whole the word 'possess' has a sufficiently extensive meaning for the purposes of the Act; and though I am not aware exactly what view my friend, Mr. Seshagiri Ayyar, who has also tabled an amendment on this clause, will take of the suggestion, for my part I am willing that the word 'possess' should stand by itself without 'obtain.'

Mr. T. V. Seshagiri Ayyar: Sir, in view of the assurance given by the Honourable the Home Member, I do not mean to press mine. Of course it would have been much better to use the word 'have' having regard to what the Madras Government said, because if a man sees a corpse in the way and he gets that information, he will be having that information. It may be doubtful as to whether this is simply *possessing* the information. That is apparently the view taken by the Madras Government. The word 'have' would cover both the cases of obtaining or possessing information. That is why I have suggested the word 'have' which would cover both the cases. However, I have no doubt that the deletion of the word 'obtain' is absolutely necessary, because it implies an obligation to seek the information. After all, we are not making law for the highest judiciary, we are making law which would be administered by the magistrates and they are likely to be misled by the use of the word 'obtain,' they may come to the conclusion that it is obligatory on them to obtain information. I do not very much care what you substitute, but I certainly think that the

word 'obtain' should be deleted, but it would conduce to the better understanding of the section if you have the word 'have,' that would certainly meet the objection which the Madras Government seem to have had for the original word. I leave it to the Government to say whether they would like to have the word 'possess' or 'have'; anyhow, the word 'obtain' must go.

Mr. Deputy President: The amendment moved.

In clause 10, sub-clause (i) (a), omit the words 'or obtain'.

The question is that that amendment be made.

The motion was adopted.

Bhai Man Singh (East Punjab: Sikh): I do not propose to move this amendment.* Sir.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, my motion runs as follows:

In clause 10 (a) after the word 'inserted,' insert the following: 'After the word persons, the words 'with his or their consent' shall be inserted'.

This relates to the appointment by Government for the purposes of this section village headmen. The section reads:

The District Magistrate may from time to time appoint one or more persons to be village headmen* for the purposes of this section in any village for which there is no headman appointed under any other law.

The amendment now proposed by Government is to appoint one or more persons to perform the duties of the village headman under this section where a village headman has or has not been appointed for that village under any other law. My amendment would only remove any misconception there may be as to the power of the District Magistrate to appoint persons against their will, and it is for that reason that I have inserted this clause that when they are so appointed it should be with his or their consent; it should not be that a person is appointed as village headman for the purposes of this section even without his consent. As it is, it is open to the District Magistrate to do that. I know that in the case of enlisting special police, people without their consent are enlisted. This ought not to degenerate into such a provision. It must be a voluntary duty to be performed by people who are given a certain status. People may not like to be appointed as village headmen, and the District Magistrate may appoint them as such even without their consent. I therefore propose, Sir, that in clause 10 (ii), after the word 'inserted' insert the following: 'after the word 'persons' the words 'with his or their consent' shall be inserted.'

The Honourable Sir Malcolm Hailey: I have in this case also to explain to the House how these words came to be placed in the Bill. In the Central Provinces it appears there is a class of persons known as *mukaddams* or *Kotwars*. These are not regular village headmen, although they discharge on occasions the work of the village headman, and the Central Provinces wrote some years ago that in their province there are not a few sets of villages and villages comprising several scattered hamlets for which only one *mukaddam* is appointed. It would be useful to have power to appoint for a particular village or hamlet in such cases a headman for the purposes of section 45 only. That is the reason why the drafting Committee thought it was advisable to give a Local Government power to

* "Omit clause 10, sub-clause (ii)."

[Sir Malcolm Hailey.]

• appoint a village headman where none existed. Secondly as to the necessity of inserting the words 'with his or their consent,' I think it will be the experience of every one in this House who has had knowledge of revenue work that so far from a man refusing to become a headman, there is on the other hand very keen competition for the post. I think that Mr. Rangachariar might in the circumstances well be free of any apprehension on that subject. I personally can hardly conceive the circumstances in which a man would be appointed to a post so highly valued in the countryside without his consent. It would, therefore, make very little difference to the Act one way or the other. But from our point of view the words are for practical purposes unnecessary.

Mr. K. B. L. Agnihotri: Sir, it will appear from the speech of the Honourable the Home Member that the proposal for the inclusion of this clause originated from the Central Provinces Government. I come from a district in which there are many villages for which one *mukaddam* is appointed to look after and perform the statutory duties. Thus it is necessary certainly that some persons be appointed in these hamlets or individual villages who should be made responsible to report. But unfortunately, the fear or the apprehension that has been put forward by our leader, Mr. Rangachariar, is absolutely well-founded. There may arise cases in which it may enter the head of the District Magistrate or the Deputy Commissioner to appoint as a punitive measure any person to give such report and that will create a hardship. I do realise and admit that in the revenue Courts we find that there is often a regular competition for the appointment as *mukaddams*, *lambardars* or headmen of villages, but there is no reason why we should not make the law clear so as to do away with the apprehensions that exist in our minds that this power is likely to be utilised sometimes as a weapon against people in the bad books of the officers. The *mukaddams* are appointed and remunerated for their duties. In this case the fear of the appointment of these men as a punitive measure should be done away with and I support the amendment moved by my friend, Mr. Rangachariar.

The Honourable Sir Malcolm Hailey: Has the Honourable Member any experience of such a case? It will interest us to know.

Mr. K. B. L. Agnihotri: Yes, just as always happens under the Police Act, sections 15 and 16, where special constables are appointed.

The Honourable Sir Malcolm Hailey: That is quite a different case.

Mr. K. B. L. Agnihotri: Not in the least. The object under that Act is a salutary one, but sometimes respectable persons are harassed and troubled, and we do not want to put in anything of an ambiguous or indefinite nature which may in future give rise to hardships to the public.

Mr. Deputy President: Amendment moved:

'In clause 10 (ii) after the word 'inserted' insert the following: 'after the word 'persons' the words 'with his or their consent' shall be inserted'.'

The question is that that amendment be made.

The motion was adopted.

Clause 10, as amended, was added to the Bill.

Rai N. K. Sen Bahadur (Bhagalpur, Purnea and the Santhal Parganas: Non-Muhammadan): Sir, may I have your permission to take up both the amendments* Nos. 16 and 17 together because they practically refer to the same section and the same clause?

The Honourable Sir Malcolm Hailey: We should be obliged, Sir, if you would kindly let us discuss both parts of the amendment separately.

Rai N. K. Sen Bahadur: Rather the second one first: 17 ought to come first and 16 ought to come next; because 16 is practically a corollary of 17.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir I would point out that, if No. 16 is carried, then No. 17 does not arise. The Honourable Member will have achieved his object.

Rai N. K. Sen Bahadur: All right: as you please.

Mr. Deputy President: I think it would be much more convenient for the House if the amendments were taken in two parts as we have hitherto done with every amendment.

Rai N. K. Sen Bahadur: Sir, section 54 (1) runs as follows:

'Any police-officer may, without an order from a Magistrate and without a warrant, arrest:

First any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned.'

Now, I propose an amendment to this section that this should be changed and the section should stand as:—

'Any police-officer may, without an order from a Magistrate and without a warrant, arrest any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned.'

Now, the change that I want is to drop the second portion of this clause. In fact, in clause 1, you will find there are four items and it is divisible into four heads. That is, any police-officer may, without an order from a Magistrate and without a warrant, (a) arrest any person who has been concerned in a cognizable offence; (b) may arrest any person against whom there is a reasonable complaint of his having committed a cognizable offence; (c) may arrest any person against whom a credible information has been received; and (d) may arrest any person against whom suspicion exists as to his having been so concerned. These are the four parts into which I divide the section. You will find from the amendment I have proposed that I do not want to touch item (c), namely, 'against whom a credible information has been received.' Because as a matter of course, a police-officer ought to have the right to go and arrest any person without the order of the Magistrate and without a warrant any

* " 16. In clause 11 (i) before the words 'To sub-sections' insert the following:

'For clause *first*' in sub-section (i) of section 54 the following clause shall be substituted:

'*First*—any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned.'

17. In clause 11 (i) before the words 'To sub-sections'

'In sub-section (i) *first* of section 54 the words 'against whom a credible information has been received' shall be omitted.'

[Rai N. K. Sen Bahadur.]

person against whom he has received a credible information of his having committed a cognizable offence. My amendment does not touch that portion of the clause. I am concerned mainly with No. 2, namely, "against whom a reasonable complaint has been made."

Now, I would remind this House that the word 'police-officer' in section 54 means and includes any person from the Superintendent of Police down to a constable and from the new amendment that is now proposed—the term 'police-officer' in this section shall be deemed to include such village officers as may be either generally or specially authorised by the Local Government in this behalf. The question before this House is, and the question I want to put first is whether any police-officer, say a writer constable, or a head constable should be authorised to go without an order from the Magistrate and without any warrant from him—to go and arrest a man against whom there is a reasonable complaint of having committed a cognizable offence. That is the first question that I want to put before the House. Now, in section 4, clause 8, of the Criminal Procedure Code, we find the word 'complaint' means 'allegations made orally or in writing to a Magistrate with a view to his taking action under this Code.' It does not include any information given to the Police. Complaint means practically that a man goes straight to the Magistrate and makes some allegations to him either orally or in writing for the purpose of his taking certain action under the Code. And what action is the Magistrate intended to take or has to take when the complaint is made? That is to be found in section 190. He takes cognizance of the case. As soon as an allegation or a complaint is made before the Magistrate, he takes cognizance of the case under section 190 and under section 200 he examines the man, records his evidence and then he passes an order either under section 202 or under section 204. Either he says, under section 202, 'I don't believe your statement—you must prove your case' (that is an order under section 202), or he may send it to the Police or to any other individual to make a local investigation of the case. But, if he believes the man,—the complainant,—he may pass an order under section 204 and issue either a summons or a warrant against him.

Now, Sir, if you will kindly refer to section 202, you will find there that the Magistrate has power to say, 'well, I don't believe you; you must prove your case.' When there is a complaint lodged before a Magistrate, can't the police say a writer constable go and arrest the man? When a Magistrate under section 202 orders 'I cannot believe the statement of the complainant, I will not issue a warrant against the accused or I will not issue any process against him,' cannot a constable, a writer constable or a head constable go and arrest the man by virtue of the power that we are vesting in him? I say 'yes,' because a police man can reasonably say 'well, the Magistrate may not have thought the complaint to be reasonable, but I think it to be reasonable. I will arrest the man.' My intention is that when the matter is in the hands of a Magistrate after a complaint has been lodged (what we call in technical terms complaint cases) the police should have no hand at all and their interference does not seem necessary. Here I may give some concrete examples, of what actually happened and where I personally felt this difficulty regarding this matter. There was a case only in 1922 before the Sub-Divisional Magistrate of Araria in the district of Purnea where a man went straight to the Magistrate and lodged a complaint. This is the case of Emperor *versus* Muhammad Irfan. The complainant went straight to the Magistrate and lodged a complaint of a cognizable offence. The Magistrate very peculiarly, no doubt, said to the

police, 'you better investigate.' The matter went up to the Patna High Court and the learned Judge there held that the order of the Magistrate was practically an order under section 202. As the Magistrate did not issue a warrant or summons under section 204, his order to the police was only an order under section 202. Now, what does the Police do in this case? I would appeal to the House to consider this. The writer constable goes straight and arrests the man. Here is an order of the Magistrate under section 202. The Magistrate has taken cognizance of the case and he is in seisin of it, and it is for him to decide whether he should issue a warrant and whether he should get the man arrested or not. It is not for the Police to decide whether the man should be arrested. The case subsequently took a different turn. The man who was arrested somehow escaped. The matter came up before the Court again and the issue was whether that arrest was a lawful arrest and amounted to lawful custody. When the matter came up, the plea of the police officer was: 'Well, here is section 54, I arrested the man (under that section) and so it was a lawful custody. The Magistrate no doubt passed an order under section 202, and did not believe the complaint and therefore he did not issue any process, but I considered that order to be very unreasonable and the complaint to be very reasonable and so I arrested the man. My custody was therefore a lawful custody.' That was the plea that the writer constable took up.

There was another case I will refer to, and that was a more recent one in the very year. The case is known as *Emperor versus Jehani*.

Rao Bâhadur T. Bangachariar: What was the decision of the High Court in the first case?

Rai N. K. Sen Bahadur: Unfortunately, it is not yet decided, but it went up on appeal and the appellate Court held that it was not a lawful custody. The appeal has been decided and the appellate Court has held that it was not a lawful custody.

There is another case, similar case, *Emperor versus Jehani*. I will give you that instance. There the complainant went straight to the Magistrate and lodged a complaint. On that complaint the Magistrate's order was as follows: 'I cannot believe this story. Let it be sent to the police for local investigation under section 202.' That was the order given by the Magistrate on the order sheet. A copy of the petition goes to the police. What does the police do? He copies out the whole of the complaint in his first information book although the complainant or informant is not before him. He copies out *verbatim* from the copy of the complaint and goes and arrests the man. What is the effect of this? Is it not a case where a writer constable or a head constable practically sits upon the judgment of the Magistrate? The Magistrate says, 'well, I will not issue any warrant or any process against the man', but the writer constable or a head constable says, 'well, I consider the complaint to be very reasonable. I will arrest the man.' Whose order is to prevail in such a case? That of the writer constable or the head constable or that of the Magistrate who has judicially held by an order passed under section 202 that no process should be issued?

The Honourable Sir Malcolm Halley: Has the case been decided?

Rai N. K. Sen Bahadur: That case has not yet been decided.

The Honourable Sir Malcolm Halley: It is still *sub judice*?

Rai N. K. Sen Bahadur: That case is still *sub judice*, but the facts are these and I think it matters very little whether it is decided or not. I think that now the Code of Criminal Procedure is being amended, it is for this House to decide whether we should let the police, a writer constable or even a sub-inspector, over-ride the order of a Magistrate. That is the chief point that I put before this House. Is it desirable? Does it not look very ridiculous that a sub-inspector of police or a writer constable or a head constable should go and sit upon the judgment of a Magistrate? A question would here arise whether the administration of criminal justice will in any way be affected or hampered if you drop the words 'where a reasonable complaint has been made.' I am fully alive to the fact that some powers have to be given to the police as intended by section 54. But let it be the power which can be exercised with bridle and some decency. But when we find that a police sub-inspector or a writer constable goes and over-rides a Magistrate's order, then our interference becomes absolutely necessary. We at least now cannot stand and tolerate such a procedure as this, by which a mere constable could go and over-ride an order of the Magistrate. Now, Sir, I want to drop the words 'where a reasonable complaint has been made.' My reason is this, that when the Magistrate is in seisin of the case, when he is dealing with the case judicially under section 202 or 204 or any other section of the Criminal Procedure Code, why should the police be vested with the power to go and arrest the man without an order from the Magistrate? And, I object especially when the word 'police-officer' includes and means any one from the Superintendent of Police down to a constable. So that, if you drop out the words 'where a reasonable complaint has been made' the administration of the criminal justice will not be hampered in any way, because, when the Magistrate is in charge of the case, he will deal with it in the best way he can, and the interference of the police does not at all seem to be necessary. That is the first portion of my amendment. The rest of my amendment falls into two parts. The first portion refers to the words 'any person who has been concerned in any cognizable offence, etc.,' and the second portion refers to the words 'a reasonable suspicion exists of his having been so concerned.' Now, in the first portion, *viz.*, 'any person who has been concerned in a cognizable offence'—the words 'concerned in' are a very comprehensive term, and very wide. He can go and arrest any man on this ground and he can at the same time, if he chooses, release the man saying 'I found him not to be so concerned.' The word 'concerned' I think ought to be changed, and I want to put it in the following language: 'anybody who to his knowledge or in his view, that is to say, in his presence, has committed a cognizable offence'—you will find in section 64 of the Code, that a Magistrate has the power to go and arrest a man if anybody commits a cognizable offence in his presence. So I would rather like to give a police officer power similar to that, that is, if a person commits an offence in his presence, *i.e.*, in his view, he may arrest the man without an order from the Magistrate and without a warrant. If he says that he has got knowledge that a person has committed a cognizable offence, I do not object to give him the power,—because there the police officer takes the responsibility of having some knowledge about the man. If he simply says,—well, I have thought the man was concerned in a cognizable offence—will that be enough to enable the police officer to go and arrest a man? I therefore submit that the word 'concerned' should be changed, and I would suggest that the words 'when any person who has in his view or to his knowledge committed a cognizable offence' be substituted. The last change that I want to make is in the fourth item,

viz., regarding the words 'a reasonable suspicion exists of his having been so concerned.' Will the Magistrate decide the question whether the suspicion is reasonable or unreasonable or a constable should decide, at the time when he makes the arrest whether the suspicion against the man is reasonable or unreasonable? I would certainly not have asked for this amendment on this point provided we could assume that every police officer from a constable upwards was an honest officer, was a man who had no likes and dislikes. If that had been so, I would have allowed the section to remain as it was. We who live in the mufassil know what a constable or a head constable or a wrier constable is, and we have to guard ourselves and guard our countrymen against any abuse of this section if there is any chance of it. I would suggest therefore that the words 'a reasonable suspicion exists of his having been concerned' may be changed to, as I have suggested, *viz.*, 'or a suspicion based on material facts exists of his having been so concerned.' He must have at least some materials to show. A police officer—I believe the House knows it—is not bound to give you all the informations as to where he got the informations from or his reasons for his suspicion, although a Magistrate is bound to give you some information, if a Magistrate acts on suspicion under section 190. He has to record something, and the accused is entitled to know it, but in the case of a police officer, he may say 'I am not bound to tell you.' A head constable who generally remains in charge of a Thana can well say, 'my suspicion was reasonable'—and that stops the mouth of the accused and he cannot further question him over this. So if this section is changed to what I have suggested, *viz.*,—'a suspicion based on material facts'—he is bound to give us at least some of the materials on which he suspected the man to have been concerned in a cognizable offence. So with these remarks, I place before this House the amendment which I propose to make in this section, and I hope the House will consider the question which is an important question so far as my countrymen living in the mufassil are concerned—whether a police officer in the first instance should be authorised to arrest a man without the order of the Magistrate regarding whom a reasonable complaint has been made to the Magistrate. That is the first point. The second is whether you should allow him to go and arrest a person simply because he thinks a man is concerned in a cognizable offence or he thinks that there is a reasonable suspicion of his having been so concerned. So this is my amendment; and I beg to propose that in clause 11 (1) before the words, 'To sub-section' insert the following:

'For clause 'first' in sub-section (1) of section 54, the following clause shall be substituted:

'First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned.'

Mr. Deputy President: The amendment moved is:

'That in clause 11 (1) before the words 'to sub-section' insert the following:

'For clause 'first' in sub-section (1) of section 54 the following clause shall be substituted:

'First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned.'

Mr. H. Tonkinson: Sir, the Honourable Member who has moved the amendment has explained the reasons for his motion at great length. But I

[Mr. H. Tonkinson.]

think it will be possible for me to show quite shortly that it would be impossible for this House to accept that amendment. In the first place, I am obliged to the Honourable Member for having informed us that this section gives power to any police officer, that is to say, any officer from the rank of a police constable up to the rank of a superintendent of police. He proposes, Sir, to amend the first clause of section 54. He proposes nevertheless to leave the 7th clause unaffected. If Honourable Members will refer to the section of the Code, they will find that the 7th clause began with exactly corresponding words to those in the first clause. The 7th clause runs as follows: 'Any person who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in the act committed' and so on. (A Voice: 'Outside British India'.) Now, Sir, the first clause of section 54 gives power to a police constable to arrest without a warrant in these circumstances if an offence has been committed or he has reasonable grounds for belief that a cognizable offence has been committed in British India. The 7th clause gives power to the police constable to take exactly the same course if any act has been committed outside British India which within British India would be an offence. Now, Sir, we are dealing with the powers of a police constable. Under the first clause, if he has to consider whether he may arrest a person, he will have, under the proposal of the Honourable Member, a certain series of considerations to apply to the case.

If, however, the man has done an act just outside British India in an Indian State, then he will have to apply an entirely different set of considerations. I think, Sir, that that by itself means that the amendment which has been moved by the Honourable Member cannot be accepted.

He has referred at great length to the portion of the clause which deals with a person against whom a reasonable complaint has been made. He has assumed that the word 'complaint' in that clause is governed by the definition in clause (h) of section 4 of the Code. I venture to suggest, Sir, that it is quite clear that the definition of the word 'complaint' in section 4 of the Code does not in any way govern the word 'complaint' in this section. (Bai N. K. Sen Bahadur: 'Is there an authority on that point?') If the Honourable Member will read the beginning of section 4 of the Code he will find that the words and expressions as defined in that section have the meanings there given 'unless a different intention appears from the subject or context.' It is quite clear, Sir, that where the word 'complaint' is used in the first clause in section 54, it has the ordinary dictionary meaning of the word 'complaint'. It does not relate to an allegation made orally or in writing to a Magistrate. (Mr. W. M. Hussainly: 'Why not substitute the word 'information' for the word 'complaint'?) That amendment, Sir, has never been suggested to us for consideration.

Then I would like to refer further to the amendment proposed by the Honourable Member. He ends his clause with the words 'so concerned'. He has taken those words from the existing clause. In the existing clause it is quite possible to use them, because the clause begins 'no person who has been concerned'. Under the Honourable Member's amendment, on the other hand, the words 'so concerned' can have no meaning whatsoever. In these circumstances, Sir, I trust the amendment will not be accepted.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I only wish to add one or two words to the remarks which have been made by Mr. Tonkinson. The difficulty that arises if Honourable Members bring in amendments which are quite new, that is to say, if they have not been considered by the Select Committee is that various drafting mistakes come in. Mr. Tonkinson has already referred to the point in regard to the words 'so concerned'; but I suggest that there are two or three other drafting amendments which will have to be made if this proposal is approved. Another point is that the Honourable Member's draft would take the place of the present law, which has been in force for about 50 years and on which High Court rulings in Calcutta and other High Courts have been recorded. In the draft we find the words 'to his knowledge or in his view'. Well, I suggest that if it is 'to his knowledge', the words 'in his view' are quite unnecessary. Then comes 'a credible information' and 'suspicion based on material facts'. Well, Sir, 'reasonable suspicion' is the language of the English Law as well as of the Indian Law; and I suggest that the specific proposal which has been made, namely, that the Honourable Member's draft should supersede the existing law, which has been in force for many years and is approved by all the High Courts, should not be accepted by this Honourable Assembly.

Mr. T. V. Seshagiri Ayyar: Sir, the answer from the Government Benches to the motion made by my friend is very unsatisfactory. Two reasons were given by Mr. Tonkinson. One is that if you leave the 7th clause intact and deal only with the first clause, there will be some difficulty in construing the section properly. The answer to that is, if you accept the amendment to the first clause you must make consequential amendments to the 7th clause. The Government will have to do it if they accept the amendment, and there will be no difficulty in so drafting the 7th clause as to bring it into conformity with the amended first clause. Moreover, there is this to be considered, so far as the 7th clause is concerned. When an offence is committed outside British India, the offence may not be committed in the presence of or within the knowledge of the constable, and therefore the use of the word 'concerned' there, is not so inappropriate as in the first clause; because, if it is used in the first clause you empower a police constable to arrest a person who, according to his idea, is concerned in an offence. But if you substitute the words which my Honourable friend wants to be substituted, you will make the position clear that the constable can deal only with cases in which there has been an offence committed in his presence or within his knowledge... (Mr. N. M. Samarth: 'and in his view. As a lawyer I would interpret that as 'in his opinion'.')

Now, Sir, the real point which my Honourable friend has been trying to make is that, if there is a matter within the cognizance of the Magistrate, the police should have no hand in moving in the matter and making arrests. To that Mr. Tonkinson's answer is that the word 'complaint' in this clause does not refer to the definition in section 1, clause (4). The expression simply means something which has been brought to the notice of a police constable. Now, if that is what is really intended, we must make it clear. The word 'complaint' has been defined, and if, in a technical treatise, in a Code you find the word 'complaint' used again, naturally the Magistrate and other officers would interpret the word in the sense in which it has been defined previously. If what you intend to convey is simply the knowledge which the constable has gained, then you can substitute the words which Mr. Sen wants to be substituted for the word

[Mr. T. V. Seshagiri Ayyar.]
 'complaint'. That was Mr. Tonkinson's second answer and so far as it goes it does not dispose of the amendment. The really important point is that the police should not move in a matter of which they have no direct cognizance. They should be able to arrest only when they see that an offence has been committed. They must not take information given to a Magistrate and act upon it except under the directions of the Magistrate. That is the really important matter, and I hope the Government will accept the amendment which has been moved.

Mr. J. Ramayya Pantulu: Sir, the point raised by my friend is that if there has been a complaint made to the Magistrate and the complaint is referred by the Magistrate to the Police for investigation under section 202, the police should not have power to arrest the accused without a warrant, and to effect this he proposes to omit in clause (1) of sub-section (1) of section 54, all words referring to a complaint. It appears to me that his object will not be achieved by the amendment that he proposes, because, although he may remove those words, the words that will remain in the clause are sufficiently elastic to enable the police to arrest. The policeman may say 'I have information that the accused has committed a cognizable offence' and arrest the man! The proper way to give effect to the Honourable Mover's intentions is to add a proviso to his section saying that no arrest without warrant shall be made in the course of investigations under section 202. That would be the proper way of giving effect to the wishes of my friend. The question then arises whether that will be in the interests of the administration of justice. Suppose there is a complaint of murder. Sometimes complaints are made direct to the Magistrates. Suppose the Magistrate foolishly sends it on to the Police without making an investigation himself—as most Magistrates pass on complaints to the police to get rid of the trouble of investigating—and suppose, in the course of the police investigation, the police officer has reasonable grounds to believe that the offence of murder has been committed. Should he be prevented from arresting the man? He would have had the power to arrest him if there had been no complaint. Now that he is investigating into a complaint referred to him by a Magistrate, should he be deprived of the power of arresting him? (Mr. T. V. Seshagiri Ayyar: 'He must take the orders of the Magistrate.') The alternative will be to get a warrant from the Magistrate. (Mr. N. M. Samarth: 'And allow him to escape in the meanwhile.') Or, as my friend says, the alternative is to allow him to escape in the meanwhile. What is the position of the Magistrate? When the Magistrate sends a complaint to the police for investigation, it means that he is not in a position to issue a process in the case, and until he receives the police report he will not be in a position to know whether he should proceed further with the case or dismiss the case under section 202? On an interim application from the police during the investigation, will he be in a position to issue a warrant? I am afraid a Magistrate will not be justified in issuing a warrant under those circumstances. Therefore, it seems to me that it will not be in the interests of public justice to deprive the police of the power of making the arrest in a cognizable case simply because a complaint happens to have been made to a Magistrate previously. So, I would rather not support these two amendments.

Sir Henry Moncrieff Smith: Sir, I should like just to emphasise one or two things which Mr. Percival mentioned. He just hinted that this had been the law in this country for a long time and in these identical words. As a matter of fact, these words 'reasonable suspicion' and 'reasonable

complaint' have been in the criminal law since the Code of 1861. Have they caused any difficulty at all? If you look at any commentary on the Code of Criminal Procedure and the notes on section 54, you will find the rulings on this subject. The Courts have never had any difficulty; and now you propose to substitute entirely different words. The result will be confusion in the minds of the Courts, when they are dealing with offences against police constables for making unlawful arrests and so on. I think Members have all along looked at this question from one point of view. They seem to forget that there are many safeguards against misuse of powers under section 54. There is in the first place a suit for damages for wrongful arrest. There is a prosecution which is a much more simple matter than a suit for damages against a police constable for wrongful restraint and confinement and other more serious offences. The police constable is quite easily kept in his place over this matter. Then, Mr. Percival briefly mentioned the English law. I should like just to tell the House very briefly what the English law is on the subject. A constable may arrest a person whom he finds committing felony, or upon reasonable suspicion that a felony has been committed by the person arrested, although no felony has in fact been committed, and whether the reasonable grounds of suspicion are matters within the constable's knowledge, or are derived from facts stated to him by others. I think the House will admit that it goes at all events as far as our law goes on the subject. Mr. Seshagiri Ayyar suggested that if the matter was in the hands of the Magistrate, then the Police should have no right to interfere at all unless a warrant was handed to them, upon which they carried out the orders of the Magistrate. That is not the law followed by the Courts of this country. If a police officer knows that a Magistrate somewhere else has issued a warrant, even though he has not seen the warrant, but he believes that a warrant has been issued, the Courts have held that he can go himself and arrest that person without the warrant in his hands at all. That is rather a different thing from the proposition which Mr. Seshagiri Ayyar placed before the House. Mr. Seshagiri Ayyar also suggested that it is a very easy matter to amend clause 7 of the section. I do not think he said anything about those words 'so concerned' which are left hanging in the air at the end of my friend, Mr. Sen's amendment. They refer to nothing. Mr. Seshagiri Ayyar would place a heavy burden on the drafting department of the Government of India: it is no concern of theirs. We have examined all the amendments that are here, and we notice here and there the necessity for consequential amendments; but we cannot proceed further and draft for non-official Members all the consequential amendments which they themselves overlook. I would, on those brief grounds, *viz.*, that we are not going beyond the English law, that we intend to maintain the law which has been in existence in this country for over half a century, that there are effective safeguards against the misuse of the powers, that the law as it has existed has caused no difficulty in interpretation, and that consequential amendments have been entirely overlooked in this amendment proposed by Mr. Sen, ask this House to reject the amendment. Apart from that, I do not think Mr. Sen's amendment will carry out what he is aiming at. I am not going to argue again the point that a complaint of this class is not covered by the definition; that suggestion has been received with some scorn by this House, but as a matter of fact, if they will look at the rulings, they will see that all along they deal with a complaint to the police or information to the police. The word 'complaint' in this section is saved from the definition by those words which come at the beginning

[Sir Henry Moncrieff Smith.]

of the definition clause, 'unless the context otherwise requires' or words to that effect. Mr. Sen has not achieved what he wants. He cuts out the word 'complaint' and leaves 'credible information.' If the police constable cannot act on a complaint, still if he has credible information, he can act just the same whether a complaint has been laid before a Magistrate or not. Nor will Mr. Seshagiri Ayyar's desire be achieved. Even assuming for the sake of argument that the word 'complaint' means a complaint to a Magistrate only, if the police constable has credible information that a man is concerned in an offence, there is nothing in the law, as Mr. Sen would have it, to prevent that constable making the arrest. On every ground this is a most undesirable amendment and I hope the House will reject it.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir Moncrieff Smith has stated that these words are existing from 1861 in the Criminal Procedure Code and he also said that they find a place in the Criminal Procedure Code of England.

Sir Henry Moncrieff Smith: In the Common Law of England.

Mr. B. N. Misra: He also points out that constables in England are authorized to arrest persons under such circumstances. First of all, I must say, that simply because these words have been in existence from 1861 it is not an argument that they cannot be amended now if we find they really create hardship. As regards his comparison between the constables of England and the constables of India, I think all the Members know what an Indian constable is. Probably if he, the constable, does not know you to be a **very big person**, a big Hakim, big Zemindar or Raja, he will at once greet you and make you his brother-in-law; whereas in England—those who have been there, know what the constables are. They are so good and the police so good and so polite that there can be no comparison between the police of England and the police of India. If Sir Henry Moncrieff Smith really compares both and has personal experience of both, I hope he will correct his statement. The Indian constables cannot at all be compared with the constables and the police of England or any other civilised country. He has also said that Mr. Seshagiri Ayyar does not think, it would simply be a burden to the drafting Committee. I think it may be a burden to the drafting Committee, but it will relieve the burden of many innocent people who are harassed by the constables. Really the words are very vague—'any person concerned with the offence.' And it is very wrong to give such power to ordinary constables, or even to Sub-Inspectors, so that they can arrest any man simply by saying he is concerned. We are aware that very often Indians have to pay tolls in many ways, and if a constable wants to take a toll from a passer-by he can at once catch hold of him and say he has committed a nuisance in such and such a place. Although he may himself commit a nuisance on the road, he will say the man did so and catch hold of him. We have these things, and especially in places of pilgrimage where innocent people go in large numbers, not knowing the country. I come from Puri and I know how these constables trouble these innocent pilgrims and say, you committed a nuisance under this or that Act. So these powers given to constables really entail a hardship upon innocent people. I think these powers of arrest must be restricted and if it is a burden to the Department, it will

relieve the burden of many. I propose the amendment should be supported by the House.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. Deputy President was in the Chair.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, with all deference to one or two of the Honourable and learned gentlemen who have spoken on the other side, I cannot help saying that some of the arguments put forward by them in support of the amendment are entirely irrelevant to the issue which has been raised by the Honourable Mr. Sen. The question before the House is not whether the power of arrest, which, under the existing law, vests in our police officers in the case of cognizable offences, should be taken away from them or not. Indeed, the amendment does not seek to delete from the Code of Criminal Procedure section 54, which is now before the House. Further, it does not even seek to omit clause (1) of sub-section (1) of section 54, with which we are now dealing. All that it seeks to do is to modify the terms of that clause. This power of arrest is, as the House knows, of the very essence of the classification of offences into cognizable and non-cognizable, and its maintenance is essential for the welfare of the community and for the maintenance of law and order. The only real issue before the House is whether the circumstances mentioned in clause (1) of sub-section (1) of section 54 justify the power of arrest without a warrant, which, at present, is vested in the police officer. That is the sole issue and I would ask Honourable Members to put aside all extraneous considerations, which are really in the nature of a red herring argument, absolutely out of consideration, and to judge on its own merits the clause as it stands at present, and whether it should be retained in our Code of Criminal Procedure or not. For, after all, it is a question not of a new enactment, not of a new provision, which is sought to be imported into the existing Code of Criminal Procedure by means of this Bill, but of the retention or otherwise of a law which has been a part and parcel of our statutory law ever since the first Code of Criminal Procedure was enacted in this country. That is the simple issue, and I would ask Honourable Members to bear in mind that issue lest they may by appeal to sentiment or appeal to the prejudice which exists in certain quarters against our police officers be led away from the real, true, issue which is before us. After all, it should be remembered that the mere fact that the agency for carrying out the law of the land may here and there be faulty, may even be corrupt in individual instances, does not justify in itself either the amendment or modification of the law with which the Legislature may have to deal in any particular instance.

Bearing this truth in mind, let us now turn to this clause (1) of sub-section (1) of section 54 as it stands at present and see whether on *a priori* grounds there is any justification whatever for its modification. What does that clause say? This is how the clause runs. Sub-section (1) begins with these words: 'Any police officer may without an order from a Magistrate and without a warrant arrest'—whom?—'any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received

[Mian Sir Muhammad Shafi.]

or a reasonable suspicion exists of his having been so concerned.' These are the classes of persons with whom this particular clause deals and in whose case it authorises a police officer to arrest without a warrant from a Magistrate. Now, a careful analysis of this clause will make it perfectly clear to Honourable Members that it really deals with the various stages of a police investigation in a cognizable case and I shall show that presently by the analysis of its phraseology.

Now, the first part of this clause says: 'Any person who has been concerned in any cognizable offence.' This obviously refers to that stage in a police investigation when, by reason of the evidence which has been actually procured or produced during the course of that investigation, a police officer is convinced or believes that a particular individual has been concerned with the commission of the offence into which he is investigating. Surely no Honourable Member in this House will say that when, during the course of an investigation, a police officer has reason to believe on the facts that he has already collected that a person is concerned with the commission of an offence that he should not then arrest that person. I am perfectly certain that no Honourable Member will support a proposition like that. Then, the next portion of the clause contemplates a different stage. This is what it says: 'or against whom a reasonable complaint has been made,' that is to say, even before the starting of the investigation, when a complaint has been made against an individual to a police officer. Here we have nothing to do with complaints to Magistrates. But when a complaint has been made to a police officer and it appears to that officer that the complaint is reasonable, then he will be authorised under this clause to arrest. Remember, he cannot arrest an individual against whom a complaint has been made simply because of the complaint itself. No. He is entitled to arrest only if there is sufficient material before him to show that the complaint is reasonable. I shall presently give the authority of a very learned and a very well known Judge for the proposition that I am placing before the House. The word 'reasonable' is a condition precedent to arrest on complaint. The complaint must on the data before the police officer be a reasonable one before the police officer is entitled to arrest the individual complained against in connection with any case. Then the next portion of this clause deals with cases where credible information has been received, not merely where information has been received, but credible information has been received, that is to say, the information is such that, *prima facie*, the police officer has reason to believe, has reason to credit, its veracity, the truth of that information. Well, surely no person interested in the maintenance of law and order, no sincere well-wisher of society in general, will come forward in this House and contend that even when a police officer has received information which is credible, that is to say, information which is *prima facie* correct, of the commission by an individual of a cognizable offence, that is to say, one of the more serious kinds of offences which the Legislature has made cognizable by the police without a warrant, that in such a case as this the police officer should not arrest that person.

Surely such a position has merely to be stated in order to be rejected by this House.

Then, lastly, the last portion of this clause contemplates a case where a reasonable suspicion exists of his having been so concerned—that is to say, not a mere suspicion but a reasonable suspicion, and the argument which I have just addressed to the House with reference to a complaint

mutatis mutandis applies to this part of the clause also. I submit, therefore, that on *a priori* grounds, on their own merits, the various clauses of this Bill are perfectly reasonable. Not a single authority has been cited on the other side, by any of the Honourable and learned gentlemen who have supported the amendment, of any case, reported or unreported, in which any Judge in any High Court has ever thrown a doubt upon the reasonableness of the provision embodied in this clause. The clause has been in force for several decades and Courts have had to deal with this branch of the law of our criminal procedure constantly. Surely had this clause been as a matter of fact found to be oppressive or harsh for the subject we should have had at least one case or two cases in which the Judges presiding in any of the High Courts would have adversely commented upon this by pointing out that the phraseology of this clause is too loose or is too wide and therefore needs amendment.

Now let me in this connection refer to an important judgment. The name of Mr. Justice Markby of the Calcutta High Court is well known. Dealing with the corresponding section in the old Code—as I said just now, this law has been our Statute Book for several decades—dealing with the corresponding provision in the old Code in VII Weekly Reporter, page 3, at page 5 in the body of the judgment this is what Mr. Justice Markby said:

‘It seems to be generally supposed, and the supposition seems to be generally acted on, that police officers in making inquiries into criminal cases are limited only by their own discretion as to what persons they may arrest and detain in custody.’ . . .

That supposition found expression to-day in some of the speeches that were addressed to this House. Well, this is what Mr. Justice Markby goes on to say with reference to such a supposition:

‘But so far from this being the case the powers of a police officer to arrest without warrant are strictly defined by the Code of Criminal Procedure. The widest power is that conferred by paragraph 2 of section 100.’

(the provision in the old Code corresponding to the very clause with which we have now to deal upon this amendment):

‘which provides that the police officer may arrest without orders from His Majesty and without warrant any person against whom a *reasonable* complaint has been made or a *reasonable* suspicion exists of his having been concerned in any offence specified in the Schedule to the Act as offences for which police officers may arrest without warrant.’

and here I would like to point out that the word ‘reasonable’ in the two places is italicised by the learned Judge in his judgment. Then he proceeds:

‘What is a reasonable complaint or suspicion must depend upon the circumstances of each particular case, but it must be at least founded on some definite fact tending to show suspicion on the person or estate and not on mere vague surmise or information. Still less have the police any power to arrest persons, as they appear sometimes to do, merely on the chance of something hereinafter being proved against them.’

And now the next words are very important: I invite the attention of this House to the next words in this very learned judgment of Mr. Justice Markby:

‘Any wrongful exercise by the police officer of his legal powers of arrest is by section 220 of the Penal Code an offence punishable by imprisonment for 7 years.’

[Dr. Mian Sir Muhammad Shafi.]

And yet when the Honourable Sir Henry Moncrieff Smith made a somewhat similar observation during the course of his speech I heard some murmurs against the proposition enunciated by him.

Now let us for a moment turn to this section 220 of the Indian Penal Code to which Mr. Justice Markby has referred:

'Whoever, being in any-office which gives him legal authority'—

—I am leaving out the words which are irrelevant—

'to commit persons to confinement or to keep persons in confinement, corruptly or maliciously commits any person to confinement or keeps any person in confinement in the exercise of that authority knowing that in so doing,'

—note the words—

'knowing that in so doing he is acting contrary to law, shall be punishable with imprisonment of either description for a term which may extend to 7 years or with fine or with both.'

It is obvious from the terms of section 220, therefore, that any police officer arresting a person, unjustifiably arresting a person otherwise than on reasonable grounds mentioned in this clause of sub-section (1) of section 54, is guilty of an offence under section 220 of the Indian Penal Code. There is the deterrent, there is the check on the wrongful exercise by the police of the powers with which they are invested under this clause. Therefore I ask Honourable Members by their vote to declare that the clause in question, which has been on our Statute Book for several decades as I said before, is perfectly reasonable, is perfectly just, is indeed absolutely necessary, is essential in the interests of society and for the maintenance of law and order, and that no modification, no amendment of it is called for.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the amendment only aims at this, that the present great power of the police may be curtailed to a reasonable extent, and that reasonable extent is this—that if any cognizable offence is committed to the knowledge of a police officer or in the presence of a police officer, then he is fully competent to arrest without warrant and without an order of the Magistrate. A number of grounds have been set forth in opposition to this innocent amendment.

It has been urged that the present law has stood the test of many years, that 7th clause stands as it was before and there is no amendment as far as that clause is concerned, that there are the words 'material facts', that it is impossible for an ordinary police officer to determine then and there on the spur of the moment what are material facts and what are not material facts. One other ground, which has been urged, is this, that the judiciary of this country has been dealing with the present provisions of this Code and therefore it will give rise to a number of troubles and complications if the amendment is accepted. Lastly, reliance has been placed on the interpretation of clause 1, sub-clause *firstly*. These are the grounds which have been relied on, and I am glad to say, Sir, that every one of these grounds can be answered with great satisfaction. Firstly, it has been said that it has stood the test of many decades. All right. Is there any force in the argument that because a certain irregularity has, before this, been countenanced it should be tolerated even now? If it is an irregularity, if there is some sort of defect, that defect ought to be removed. The time that has elapsed cannot mitigate the force of the argument in

favour of the amendment. The second ground is that sub-clause (7) stands and therefore it will be of no avail to allow this amendment. In reply to that my submission is that we are dealing now with sub-clause *firstly*; we are not concerned with the 7th sub-clause. That will be seen when we come to deal with it. Therefore there is no force in the argument that this sub-clause (1) cannot be amended. Then great stress has been laid upon the argument that the very interpretation and the construction of sub-clause (1) shows that the amendment is useless and that it will not serve any purpose. My humble submission in reply to that construction is this: that the way in which I read this sub-clause is in support of the present amendment. 'Any person who has been concerned . . . ' The Honourable the Law Member has construed this clause in the following manner, that there must have been some sort of evidence before the police officer comes to think that the person has been concerned. That is not the interpretation. If it were within the contemplation of the Legislature that the police officer ought to have some sort of data or some sort of evidence before he arrests, then the words would have been 'any person who has been found to be concerned' but it is given here 'any person who has been concerned.' It then comes to this that the question of arrest simply depends on the discretion of that police officer; though that discretion may not be based on any data whatsoever, he will thus have an ample opportunity of abusing his powers. Therefore, it is the sincere desire of the Honourable Member of this amendment that any room there may exist for abusing that power may be removed at once. That is the desire which has prompted him to set forth this amendment before this House. Then the Honourable the Law Member construes 'or against whom a reasonable complaint has been made.'

The reasonableness of that complaint is to be judged by that police officer on his whim only, not on any data, not on any evidence whatsoever; it is quite probable that on account of some bias or prejudice he may be misled or even on account of a bad intention he may subsequently, when he is hauled up, say there was a reasonable complaint. So far as the technical discussion, in regard to the word 'complaint' is concerned, I am not going to detain this Honourable House. 'Complaint' here is used in a popular sense and not in the technical sense of a complaint which is made before the Magistrate. 'Complaint' here means information, a kind of report. Then the Honourable the Law Member construes saying 'or credible information has been received', that is, the police officer will discuss and determine whether the information, which has been imparted to him, is credible or not, and that here the provision has allowed a safeguard. In reply to that my humble submission is this, that the police officer has been given greater power; the credibility or incredibility of the information simply depends on the whim of the officer; therefore this House should not be in favour of it, *viz.*, that the police officer should be allowed so great a power that he may subsequently, when he is going to be prosecuted under section 220, Indian Penal Code, say that he took it to be very credible information and therefore he arrested an innocent man. The present law may wrongly come to his help. He might say that he determined and judged and examined *pro* and *con* and arrived at this conclusion that the information then imparted to him was credible; therefore, no wonder he may be acquitted though he ought not to be acquitted because he had abused his powers. Therefore, the proposed amendment on this ground also seems to be a justifiable one. Now as to the words, 'reasonable suspicion exists of his having been so concerned.' Here again the police officer has been given an opportunity to abuse his powers, when he has

[Dr. Nand Lal.]

arrested an innocent man without warrant and without authority or without orders taken from a Magistrate, and if he is hauled up, he would say simply 'Well, the suspicion which arose in my mind was reasonable.' Therefore here too he will have room to save his skin and get an escape, in spite of his having abused his powers. The intention of this Assembly is that the police officer may not arrest an innocent man, that he may be made to perform his duty honestly and properly, that these provisions may not be misconstrued and that his powers may not be abused by him. Therefore, Sir, with that intention this amendment has been moved which, to my mind, seems to be a commendable one. The safeguard, contained within the terms of this amendment, is this: that if the powers of a police officer to arrest without a warrant and without an order of a Magistrate are limited to the scope of this amendment, then he may realize a little more responsibility; not forgetting that he has to establish that the offence was committed to his knowledge—or in his view, that is, in his presence. Therefore he will, probably, not abuse his powers so freely as he may do under the present law.

In the present provision we find the words 'reasonable suspicion'.

3 P.M. The amendment means to provide that the suspicion should be based on material facts. A person comes forward and tells a police officer that a certain cognizable offence has been committed by a certain man. Well, here he has got material facts, a person bears testimony to that allegation. In these circumstances, he may exercise his power and arrest without warrant or without an order of a Magistrate, otherwise not. So the fear of the Government that this Assembly wishes to see the police deprived of its powers is wrong. All that this Assembly wants is that those powers may be exercised within reasonable scope, and there should be an idea of greater responsibility in the minds of the police officers. With this object this amendment has been placed before this House, and I submit that this House may wholeheartedly support it.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, my first words must be of sincere congratulations to the Honourable the Law Member on the clear exposition that he has placed before the House which would remove many doubts. Like a past master of drawing red herrings, however, he has obscured realisation of the circumstances that provoked this amendment. The Government had powers; the police had powers. Those powers are now sought to be extended. (*Cries of 'No, No.'*) I beg your pardon. Those powers are now sought to be extended

The Honourable Dr. Mian Sir Muhammad Shafi: In this clause 1?

Sir Deva Prasad Sarvadhikary: No, by the amendment that the Government has invited the House to adopt. Let us read the Government amendment: 'ninthly, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by that officer'. The next amendment is in sub-clause (3) of clause 11. It reads thus: 'The term 'police officer' in this section shall be deemed to include such village officers as may be either generally or specially authorised by the Local Government in this behalf'. It is therefore not merely a head constable, a writer constable or a constable who can effect arrest, but the filtration downwards is to be to the village

officer, whatever that may mean, whether he is to be the village police officer or the village headman about whom under a previous clause we were discussing this morning, whether that officer would also have this vicarious right of issuing a warrant and assuming magisterial functions as it were will probably be a matter of interpretation. Therefore, I say, and deliberately say that here is an attempt to extend the powers of the police. The police had 8 clauses of powers under section 54, in the corresponding old section, under which Mr. Justice Markby's decision just read out by the Law Member was given. For whatever reasons that have not been disclosed yet, although three Government Members have already spoken, Government wants this further power, that the police officer who exercises powers under the first clause of section 54 shall also have the power of calling upon a neighbouring police officer to execute a warrant which a magistrate perhaps under proper circumstances might have issued or might have declined to issue. Then under the category of police officers comes the village officer, whatever that may mean. That, I believe, is the handle, the cause, the provocation of Mr. Sen's amendment. I agree that it is not a very happily worded amendment and that can be improved. If the House be with Mr. Sen on the substance of it, the little burden of putting it into shape consequential and otherwise that Sir Henry Moncrieff Smith so much deprecates will not, I am sure, be found too heavy for the department. Unfortunately, there is the clause 7 of section 54 which Mr. Sen has not thought of. Reading that clause 7, Sir, and the proposed ninth clause, one would almost think that the Government wanted really an amendment like this to existing clause 7. 'Any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of British India (Voices. 'Any act which if committed in British India.') Let me please put my case in my own way, and the House will then be able to deal with it.

This further power in the proposed section 9 would really be extending the scope of the power already possessed under clause 7. That is my submission with regard to it. There is and can be absolutely no difference of opinion between those who are defending the present clause (1) and those who are wanting to amend it in the way that Mr. Sen wants to amend it, that the police must have some powers, as provided in that clause already. The only question is whether under the circumstances some revision and modification is not necessary. Mr. Sen's amendment according to some, errs on the side of not asking for too much. (Cries of 'Quite so, he does err.') Now let us see why so much considerable stress has been laid by the Honourable the Law Member, and rightly laid, upon the safeguards that are already there. Mr. Sen does not do away with any of those safeguards. We have quite a good residuum left of the safeguards that the Honourable the Law Member so rightly values. For example, if credible information exists against a person, he is not exempted; there is no quarrel there. Then with regard to suspicion, what is attempted to be done here is to have the matter cleared up. Although there have been judicial interpretations with regard to the expression 'reasonable suspicion,' there has been abuse also which is attempted to be guarded against. Therefore what Mr. Sen desires is that that suspicion should not be left to belief, imagination or information, but should be capable of being justified by material facts brought home to the police officer. Therefore here also the police power is not seriously attempted to be weakened but is sought to be broad-based upon facts. All that he attempts to do away

[Sir Deva Prasad Sarvadhikary.]

with (and he has given reasons in the light of the two cases that he has quoted) is that with regard to what the clause terms 'reasonable complaint' this power should be taken away and in its place he wants to substitute this that the offences should have been committed to his knowledge or in his presence,—I suppose he will be prepared to accept that verbal amendment if the House is with him on the substance of it. The police officer will still have the right of arrest when the offence has been committed to his 'knowledge' of the character and basis of which he will still be the sole judge. That is large power by itself. If the police officer is prepared to say, it was within his knowledge, he is not liable for that action for damages about which Sir Henry Moncrieff Smith told us this morning. Then we have the concession in Mr. Sen's clauses about commission of offences in his presence: that goes without question. Therefore, all that this amendment seeks to attack is where the question of arrest on what is called reasonable complaint comes. There seems to be some difference of opinion as to how that expression ought to be construed. I myself am not inclined to the view that that 'complaint' in this clause is the same complaint within the definition of complaint in section 4. If that was not so, the word 'reasonable' would not have found place in this clause; the word 'complaint' would have been enough. But we have seen from what Mr. Sen has told us that because there has been a 'complaint' as defined in section 4 before a Magistrate upon which he sent it to the police for inquiry or for disposal or otherwise, the police proceeds to copy the words of that complaint in the information book and use that as evidence of the existence of a reasonable complaint though the Magistrate himself was not clear whether it was reasonable or not. That could not have been contemplated by clause 1 of section 54, even by the framers of it. Sir Malcolm Hailey twice asked Mr. Sen as to whether those cases that he had referred to had been decided by the High Courts or not. They appear to be still *sub-judice* and Mr. Sen would have no right to refer to them if what we are here discussing was the point in issue. That however is not so; the issues in the appeal are quite different. We have those facts from these cases and upon those facts are we entitled to say or not that where difference of opinion is likely to exist on a matter like this, it is best that the chances of such difference should be done away with. We want to substitute a clause under which a police officer would have the right of arrest where an offence has been committed to his knowledge or in his presence or about which he has credible information. About the terms 'reasonable complaint' and 'information' there is some confusion and that may be set at rest by Mr. Sen's clause, of course, with proper verbal amendments, so far as the police is concerned. They are interchangeable terms under certain circumstances and that is not desirable. You can have no quarrel with this for you have that residue left that, where credible information has been received, a police officer can act. As regards action under suspicion the suspicion has to be supported according to Mr. Sen's amendment by material facts. How can it then be contended that this is an attempt to take away necessary and healthy powers of the police. It is only to clear up matters, particularly in view of the larger powers that the Government is now wanting to take, namely, of making it possible for the police officer under clause one to transmit his knowledge, his information, his suspicion, to the neighbouring police officer and ask him to take up the case in the neighbouring district and effect an arrest. And that becomes particularly irksome where the village officer or village police officer is also to be entrusted with those powers. We have

been asked not to be governed by sentimental prejudice against the police. It is unfortunately there and you cannot help it. And when you want to extend the scope of the power of these police officers, there is a natural desire to have them restricted if possible. If without hurting the cause of strict public administration and of law, order and justice, it can be done, I see no reason why it should not be allowed by this Assembly. Therefore, in substance, so far as one can see, the Government can have no quarrel with Mr. Sen's amendment and if it is properly drafted and put on the Statute Book, I think that the Government will have all the power that it wants and all the power that it has so long enjoyed and more.

Mr. R. A. Spence (Bombay: European): Sir, I do not agree with the last speaker that the clause as drafted by Government gives any greater powers to them than before. But some of the Members of this Assembly who belong to the legal profession appear to be under the impression that the existing clause as drafted in the Bill will permit of a number of innocent people being arrested. Now, as far as I have listened to this debate, no one has produced any evidence that the existing powers of the police have been abused. Have the Honourable Members who support this amendment any evidence which can convince this House that the existing clause has resulted in miscarriage of judgment which has not been remedied? Do not the existing powers give a safeguard against arrest where reasonable suspicion or credible information do not exist? Now, Sir, we, as Members of this Indian Legislative Assembly, are legislating for the benefit of the people of India. We must see, I think, that guilty people do not escape easily, whilst we provide security—as I consider is provided in this Bill—that innocent people falsely arrested should be able to obtain restitution and satisfaction. For these reasons, Sir, and because I believe that the clause as drafted by those who have been engaged in the drafting of this Bill does provide all safeguards necessary for innocent people whilst protecting the majority of the citizens of this country by seeing that guilty people should be arrested without being able to easily escape arrest, I oppose this amendment.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): Sir, I think it is clear that the idea underlying this amendment is that it should not be possible for a policeman to arrest an alleged or supposed offender on mere suspicion, surmise, or whim or to serve a private end. But, Sir, it is equally clear that the amendment as drafted does not secure this purpose, especially as the expression 'in his view' may mean anything of the kind. Sir, there is also another side of the picture. If a policeman is not empowered to arrest an offender on suspicion, many a miscreant will be able to make good his escape while the police are busy gathering materials to justify their conduct on arresting him. In these circumstances, Sir, I hope the Honourable Mover of this amendment will see his way to withdraw the proposal.

Rao Bahadur O. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, the question before the House—that is, the amendment which my friend, Mr. Sen, has put before the House tends to make the powers of a police officer to arrest without a warrant subject to certain restrictions. He has now under the present law practically an unrestrained power to arrest a man. That is the difference between the two views. The view of the Government is that that power which he has now should continue. The view of those who support the amendment is that we should put some restraint, we should curb the

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powers of a policeman to arrest without a warrant. That is the issue. I heard some remarks from the Honourable the Law Member about the irrelevant points that have been raised in this debate. It so happens that those who give these precepts violate them in the first instance. One of these irrelevant points was that this law has existed for several decades. Now, what is the view, what is the position in regard to criminal law in any country? As times advance, as Government becomes more popular, the tendency is to lighten the rigours of the criminal law. Do you know how many offences were punishable by death by hanging in England 150 years ago? What is the number of offences that is now punishable with death? Could we use the argument that because the sentence of death had existed for five centuries for certain offence, therefore it should continue for all those offences for ever? Forgery was one of the offences, theft of certain articles was one of the offences punishable with death. Therefore the argument which has been put forward by the Honourable the Law Member so very seriously at the end of the debate that this law has existed for decades and therefore must be continued cannot hold good. Is the criminal law the law of the Medes and the Persians? Should it continue for ever? Should not an Assembly like this, which is in touch with the pulse of the country, which knows how the police act, which knows what lack of supervision there exists over the actions of the police and over the actions of the Magistracy, should not this Assembly take upon itself and face the responsibility of curbing the unrestrained powers of the police? The argument of my Honourable friend, Mr. Spence, is that the guilty man should be punished. Whoever says that the guilty man ought not to be punished? Whoever says that the guilty man ought not to be restrained? Only we say be sure of the guilt of the man, have more sound materials for saying that the man is guilty, not on mere suspicion entertained.

Mr. R. A. Spence: Reasonable suspicion.

The Honourable Dr. Mian Sir Muhammad Shafi: Is it mere suspicion?

Rao Bahadur C. S. Subrahmanayam: Yes.

The Honourable Dr. Mian Sir Muhammad Shafi: No, reasonable suspicion.

Rao Bahadur C. S. Subrahmanayam: What is it?

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Reasonable suspicion.

Rao Bahadur C. S. Subrahmanayam: What is the meaning of 'reasonable'? What are the safeguards for enforcing the reasonable character of that suspicion? I have to go to another point well known for students of elementary law. A law is good enough so far as there is a sanction to enforce the law. There is no good having a law on the Statute Book if you cannot enforce the law. Who is to decide that the suspicion which the policeman had in arresting a man was reasonable?

Mr. R. A. Spence: The Court.

Rao Bahadur C. S. Subrahmanayam: Which Court? How to enter the Court? Do you know that you must get the permission of that very policeman's superior to enter the portals of the Court? That is a point which the Honourable the Law Member omitted to consider. When he read the section of the Penal Code, I was wondering whether we were in a debating

society of which we were reminded very seriously yesterday—whether we were in a debating society without knowledge of law, without knowledge of juristic principles, without the knowledge that the criminal law has been evolved in the manner it has been from decade to decade, from period to period. Now, you have got a section in the Penal Code under which a policeman could be punished for doing a wrong. But how could you reach the Court? You must get the permission of that policeman's superior. Have you ever heard of the superior of a policeman or of any Government servant giving permission to a private individual to prosecute his subordinate in a Court?

The Honourable Sir Malcolm Hailey: It does occur.

Rao Bahadur C. S. Subrahmanayam: That is the point. Therefore, there is a law which we cannot enforce, which by the restrictions is practically an unapproachable remedy. Therefore, that argument of the decade, that argument of the section of the Penal Code having been there for several years has no force.

Now, there was another argument which is usually put forward in debating societies, and that has come from the Government side. I am sorry to see that the Government should be so lacking as to support their position by arguments which would be useful in a debating society. The terms in which my Honourable friend, Mr. Sen, has worded his amendment have been criticised. There has been verbal criticism, quibbling criticism of the words used. What is the Secretariat for? A popular Assembly indicates the view it takes of a particular portion of the criminal law. That is all we are bound to do. We are not draftsmen trained to draft laws. No popular Assembly, no Legislative Assembly undertakes to be meticulous in the words it could use in the law. It is the duty of the draftsman. They are paid to do it and they are there to do it. I wonder why that argument was put forward that the words of the amendment were not very accurate and not very precise. You indicate what you want. You want to make the law more legal. You want to restrain the powers of the policeman. Well, I have consulted some friends and if the House accepts the principle underlying this amendment, I would suggest a slight verbal modification. Whether it is acceptable or not, I will read it and I would leave the House to say whether it accepts it. Any person who has to his knowledge or in his view committed any cognizable offence or against whom credible information has been received or there is reasonable cause for suspicion of his having been concerned in any such offence—well, that is the point, that is, the present law is this: 'reasonable suspicion' is replaced by 'reasonable cause for suspicion.' Now 'reasonable cause for suspicion' will narrow down the discretion of the policeman, as I understand it,—that is reasonable suspicion. Now, after all, there is only a slight difference between the law as it exists and the amendment proposed by Mr. Sen. I do not see why so much trouble should be raised, so much opposition should be raised in regard to this slight alteration. It, after all, controls a set of men who are not known to use their powers for the safety of the public or for the preservation of respect for the people of this country. Everybody here knows that policemen, especially in out of the way places, do misuse their powers. The attempt is now made to restrain those powers. The amendment proposed does not materially diminish the power of the policeman to arrest a guilty man. Now in regard to this arrest of a guilty man, I would ask the European Members of this House, is it not a fact that in England arrest is the last thing that is done when

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an offence is committed? That is, all the materials are collected, and the man who investigates becomes quite sure that he has the materials to put the case before the Magistrate, that is, he is quite sure that the man is guilty; he prepares the ground properly, and then at the last moment, arrests. Is not that the case? What do we find in India? The first thing that a policeman does is, he goes and arrests. Whether he has got the materials or not, whether he has sufficient grounds for establishing a case against the man, the first thing he does is, he arrests, and then takes his time leisurely. The law allows him a certain time, 15 days or so, later on he begins to collect his materials. What is the Magistrate to do? The policeman tells the Magistrate, 'I am investigating the case, Sir, I am collecting materials; I am preparing the ground; I believe; and so on, and so on.' Well, I put it to the European Members of this House that the methods which the policeman in England adopts are quite different from the methods which are adopted here. It is no use running away with the idea that this Assembly, or at any rate those Members who are in support of the amendment, want to let off the guilty man. We are as much interested in the protection of our property and the protection of the lives and the safety of our fellowmen as anybody else in this House, and it is simply ridiculous to be told that we do not interest ourselves in the protection of property and of life.

Therefore this is not a question of sentiment or prejudice. This is a question which the natural evolution of criminal law should take, that is, to restrain the powers of a policeman in regard to this matter. This, Sir, is a verbal alteration which I offer to the House in place of what Mr. Sen has put in. This is the amendment which I formally present. . . . No person who has to his knowledge. . . .

The Honourable Sir Malcolm Hailey: It is for your ruling, Sir, whether amendments are permissible at this stage.

Rao Bahadur C. S. Subrahmanayam: It is not very much of an amendment. It is only a verbal alteration. If it is opposed or seriously objected to. . . .

Mr. Deputy President: If it is only a verbal alteration it might be allowed, but no new amendment can be allowed at this stage. The Bill has been before the Legislature for the last two years and in September it was before this House. In December a notice was sent out to all the Members to send in their amendments.

Rao Bahadur C. S. Subrahmanayam: I may say at once, Sir, that that is not an amendment in the sense of an ordinary amendment. I say, if the House accepts the principle underlying the amendment which Mr. Sen has put before it, then this draft which I have given in is merely an attempt to rectify certain alleged verbal defects.

Mr. Deputy President: Does Mr. Sen withdraw his amendment?

Rai N. K. Sen Bahadur: No.

Mr. Deputy President: This is an amendment to your amendment.

Rai N. K. Sen Bahadur: I do not think so.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): I rise to a point of order. The view of several Members here appears to me to be

that though the amendment proposed by my friend, Mr. Sen, is in substance a good one, it needs verbal alteration, which might be done, I suggest, in the drafting Department. But as the amendment which has been put in by my friend, Mr. Subrahmanayam, has drawn forth some protest, may I inquire if the substance of the amendment of Mr. Sen is carried, will the amendment go to the drafting Department for redrafting, or will it stand as it is proposed? It seems to me that the form of the language used by Mr. Sen does need a little alteration.

Mr. Deputy President: That can hardly be called a point of order. It is a question which the Government can answer.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammad Rural): The alteration proposed by my friend, Mr. Subrahmanayam, includes the words 'or in his view,' to which I think the whole House does not agree. There is at least a difference of opinion that 'in his view' does not mean 'in his presence'. The words 'to his knowledge' may include the sense 'in his presence'; whereas 'in his view' might be construed as 'in his opinion,' and that I think would do a great deal more harm than the present section does.

Rai N. K. Sen Bahadur: I used the words 'in view' in the sense in which they are used in section 59 of the Criminal Procedure Code.

Mr. Deputy President: The original amendment moved was:

'That in clause 11 (1) before the words 'To sub-section' insert the following:

'For clause "first" in sub-section (1) of section 54 the following clause shall be substituted:

'First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned',

to which a further amendment has been moved by Mr. Subrahmanayam and that is:

'That in clause 11 (1) before the words 'To sub-section' insert the following:

'For clause "first" in sub-section (1) of section 54 the following clause shall be substituted:

'First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom credible information has been received or there is reasonable cause for suspicion of his having been concerned in any such offence',

The question is that that (Mr. Subrahmanayam's) amendment be made.

Mr. W. M. Hussanally: With your permission, Sir, I shall further propose a slight amendment, viz., that the word 'presence' be substituted for the word 'view'.

Rai N. K. Sen Bahadur: I accept that the word 'view' be changed to 'presence'. The word 'view' may be dropped and the word 'presence' inserted.

Mr. Deputy President: Mr. Subrahmanayam's amendment is before the House now.

Mr. Muhammad Yamin Khan: Is Mr. Hussanally's amendment before the House?

Mr. W. M. Hussanally: That has been accepted by the Mover.

Mr. Deputy President: That point will be taken later on after this question has been decided.

Colonel Sir Henry Stanyon (United Provinces: European): Have I leave to speak on the original amendment, Sir?

Mr. Deputy President: Yes.

Colonel Sir Henry Stanyon: Speaking for myself, Sir, I have no hesitation whatever in expressing my entire sympathy with the object which the Honourable Mover of the amendment has in view in putting it forward; and I think I may safely say that his object will have the sympathy of this House generally, *viz.*, a protection of the general public from what I may put in a general term well known here as 'police *zoolam*.'

But there are things beyond the reach even of this Honourable Assembly and the Legislature; and protection from the dishonest or the extortionate policeman is one of them. Law is not a panacea for all the ills that flesh is heir to. No doubt it is our business as a House to legislate from time to time so as to promote the public interest and check abuses that may grow up among us; but I would ask this Honourable House to remember that we are here as a corporate body, saddled with a responsibility to the whole country for what we shape into law. We are not here to give indulgence to prejudices which all of us, or the majority of us, or some of us, or a few of us, may entertain. Those who know this country are bound to confess that police *zoolam*, with all that that term means, does exist. We are also constrained to admit that in this country there is a great deal of popular prejudice against the police which is not always deserved. Now my submission for the consideration of the House is this that, so far as a legislative enactment of this kind is concerned—a Procedure Code—we are wise if we leave well alone. That is a very old saying: 'leave well alone'. I would go a little further and say that in legislation of this kind we would also be wise to leave unwell alone, unless we can be quite sure that we can make it better. We have had an extremely clear and able exposition of section 54 of the Code as it now stands by the Honourable the Law Member; but there is no doubt, those of us who know the country are bound to say so,—that, notwithstanding the safeguards which exist, and have been pointed out by the Honourable the Law Member, powers of arrest are abused. We have got to recognise that fact. We are not to-day considering in any general sense whether we can improve on that position by legislation. We have to see whether the introduction of the particular amendment which is now proposed will effect any improvement; and on that point I would ask attention while I humbly examine that amendment. We will take it that the words 'or in his view' are now cut out. The amendment is first — 'any person, who has to his knowledge committed any cognizable offence'

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): 'In his presence.'

Colonel Sir Henry Stanyon: I understood the elimination of the word 'view' had been accepted.

Mr. Pyari Lal: In favour of 'in his presence.'

Colonel Sir Henry Stanyon: Very well: 'in his presence.' That, on the face of it, is of course, a limitation on the powers of the investigating officer.

For, as a general rule a criminal does not commit a cognizable offence in such a way as to give knowledge (using that word as distinguished from mere belief) to, or in the sight of or in the presence of, a police officer. It will be a restriction; but that does not help us. What we have got to look at is the end of this amendment. The amendment would still leave it open to the police officer to arrest any person whenever he has '*a suspicion based on material facts.*' Those words are to be substituted for the words 'reasonable suspicion.' Now, Sir, I take it that this Legislature in its responsible position will not content itself with a mere bandying of words which do not carry us any further in the matter of law. What is a material fact? All the High Courts in the country will be called upon to decide, if this amendment becomes law, what are 'material facts.' After all, what is a 'reasonable suspicion?' A reasonable suspicion, as we 'gentlemen of the legal fraternity' (as we are so often called) know, means the existence of facts which would rouse suspicion in the mind of a reasonable man. Now, are not such facts material facts? Suppose a constable at 4 o'clock in the morning, when all Judges and superior officers are usually sound asleep, sees a man coming out of a lane with a bundle under his arm and the man attempts to hurry by. The constable suspects, by reason of the hour, by reason of the attitude of the man, and by reason of the direction from which the man is coming, that that bundle may contain stolen property. Thereupon, he exercises his power to interfere with the man's liberty. Now, is that a reasonable suspicion or is it a suspicion based upon material facts? You cannot differentiate the one from the other. A reasonable suspicion is a suspicion based on material facts. Material facts are those facts which would make any reasonable man suspicious. I will put myself in the position of the dishonest policeman, and I promise to find you material facts for suspicion at once. You cannot stop it. If the police officer is dishonest, he will find his material facts every time. He is the only one there; there is nobody else. He says 'This man was going off, he had his face concealed.' The man says 'a cold wind was blowing, that is why I concealed my head.' But, says the policeman, 'I thought he was concealing it to hide his identity. That was a material fact; on that I acted and I therefore arrested him.' You cannot by a mere alteration of words as proposed get out of such difficulties. A policeman must be given a certain amount of liberty and discretion if we are to have the midnight criminal stopped. You cannot get out of it. This House must legislate on the basis of one principle or of another; either upon the assumption that every policeman is a scoundrel until the contrary is proved, or upon the assumption that all our police are just and honest people trying to do their duty. We have got to take something like that as a basis for legislation; and obviously there is no choice between the two. If we are to be a progressive country we must proceed upon the latter as a basis of legislation, *i.e.*, with a trust in our agents, which, albeit constantly abused, must nevertheless still be given, as it is the only means, added to public opinion, which will raise them to the level at which we would have them. A very uncomplimentary comparison to the Indian policeman was drawn in connection with the English Police. It is too wide a subject to go into, but even in England policemen sometimes are accused of doing *zoolum*. I daresay all my hearers will remember a very recent case where the activities of a septuagenarian in Hyde Park led to a certain case which was afterwards regarded by some as a case of police *zoolum*. Opinions are divided. Some think perhaps the old gentleman was weak, others that it was purely police oppression. These things will happen. Individual cases cannot be allowed to sway us in laying down

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a general rule of law. If we do that we shall get into endless trouble. This amendment, I submit with confidence, will not achieve the very desirable object which the Honourable Mover wants to achieve; and for that reason I do not think that it ought to commend itself to the House. Do not let us tinker with words and alter words which have been the subject of much judicial deliberation. If superior officers will not allow section 220, Indian Penal Code, to be given full scope, let public opinion come down on the superior officers, let public opinion and public courage insist that they shall do so. We can make them do these things out here, as we make them do them in England. The times are moving rapidly. A strong public opinion is growing up, and section 220 really offers the only sort of legislative protection which we can obtain. Therefore I would suggest to the Honourable Mover, even at this late stage, to consider whether he should press this amendment.

The Honourable Sir Malcolm Hailey: I should be unwilling to add to the length of this discussion, were it not that in its later stages it has taken a turn which I think requires comment from Government; indeed an attitude has been adopted which may affect the whole course of our subsequent debates on the cognate sections of this Bill. You will remember, Sir, how the discussion began. I think I may safely put it to the Honourable Mover, that the major part of his attack on the existing section of the Code was based on his fear that in some cases a police constable might override a Magistrate—that is to say, that where a Magistrate has issued orders under section 202 for the investigation of a case, being in doubt as to the necessity of proceeding further with a complaint, the constable might take the matter into his own hands and arrest the person against whom the complaint had been made. I see that I have the assent of the Honourable Mover to my claim that I have stated his position perfectly clearly and correctly. He founded his apprehension on two cases which he quoted to us. Now in both of those cases it appears to me that the constable had been guilty of much more than an irregularity. He had been guilty of an act of sheer stupidity, and I found on inquiry from the Honourable Mover that in both these cases the Courts did not support the action of the offending constable. In other words, they found the wording of the existing Act sufficient and that the action taken by the constable was not covered by the Act.

Rai N. K. Sen Bahadur: But he did take it.

The Honourable Sir Malcolm Hailey: True; he took it. But does the Honourable Mover think that by his own wording, or by any other wording which we can introduce, we can prevent the committing of acts of sheer stupidity? See what the constable did in one of these cases. He took the complaint as it came from the Magistrate for investigation, transferred it to his diary and took action to arrest the person referred to. I defy the wisest legislators to frame a law that will entirely prevent manifest absurdities of this nature being committed. My present point is however that these were the two cases which the Honourable Member put before us, and it was on considerations arising out of these two cases that the discussion started in the first instance. But we found when the discussion proceeded, that after all, the word 'complaint' in this section of the Code does not bear the restricted sense given in the definition section, viz., 4 (h) of the Code, viz., a complaint to a Magistrate, but really refers to a complaint or information to the police. That fact has been generally

admitted by those who have subsequently commented upon this section. Consequently, therefore, the omission of these words of which the Honourable Mover complained—'against whom a reasonable complaint has been made'—would not attain the purpose that he himself had in putting his case before us. Indeed, it is perfectly clear that if we wished to attain the object which he had in view we should have to insert some substantive provision to prevent anybody taking action in the sense deprecated by the Honourable Member. That position indeed was put before us with great clearness by Mr. Pantulu. Unfortunately the matter did not stop there. We could perfectly well have discussed this restricted point and come to conclusions either for or against the Honourable Mover. The discussion went entirely away from this point, it embraced attacks of a general nature on the police, and we have been told that in the objections which we put forward to any change in the section, we were deprecating a modification of the law because we feared that what Mr. Subrahmanyan describes as the unrestrained power of the police in effecting arrests might be curtailed. We were told that this section must be materially modified in other respects for the purpose of curtailing the powers of the police where and if necessary. We were told that Government itself showed an entirely unreasonable apprehension lest the powers of the police, powers widely abused by them, should be invaded. Now I say that we are all equally concerned in preventing what has been called police tyranny. If such existed, it would do Government no good; in the long run it does not administer to the cause of law and order; it creates an irritation in the mind of the public which in itself is detrimental to the development of a spirit of law and order, and you cannot hope to obtain law and order unless you secure a spirit making for its observance.

If we can do anything as a Legislature, if we can do anything as a Government to prevent oppression not only by police, but by any of our officials, we should do so; even if we did not wish to do so in the interests of the public, common sense would indicate to us that we ought to do so in our own interests as an administration. Believe me, Sir, any opposition that we have had to this amendment has not been motivated, as Mr. Subrahmanyan has suggested, by an untimely desire on our part to retain in the hands of the police powers which they can and do abuse. What is the real reason why we objected? It was simply this: that we believed that the powers of the police under the Mover's suggestion would not be materially affected either for good or ill; on the other hand, we believed that the drafting of the section as put forward by him would be materially defective. We believed that where a section had stood the test of the Courts for a number of years, it was better to leave it standing, than to effect modifications in it, unless some very grave and substantial reason was shown for doing so. I quite agree, as Mr. Subrahmanyan said, that law must be progressive and that where we find that it requires modification, that modification must be carried out. But we could not see

4 P.M. that the amendment in itself carried out any improvement of the law which had been demanded by the public, or that in itself it effected any such clearing up of doubts arising under the section and pointed out to us by our many legal advisers as required its modification or elucidation. As Sir Henry Stanyon has justly said, we have as a House a very heavy burden laid upon us in regard to this Bill. I am sorry that there have been references to the Government point of view, and to the point of view of other people. I should like to regard ourselves in enacting this piece of legislation not as two parties, but as one.

[Sir Malcolm Hailey.]

possessing only a common object. If you take the history of the Criminal Procedure Code (Amendment) Bill, it will be clear that what we set out to do here was really not to increase the powers of Government or the administration or the police, not to take larger powers in regard to action under the criminal law, but simply to clear up doubts, remove inconsistencies, and to bring the law generally up to date. That has one object in putting the Bill forward, and the country at large and the Courts will criticise the action of the House, as a whole, if we make modifications in the law which are themselves difficult of interpretation, which introduce without substantial reason new phrases or turns to the law as for many generations administered by the Courts, or which, by creating fresh field for legal discussion, involve further delays in the Courts. To that extent we should actually impair the cause of justice and therefore harass the subject. I am sorry to find that Sir Deva Prasad Sarvadhikary actually was swayed by the thought that in adding one sub-clause to this section we were proposing to take larger powers. We ourselves have regarded the small addition of sub-clause (9) and the small addition of sub-clause (3) as quite unimportant matters, and I think the House at large, which among the many other amendments put forward in regard to other sections, has practically neglected these two clauses, shows thereby that it takes the same view. The mere fact that we have proposed to take the powers in clause 9 and sub-clause (3) should not therefore be allowed to count against us in considering this particular section.

Now let me take for a minute, not what our existing clause in the Code is, for that has been very clearly elucidated by the Honourable the Law Member, but merely the proposals as they now stand in Mr. Subrahmanayam's version of the Honourable Mover's amendment. It will be seen that he now proposes in effect really to retain the latter part of the existing section, but to alter the first part, that is to say, he would omit 'any person who has been concerned in any cognizable offence.' Now I merely put to this House, without enlarging again on aspects of the case to which the Honourable the Law Member has already called attention,—I merely put to the House that if a person has not actually been concerned in any cognizable offence, the arrest is in itself unlawful, and the utmost that we can do in our law is to lay down the general circumstances in which arrests can be made, with of course the corollary that if they are made in spite of the prescriptions of the law, they are unlawful. I must ask Mr. Subrahmanayam in that particular connection where and how it is that the sanction of a superior police authority is necessary for the prosecution of a police officer who makes an unlawful arrest? There are many lawyers here. They can perhaps, if Mr. Subrahmanayam is not prepared to supply me with the information,

Rao Bahadur T. Rangachariar: If he is a superior officer coming under section 197, perhaps sanction may be needed.

The Honourable Sir Malcolm Hailey: Perhaps; but we were certainly not talking of superior police officers, and the House knows it. Mr. Subrahmanayam told us that all these safeguards that have been talked about were entirely insufficient. He told us that the Law Member was indulging in mere debating society talk because, after all, if an unlawful arrest was made by a constable, the sanction of some superior authority was needed for a prosecution to be undertaken against such officer; and he asked us when such sanction for prosecution was likely to be

given or has actually been given. Now, that point was made dogmatically and emphatically; but I still have to pause for a reply as to the section under which such sanction is required. I have not yet received it. I must therefore take it then that that statement, designed as it was to prejudice the debate against Government, was made without due thought by the gentleman who made it. But let me go back to my original point. 'Any person who has been concerned in any cognizable offence.' Therefore, he must actually have been concerned in such cognizable offence for arrest to be lawful; and I ask if this is an unreasonable provision of law. The second point the Mover proposes to omit is 'against whom a reasonable complaint has been made.' I have dealt at some length with the exact reason why he wished to omit that sentence and I pointed out that it is perfectly clear from the subsequent course of the discussion, that the word 'complaint' does not bear the technical meaning which the Mover attached to it; it merely refers to the complaint to a police officer; I have proved that the exclusion of the sentence would not attain the purpose which he himself seeks to effect. The rest of the clause, as now proposed, stands very much as it is in the Act; and I ask, is it worth while in the circumstances to make a serious change of this nature? I would again emphasize the point that the attitude which we take up is not one of dogmatic assertion that we must keep up the full powers of the police. The attitude we take up is this, that where you have a law of procedure administered for years in one clear sense by the higher Courts, thoroughly understood by the Courts below, it is not advisable for this Assembly lightly to introduce changes; for the Courts, looking narrowly at every word of the law, will suppose that there is some deliberate and perhaps novel meaning behind every change that you make. They will put their own interpretation on the omission of a word here and the insertion of a word there. And the consequence will be that a fresh series of doubts will arise in the minds of the Courts, a fresh series of judicial interpretations and, in consequence, a fresh cause of delay and difficulty in the administration of justice.

An Honourable Member: I move that the question be now put.

Mr. Deputy President: The question is that the question be now put.

Rai N. K. Sen Bahadur: Just a word of explanation, Sir.

Mr. Deputy President: You have no right of reply.

Rai N. K. Sen Bahadur: Regarding the question of sanction.

Mr. Deputy President: I am afraid I cannot allow that. I can only allow you to speak on a matter of explanation.

The Honourable Sir Malcolm Hailey: May I have your permission for one more word? The point is very important to us for, I think, prejudice has been created against us. Section 197 does not apply to the cases to which reference was made.

Mr. Deputy President: The question is that the question be now put.

The motion was adopted.

Mr. Deputy President: The original question was:

'That in clause 11 (1) before the words 'To sub-section' insert the following:

'For clause 'first' in sub-section (1) of section 54 the following clause shall be substituted:

'First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned.'

[Mr. Deputy President.]

Since which an amendment has been moved :

'That for the words ' *first*, any person ' down to ' so concerned ' the following be substituted :

' *First*, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom credible information has been received or reasonable cause for suspicion exists of his having been concerned in any such offence '.

The question is that that amendment be made

The Assembly then divided as follows :

AYES—35.

Abdul Majid, Sheikh.	Lakshmi Narayan Lal, Mr.
Abdul Rahman, Munshi.	Man Singh, Bhai.
Abdulla, Mr. S. M.	Mukherjee, Mr. J. N.
Agarwala, Lala Girdharilal.	Nag, Mr. G. C.
Agnihotri, Mr. K. B. L.	Nand Lal, D.
Ahmed, Mr. K.	Neogy, Mr. K. C.
Asad Ali, Mir.	Reddi, Mr. M. K.
Asjad-ul-lah, Maulvi Nayan.	Sarvadhikary, Sir Deva Prasad.
Ayyar, Mr. T. V. Peshagiri.	Sen, Mr. N. K.
Bagde, Mr. K. G.	Singh, Babu B. P.
Basu, Mr. J. N.	Sinha, Babu Adit Prasad.
Bhargava, Pandit J. L.	Sinha, Babu Ambica Prasad.
Chaudhuri, Mr. J.	Sircar, Mr. N. C.
Das, Babu B. S.	Sohan Lal, Mr. Bakshi.
Gulab Singh, Sardar.	Srinivasa Rao, Mr. P. V.
Ibrahim Ali Khan, Col. Nawab Mohd.	Subrahmanayam, Mr. C. S.
Haramullah Khan, Raja Mohd.	Venkatapatiraju, Mr. B.
Jatkar, Mr. B. H. R.	

NOES—42.

Aiyer, Mr. A. V. V.	Kamat, Mr. B. S.
Akram Hussain, Prince A. M. M.	Ley, Mr. A. H.
Allen, Mr. B. C.	Lindsay, Mr. Darcy.
Blackett, Sir Basil.	Misra, Mr. B. N.
Bradley-Birt, Mr. F. B.	Mitter, Mr. K. N.
Bray, Mr. Denys.	Moncreff Smith, Sir Henry.
Burdon, Mr. E.	Muhamma Ismail, Mr. S.
Cobell, Mr. W. H. L.	Nabi Haqi, Mr. S. M.
Chatterjee, Mr. A. C.	Percival, Mr. P. E.
Crookshank, Sir Sydney.	Pyri Lal, Mr.
Davies, Mr. R. W.	Ramayya Pantulu, Mr. J.
Fardoonji, Mr. R.	Samarth, Mr. N. M.
Ginwala, Mr. P. P.	Singh, Mr. S. N.
Haigh, Mr. P. B.	Spence, Mr. R. A.
Hailey, the Honourable Sir Malcolm.	Stanton, Col. Sir Henry.
Hindley, Mr. C. D. M.	Tonkinson, Mr. H.
Holme, Mr. H. E.	Vishindas, Mr. H.
Hullah, Mr. J.	Webb, Sir Montagu.
James, the Honourable Mr. C. A.	Willson, Mr. W. S. J.
Jamnadas Dwarkadas, Mr.	Yamin Khan, Mr. M.
Joshi, Mr. N. M.	Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. Deputy President: The question is :

'That in clause 11 (1) before the words 'To sub-section' insert the following :

'For clause ' *first* ' in sub-section (1) of section 54 the following clause shall be substituted :

' *First*, any person who has, to his knowledge or in his view.

An Honourable Member: ' Presence ' not ' view '.

Rao Bahadur T. Rangachariar: I should like it to be put to the House, Sir. If that substitution is to be made, I have a word to say about it.

Mr. Deputy President: I cannot allow any substitution at this stage.

Mr. W. M. Hussanally: I proposed the substitution of the word ' presence ' for the word ' view ' and you said you will give me an opportunity later on to move this amendment.

Mr. Deputy President: In the meantime the closure was applied.

Mr. W. M. Hussanally: That is with regard to Mr. Subrahmanayam's amendment.

Mr. Deputy President: The closure was applied with regard to the whole amendment.

Mr. W. M. Hussanally: I proposed this amendment and Mr. Sen accepted it at the time.

Rai N. K. Sen Bahadur: At that time I accepted that the word ' presence ' should be substituted for the word ' view '.

Rao Bahadur T. Rangachariar: May I point out that the word ' presence ' has not been assented to by the House. It may be that the Mover has accepted it, but that does not mean that the House accepts it. I have a word to say about it. It has not been accepted by the House.

Mr. Deputy President: If the House has not accepted it, the amendment must be put in its original form.

Mr. Deputy President: Amendment moved:

' In clause 11 (d) before the words ' To sub-section ' insert the following :

' For clause 12, in sub-section (1) of section 54 the following clause shall be substituted :

' First, any person who has, to his knowledge or in his view, committed any cognizable offence or against whom a credible information has been received or a suspicion based on material facts exists of his having been so concerned '.

The question is that that amendment be made.

The Assembly then divided as follows :

AYES—18.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Asjad-ul-Jah, Maulvi Miyan.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Hussanally, Mr. W. M.
Ibrahim Ali Khan, Col. Nawab Mohd.
Jatkar, Mr. B. H. R.
Lakshmi Narayan Lal, Mr.

Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Sen, Mr. N. K.
Singh, Babu B. P.
Sinha, Babu Adit Prasad.
Sinha, Babu Ambica Prasad.
Sohan Lal, Mr. Bakshi.

NOES—48.

Aldal Rahman, Munshi.
 Aiyar, Mr. A. V. V.
 Akram Hussain Prince A. M. M.
 Allen, Mr. B. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Chaudhuri, Mr. J.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Davies, Mr. R. W.
 Faridoonji, Mr. R.
 Ginwala, Mr. P. P.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.
 Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.
 Jannadas Dwardadas, Mr.
 Joshi, Mr. N. M.

Kamat, Mr. B. S.
 Ley, Mr. A. H.
 Lindsay, Mr. Darcy.
 Misra, Mr. B. N.
 Mitter, Mr. K. N.
 Moncrieff Smith, Sir Henry.
 Muhammad Ismail, Mr. S.
 Nabi Hadi, Mr. S. M.
 Percival, Mr. P. E.
 Pyari Lal, Mr.
 Ramayya Pantulu, Mr. J.
 Rangachariar, Mr. T.
 Reddi, Mr. M. K.
 Samarth, Mr. N. M.
 Sarvadhikary, Sir Deva Prasad.
 Singh, Mr. S. N.
 Spence, Mr. R. A.
 Stanyon, Col. Sir Henry.
 Tonkinson, Mr. H.
 Vishandas, Mr. H.
 Webb, Sir Montagu.
 Willson, Mr. W. S. J.
 Yamin Khan, Mr. M.
 Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. Deputy President then called on Rai N. K. Sen Bahadur to move Amendment No. 17.

The Honourable Sir Malcolm Hailey: I rise to a point of order, Sir. Has not the House in substance already disposed of this amendment?

Rai N. K. Sen Bahadur: That is what I want myself to submit to the House. I want to submit that in view of the fact that Amendment No. 16 has been lost, I seek permission of this House to withdraw Amendment No. 17 standing in my name.

The amendment was, by leave of the Assembly, withdrawn.

Bhai Man Singh: The amendment that stands in my name is:

"In clause 11 insert the following new sub-clause and re-number the present sub-clauses (1) and (2) as (2) and (3) respectively:

"(1) In section 54, subsection (1), the clause *secondly* shall be omitted; and in clause *fourthly* the word 'and' shall be substituted for the word 'or'."

Mr. Deputy President: It will be for the convenience of the House if you move your amendments separately.

Bhai Man Singh: Yes, I shall move them separately. The first part of the amendment is that the clause *secondly* of section 54 shall be omitted. The clause reads:—"Any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking."

Why I want this clause to be omitted is that, in the first place, we should see what are the implements for house-breaking. So far as I know, in my own Province I have come across only one implement of house-breaking, that is a '*Sandhewa*' or '*Sabhal*,' an iron piece perhaps a bit thinner than my arm and a little shorter at the end. I do not know if there are any other implements, but if there are, they are also probably iron rods something like a *Sandhewa* though a little

different from it. The *sandheera* is an article which is used in every home for ordinary household purposes, for digging earth and doing other little jobs. I doubt if in the Punjab every zemindar has not got that thing in his house, and it is really terrible if a police officer is to be allowed to arrest a man without a warrant for possessing that *sandheera*. I am really sorry that the Honourable the Law Member, Sir Muhammad Shafi, is not now present in the House. I do not know whether he possesses a *sandheera* or not but I am sure that he would have borne me out that every zemindar in the Punjab, perhaps every zemindar in his own village, must possess that *sandheera* and must be using it for digging the earth. If a man is caught with that *sandheera* and he is required to prove—and the burden of proof shall be on him—that he possesses it for quite innocent purposes, it would be a terrible thing. It is a provision under which the police can harass anybody, perhaps a most innocent and a most respectable man.

The other point about it is this. Supposing a man is arrested by a police officer without a warrant for possessing a *sandheera*, I should like to know what is he to do with that person. If a man is arrested under any of the other clauses there are some steps that have to be taken in connection with that person under the Code. If he is believed or if he is suspected to have committed a cognizable offence, the police officer will make enquiries about it. If the suspicions are found to be correct or well founded, he will *chalan* him. Similarly, if he is a person who has been proclaimed an offender, steps could be taken against him, and so on. If these suspicions are found to be wrong, the person arrested will be let off, but in the case of a person in possession of a *sandheera* if he is really found to be in possession of it, what will the police officer do? Can he proceed against him? Is there any provision of the law under which the possession of an implement like that is an offence? I know of a good many instruments, the possession of which is supposed to be an offence. If a man has got some instruments for making false coins, well, you can proceed against him; but, if you have arrested a person for possessing an implement under the clause, I would like to know how you would proceed against him. If you let him off, well, the arrest means nothing. If you arrest a man for possessing a *sandheera*, I would like to know if you would *chalan* him for some offence? There is no offence like that. What would you do with him? Keep him in jail for eternity? So, from the legal point of view itself, I see absolutely no way out of the difficulty, unless we frame a new offence for the possession of that implement.

Then, I can find absolutely no ruling under this clause, at least I have not come across any reported case under it; so that provision has, really speaking, been a dead letter up till now. Where is the necessity of having a provision which creates a difficulty in law and out of which we can find no way? If a man were produced before me within 24 hours of his arrest as a Magistrate, I must confess that I do not know what orders I would pass in the case. It is a provision which has remained a dead letter up till now, I do not see why such a provision should remain on the Statute Book.

With these remarks, Sir, I commend this amendment to the House.

Sir Henry Moncrieff Smith: Sir, my friend, the Mover, has explained to us that he has three difficulties with regard to this amendment. His first difficulty was, he said, that he did not know what an implement of house-breaking was, and then I think he proceeded for about five minutes

[Sir Henry Moncrieff Smith.]

to exhibit a considerable amount of knowledge as to what implements are used for house-breaking. I do not profess to have such a full knowledge of them.

The section however refers to an 'implement of house-breaking,' which is possessed without lawful excuse. If the instrument is merely one that can be used for house-breaking—there is no kind of tool probably known to anyone which could not be used for house-breaking,—then there is no question of an arrest at all, unless it is a well-recognised house-breaking implement; this is all that comes within the meaning of this clause of section 54.

Bhai Man Singh's second difficulty was that he did not know what happened after the arrest. What is the police officer going to do? He seemed to contemplate that the police officer after arresting this man might confine him for an unlimited period. Well, Sir, if the Mover will look a few sections ahead in the Code he will find that no police officer shall retain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable. Then it lays down that that period shall not in any case exceed 24 hours, unless he brings the accused before a Magistrate and gets a remand under section 167 of the Code. I think what happens is quite clear. The arrest is a preliminary step to an investigation. It may result in a prosecution under section 109 of this very Code. It may lead to a prosecution for some offence. The possession of a house-breaking implement might be corroborative of circumstances within the knowledge of the police officer. I do not think the Honourable Member or the House need be in any apprehension at all that this power of arrest will enable the police to keep a man in custody without sufficient cause—certainly not for more than 24 hours without the order of a Magistrate.

Bhai Man Singh: What will the Magistrate do?

Sir Henry Moncrieff Smith: The Magistrate acts under section 167, if the Honourable Member will read it. We shall come to that section in due course,—I hope so at least—we are not getting very near it at present.

The Honourable Member's third difficulty was that he found no rulings on this point. Well, I think I can take that as an argument in my favour—in favour of retaining this clause in the law. If there are no rulings on the point, it is perfectly obvious that this clause, which has been included in the law for a long time, has never caused any difficulty. I do not think the amendment is at all desirable. I think the clause should stand as it is. Is this House prepared to have it go out to the world that they are not prepared to give to a police officer the power to arrest a person in whose hand the police officer sees a house-breaking implement?

Colonel Sir Henry Stanyon: I rise to support this amendment. I have often read this clause and tried to find out what practical use can be made of it. My friend has told us—which I also think is correct—that the matter has never been before the courts; there is no published ruling, at all events, on the point of what is an implement of house-breaking. A nail or a piece of wire may be used to pick a lock. A screw-driver may be used to unscrew a hasp; and ordinary iron rod used for digging—a well-known class of iron rod called *sabhal* in some places—may be used to break open a door. But are these implements of house-breaking? If this section has any sense it must refer to an instrument that is specially used and

kept for house-breaking. I think myself that this is a provision derived, possibly, from English law, where burglars' tools, known by certain slang names, do exist. 'Implements of house-breaking' is a phrase that has some meaning to a British policeman, but has really no meaning in India.

Rao Bahadur T. Rangachariar: It has a meaning in South India—we call it Kannakol.

Colonel Sir Henry Stanyon: I am perhaps not sufficiently acquainted with all parts of India; but what we have to interpret is not the word 'Kannakol' but the words 'implement of house-breaking', and I would point out that a nail or a piece of wire may be an implement of house-breaking. Are we going to allow a police constable to arrest without warrant every person found with a nail in his hands?

Mr. N. M. Samarth: Without a lawful excuse.

Colonel Sir Henry Stanyon: Very well. Then the section also puts the onus of proof on the man who is in possession of the nail. He may not even know that it is in his possession; he cannot give any cause. 'Why have you got this nail?' 'I do not know.' 'Very well, then I arrest you.' How many of us can explain why we have got nails in the house? I say that a useless section like this merely cumbers the Code, and, as we are out to amend it, I support the amendment on the ground that the clause is useless in the interests of public justice and it may be harmful to the interests of public safety.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhaddan Rural): I move that the question be now put.

The motion was put and agreed to.

The amendment* was put and negatived.

Bhai Man Singh: The second part of my amendment reads:

"In clause *fourthly* the word 'and' shall be substituted for the word 'or'."

Clause (4) runs like this:

"Any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing."

Now, there are two different positions taken under this clause. One is that any man who is in possession of property that is suspected of being stolen property can be arrested irrespective of the fact whether that man has come in possession of that property by fair or foul means, quite innocently or with any criminal act attached to it. The most respectable man who buys anything in the open market and who has got a receipt for having bought it can be arrested without a warrant by a police officer under this portion of the clause. The other portion deals with the question of all those who may reasonably be suspected of having committed an offence with reference to such a thing. I quite agree that if a person can reasonably be suspected of having committed an offence with respect to any thing, which is stolen property, he should by all means be arrested. But the clause as it at present stands means that any person

*In clause 11 insert the following new sub-clause and re-number the present sub-clauses (1) and (2) as (2) and (3) respectively:

'(1) In section 54, sub-section (1), the clause *secondly* shall be omitted.'

[Bhai Man Singh.]

who possesses a stolen property, however innocently he may have come in possession of it, can be arrested by a police officer without any warrant. My amendment is that if he is in possession of stolen property and he can be reasonably suspected of having committed an offence with reference to such thing, only in that circumstance he should be liable to be so arrested. Now, Sir, the object of the section is only to facilitate arrest of a person who can reasonably be suspected of being an offender. There is no reason in making a provision in law for arresting a person in respect of whom you cannot reasonably suspect that he has committed an offence. Under the clause as it at present stands, if the police officer sees that the gentleman who has a stolen property has got a duly signed receipt for it from the person who sold the property to him, and he has come in possession of that property innocently, even then the police officer has a right to arrest him. If such an innocent person is thus arrested, what is the result? Does it not mean sheer injustice to him? If you do not suspect a person to have committed an offence, there is no meaning in your arresting him. I may further state, Sir, that some of the Local Governments too seem to have understood this clause to mean that the person who is arrested is suspected of having committed some offence in respect of such thing, otherwise he should not be arrested. The Central Provinces Police Manual and the Madras Police Manual have provided that 'with regard to the seizure of property suspected to be stolen, it is to be observed that no such seizure must ever be made, except when there are strong and definite grounds for believing that the property must have been dishonestly come by, *e.g.*, when jewels of large value are found with a person of mean condition and having no ostensible means of livelihood. It is not justifiable to seize valuables which are not identified as stolen property merely because the police officer who comes upon them in the course of a search has an unfavourable opinion of the character of the possessor. To raise a presumption of guilt, the possession of property believed to be stolen should be exclusive as well as recent'.

This itself shows, Sir, that some of the Local Governments while issuing these instructions also thought that arrests should be made under this clause only if the possession has been acquired by some criminal means. Therefore, I think that the clause, as it stands at present, gives the chance of an innocent man being arrested, but if amended, it does not give room for any guilty person to be left off because if there is a proper suspicion about a man being guilty and his having come in possession of the stolen property through some foul means, he is liable to be arrested. I request, Sir, that this amendment be made.

Sir Henry Moncrieff Smith: Sir, the Mover of this amendment is trying to make both the conditions laid down in the clause necessary before an arrest can be made under this particular clause of section 54. At present, the police have the power to arrest a person in possession of an article which may reasonably be suspected to be stolen property, and they have the power to arrest a person who may reasonably be suspected of having committed an offence with reference to a thing in his possession—not stolen property. That is where the danger of this amendment comes in, because 'stolen property' of course has a technical meaning. We have to refer to section 410 of the Penal Code to find the definition of it:

'Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which criminal breach of trust has been committed.'

That is designated stolen property. Well, there may be many other articles which are not stolen property—articles the possession of which has been transferred by cheating or there are things like forged currency notes, forged bank notes, counterfeit coins and so on. Why should the police not be allowed to arrest a person in possession of these articles if he can reasonably be suspected of having committed an offence with reference to them? It would make the position difficult if you tack on to this the fact that they must be also found to be in possession of the same. I think therefore there is some danger in making such an amendment, though it seems such a simple one, and I would ask the House to leave the law as it stands.

The amendment which my friend desires readily is—though perhaps he is not aware of it—to restore the law to the form in which it stood up to 1897. It was deliberately altered in 1897. The word 'and' did occur in the Code of 1882 and because the provisions of that Code were found to be unduly restricted, in 1897, when the whole Code was consolidated and amended, the word 'or' was put in and I think the House will agree that the change was an improvement.

Rao Bahadur T. Rangachariar: Sir, I fail to see how any person can be prosecuted or rather arrested under that clause unless the thing is found with him. The first requisite is that the thing must be found because the latter portion of that clause, to which the Honourable Sir Henry Monierieff Smith referred, refers to 'such thing', namely, a thing found. Therefore, it must be a thing found with reference to which the policeman is enabled to arrest him. Therefore, it cannot be contemplated by that clause that you find the thing with a person (A) and you arrest another person (B) suspecting him of having committed an offence with reference to it. I think, as it is, if the matter came before a court under the usual canon of construction which is often adopted to illustrate the true meaning of the clause, I have no doubt the court will hold that 'or' there means 'and'. It has often been so held. Therefore, I think the clause itself contemplates only the arresting of a person with whom the thing is found and not only that. That is not enough, because I may be innocently in possession of stolen property. I must also be reasonably suspected of having committed an offence with reference to it, that is within the definition of stolen property or receiving stolen property or abetting the committing of an offence. Therefore, the very intention of the clause seems to suggest that the two factors must go together in order to enable the police to effect an arrest. And the object of this amendment is to make it clear. It cannot have any other meaning. Having the words 'such thing' there, the word 'or' loses all its force. Such a thing must be a thing—stolen property—found. "Found" therefore must be with the person with whom it was found and that person must be suspected of having committed an offence with reference to it. And I therefore think, Sir, that it would be better to substitute the word 'and' for the word 'or'.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadian Rural): Sir, I find that Sir Monierieff Smith has failed to answer the argument
5 P.M. laid before us by Bhai Man Singh, the Mover of this amendment, that if the wording of this section was allowed to stand, the police would have the power of arresting any person who is found in possession of stolen property although he is quite prepared on the spot to establish his innocence. I do not think there will be any violence to public justice or the rights of

[Mr. Harchandrai Vishindas.]

the subjects will be in any way defeated if the amendment suggested by Bhai Man Singh is carried. As Mr. Rangachariar has just now put before the House, it is very likely that for the purpose of carrying into effect the object of this clause it will be considered that 'and' is more appropriate than 'or' and as often-times we have found, in the interpretation by Judges of the various provisions of the law they might say that this word 'or' itself implies that it cannot be interpreted in any other way except when it is identified with the word 'and.' If up to 1897 the word 'and' remained as Sir Moncrieff Smith has pointed out to us, no explanation is forthcoming as to why this change was made and no answer is given to the argument that the word 'and' should remain. Therefore, all common sense suggests to me, and it will suggest to the House, that the amendment is not only desirable but is necessary.

Mr. J. Chaudhuri: I propose, Sir, that the question be now put.

Mr. J. Ramayya Pantulu: Sir, I beg to support the amendment. I think that clause (4) deals with the case of a person who is found in possession of property which there is reason to believe to be stolen property. If there is reason to believe that the property is stolen property, that is a very good ground for seizing that property, but it cannot be a good ground for arresting the man. A man can be arrested only when there is reason to believe that he has committed a cognizable offence, and that case is provided for in clause (1) of the same section. I do not accept the interpretation that is put upon clause (4) that the latter part of it is intended to cover the case of a man other than one who is found in possession of property, apart from the case of a man who is found in possession of stolen property. It is not meant to cover the case of a man who is not found in possession of property. That clause is specially intended to cover the case of a person who is found in possession of stolen property. If a man is found to be in possession of property which could reasonably be suspected to be stolen property, then the clause gives power to the police to arrest that man, but that is improper as pointed out by the Honourable Mover. The reason given, i.e., that there is reason to believe that the property is stolen would be good reason for seizing the property, but you cannot arrest a man unless you have got reasons to believe that he has committed some cognizable offence with reference to the thing which is found in his possession. Since that case is covered by clause (1) I do not think that clause (4) really serves any useful purpose. So, the substitution of the word 'and' for the word 'or' will take away the objection from the clause as it stands. I therefore support the amendment.

Dr. Nand Lal: Sir, reading the clause, as it stands, we come to this conclusion that two things are contemplated by the present provision; the discovery of the thing or article, as the case may be and, its being reasonably suspected to be stolen property. Admitting the existence of all these conditions, yet the possessor of that article may be innocent. He has got no knowledge at all as to whether this article is really stolen or not. Why has he been hauled up? Because a certain article has been recovered from his possession; secondly, because there is a reasonable suspicion that this article is a stolen property. On account of these two conditions, an innocent man has been arrested, though eventually he may be acquitted by the Magistrate on the ground that his guilty knowledge is not established. Now, Sir, who is responsible for his unlawful arrest? Who is responsible for his unlawful confinement in the lock-up for a number of days till he

secures his release or acquittal, as the case may be, at the hands of the Magistrate? The proposed amendment does away with that fear. It (the amendment) contemplates that instead of the word 'or' you may put in the word 'and'; and the insertion, as I have already submitted, will meet a pressing need. If in addition to the aforesaid existence of two conditions the police officer arrives at the conclusion that the possessor can reasonably be suspected of a connection with the commission of the offence, then he can be arrested. There is a great sense in it. Therefore, Government should thank the Mover of this very reasonable amendment which commends itself, and I consequently strongly support it.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I move, Sir, that the question be now put.

Mr. Deputy President: The question is that the question be put.

The motion was adopted.

Mr. Deputy President: The amendment moved is:

"In sub-section (1) of section 54 of the said Code, in clause *fourthly* for the word 'or' the word 'and' shall be substituted."

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, in sub-clause (1) of clause 11 (a) I beg to move an amendment:

"That between the word 'and' and the word 'the', insert the words 'full particulars of'."

As the sub-clause stands at present, it means that any police officer may requisition for the arrest of any person through another police officer and may ask the other police officer to arrest that man who may have committed an offence or other acts for which the arrest is to be made. Under the clause as it stands, the police officer simply may mention to another police officer that such and such a person has committed, say, an offence of cheating or any other offence and should be arrested; that police officer will have no discretion to refuse it, but under this clause shall be bound to arrest him. If the amendment which I beg to move be adopted, in that case that police officer shall be able to utilise and exercise his own discretion and find out whether the particulars that have been given by the requisitioning officer are enough to make that person liable to be arrested, and on that suspicion and after finding out the liability for that man's arrest, he may arrest him. Therefore, I suggest that the police officer who requisitions an arrest through another police officer should also be required to give the particulars of the offence for which he is to be arrested. With these words, Sir, I move the amendment:

"That in clause 11:

(a) In sub-clause (1) insert the words 'full particulars of' between the word 'and' and the word 'the'."

Mr. H. Tonkinson: Sir, perhaps it would facilitate a discussion of this amendment if I referred in the first place to the history of the present clause. Sir George Lowndes' Committee were of opinion that an amendment is required in section 54 to meet the case of a requisition from a police officer to arrest a man at a distance:

'We think it is clear that there should be power for an investigating officer to require by telegram the arrest of a person who may perhaps have absconded from the place where the investigation was taking place.'

As the Honourable Members of this House know quite well, the Bill drafted by Sir George Lowndes' Committee was circulated for opinion and

[Mr. H. Tonkinson.]

those opinions were considered by the Joint Committee. One of the opinions was signed by my Honourable friend, Mr. Chaudhuri, and it suggested that in the clause drafted by Sir George Lowndes' Committee some safeguard was required. The Joint Committee therefore said in their report that:

'We agree with those critics who desire that some safeguard should be provided, and we have therefore proposed to lay down that the requisition shall reveal the offence or other cause for which the arrest is to be made, so that the arresting officer can satisfy himself that the arrest could lawfully have been made without warrant by the officer issuing the requisition.'

Now, Sir, on the clause as it stands in the Bill sufficient particulars will clearly have been included in the requisition received from the person at a distance to enable the officer who has to make the arrest to decide whether that officer had power to make the arrest. The Honourable Member proposes, however, to insert the words 'full particulars of'; that is to say, in the requisition full particulars of the offence are to be included. Now what, Sir, does the Honourable Member mean by 'full particulars'? Whenever we refer elsewhere in the Code to 'full particulars' we indicate clearly what we mean by them. The amendment moved by the Honourable Member would therefore require another section to explain it. Perhaps my Honourable friend, Mr. Seshagiri Ayyar, would say that after we have considered this amendment we should go on and propose a new section to meet this point. Still we have not had any indication as to what full particulars would be required by the Honourable Member. I think, Sir, it is clear that the safeguard inserted by the Joint Committee is quite adequate for the purposes of this clause, and I hope that the amendment will not meet with the approval of this House.

Mr. Deputy President: Amendment moved:

"In clause 11:

(a) In sub-clause (1) insert the words 'full particulars of' between the word 'and' and the word 'the'."

The question is that that amendment be made.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, the amendment I propose in clause 11 (1) under the head 'ninthly' is a mere formal amendment. In order to make clear what is meant by 'that' officer in that clause, that is to say, the officer who makes the requisition, I introduce the word 'other.' I have been supplied with a draft from the department which makes it even plainer; that is, instead of the words 'that other officer' they suggest the substitution of the words 'the officer who issued the requisition.' I am quite willing to substitute that for my original amendment. For the words 'that officer' the words 'the officer who issued the requisition' are to be substituted.

Mr. H. Tonkinson: I accept the amendment now proposed by my Honourable friend, Mr. Rangachariar, viz., the substitution of the words 'the officer who issued the requisition' for the words 'that officer.'

Mr. Deputy President: Amendment proposed:

"That in sub-clause (1) of clause 11 for the words 'that officer' the words 'the officer who issued the requisition' be substituted"

The question is that that amendment be made.

The motion was adopted.

Bhai Man Singh: Sir, the amendment which stands in my name is to omit sub-clause (2) of clause 11. Sub-clause (2) reads as follows:

"After sub-section (2) of the same section, the following sub-section shall be added, namely:

(3) The term 'police-officer' in this section shall be deemed to include such village officers as may be either generally or specially authorised by the Local Government in this behalf."

This means that power of arresting persons mentioned in this clause without a warrant is to be extended beyond the ordinary police officers to village headmen and to any village officer. I think it would be giving them too much latitude. If this is done any village chaukidar or a lam-bardar or jaidar will be able to arrest anybody without a warrant under this clause. We have been going on for such a long time without that power and very strong and cogent reasons should be brought forward to make this new provision, if it is to stand at all. I do not understand, Sir, why such drastic powers should be given to persons who are not connected with the detection of or enquiring into crimes. They are untrained persons in this matter. It is really a very dangerous doctrine that any village officer should be given the power to arrest any person without a warrant under section 54.

Mr. Deputy President: Amendment moved:

'Omit sub-clause (2) of clause 11'.

The Honourable Sir Malcolm Halley: The Honourable Member will probably accept our proposal if I told him how it came to be framed. I notice that Sir Deva Prasad Sarvadhikary was also somewhat apprehensive of its results. Indeed he went so far as to say that this was a distinct attempt on the part of Government to take new powers under this section. The exact facts are very simply as follows: Some years ago the Central Provinces pointed out that in Berar the police patel had since 1863 been given power to arrest, but the power rested on somewhat doubtful authority. It was indeed an executive order, but the Local Government asserted that these police patels, although not technically coming within the category of police officers, had acted admirably in that respect and had not exceeded their authority. They merely asked therefore that they might have power to give to them the formal authority which they had actually utilised in the past. That is the very simple reason why we placed this sub-clause in the Bill. It has been before the public ever since the Bill was first published, and I think I am right in saying that it has received no objections. Stay, there was one objection, from the Bar Association in Madras, though not of a very serious nature, for it chiefly referred, I think, to other provisions of the clause.

Mr. T. V. Seshagiri Ayyar: Madras objections are always weighty.

The Honourable Sir Malcolm Halley: No doubt, but this in itself tells against the amendment of Mr. Man Singh, since the Association did not itself lay great stress on their objection. Now it is not correct to say, as the Mover of this amendment said, that we are hereby placing in the hands of a very large number of village officers, be they village chowkidars or any other such officers, an unlimited power of acting as police. The Bill does not do that at all. It is purely permissive; it declares that the Local Government may in certain circumstances grant these powers. Who are responsible for the administration of law and order but the Local Governments? We have no reason to suppose that this permissive clause, if it

[Sir Malcolm Hailey.]

is put in the Bill, will be abused by them. Why should they raise up trouble for their own Provinces by handing over to a large number of undesirable persons the power of arrest as police officers? Surely we must give Local Governments sufficient credit for at least a passing interest in the welfare of the people of their Province. We must give their local Councils sufficient credit, I think, for protesting against any such course of action as would lead to widespread mischief arising from the abuse of a simple provision of that nature.

Mr. T. V. Seshagiri Ayyar: For once, Sir, I shall use the argument which has been so often used by the Government benches in this House, and that is, as for a long time we have gone on without an amendment of this kind, it is not necessary now to tinker with the law and bring in an amendment, because one Local Government considers a particular class of officers in a particular place should be empowered in a particular manner. We have gone on without such a power as that for a long time and I do not think other Governments have felt the same difficulty as the Central Provinces Government. Moreover to empower with a general power a large class of officers of this calibre to arrest a person is simply to place power in their hands which would be sure to be misused, and I do not think that the authorities of the Local Government will be able to distinguish between a particular class of patels and other classes of patels, and the result would be that they would give general power to patels and that would lead to the general abuse of power. The Honourable the Home Member has not shown any reason for a change in the law which has stood for a long time, and the fact that the Central Provinces has asked for it is not a reason for including such a dangerous provision like this, namely giving power to arrest to persons of this low class.

Mr. K. B. L. Agnihotri: Sir, I rise to support the amendment moved. My own Government has been quoted in support of this introduction. It was the Central Provinces Government which needed such a clause and to satisfy the desire of the Central Provinces Government this clause has been added, because in Berar there is a class of people known as police patel who have been exercising such power before Berar was attached to this Government and so that that power should also continue after Berar has been amalgamated to the Central Provinces. My humble reply in that case would be, Sir, that Berar was included in the Central Provinces in the year 1905 or thereabouts and from 1905 to this year, 1923, those police patels have been working without those powers, that is to say, whatever powers they had of arresting have been suspended and they are not authorised now under this present Code of Criminal Procedure to arrest persons. Therefore, if these people could do without these powers for so long, there is no reason why that additional power should be given. Moreover, if it had only been a case of police patels, I might have opposed the amendment and supported the Government; but there is no knowing, as the clause stands, to whom that power may be extended. The Honourable the Home Member says that we should leave this discretion in the hands of the provincial Governments who are supposed to exercise their discretion in a proper way and that, if there is any impropriety in the exercise of their discretion, that might be questioned by the local Councils. I am afraid, Sir, it is not always possible. It may happen sometimes that provincial Governments may even do the improper thing and the local Councils cannot take sufficient

action in time. I would just give one instance of my own provincial Government to show in what way they have behaved in regard to certain legislation which was passed by this House in the September Session in Simla. The House will remember that the Police Incitements to Disaffection Act was passed in that session and a clause was added at my request, after acceptance by the Government, that that Act was to be brought into force in such provinces and such parts of the provinces where it might be thought necessary. The Act received the assent of the Governor General probably in the first week in October and it was hardly a fortnight after the assent was given that the Central Provinces Government was the first to introduce and to extend the provisions of that Act in the whole of the Central Provinces and Berar. If the Central Provinces Government thought that such an Act was necessary for a particular part of the province they could have extended it to that part only instead of extending it to the whole of the province and Berar. So, this is the way in which the powers that are delegated to the Local Governments are sometimes utilised. Therefore, I beg to submit that we should not delegate this power to the Local Governments to authorise any person whomsoever they please to arrest persons under this section. We have spent the whole day discussing the way in which police officers have been behaving and acting under section 54 and the whole day we have been thinking of the ways in which we should curtail these powers without causing any inefficiency in their work, but we have not been able to come to a proper conclusion so far, and now in this clause we are extending this power to whomsoever the Local Governments may desire to extend it. Therefore, Sir, I suggest that the power would be a very dangerous one and it should not be extended beyond the powers under the old section 54; and this amendment which has been moved by my Honourable friend should be supported and accepted.

Mr. Darcy Lindsay (Bengal : European): I move that the question be now put.

Mr. Deputy President: The question is that the question be now put. The motion was adopted.

Mr. Deputy President: The amendment moved is to omit sub-clause (2) of clause 11.

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—34.

Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Das, Babu B. S.
Ginwala, Mr. P. P.
Gulab Singh, Sardar.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.

Lindsay, Mr. Darcy.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Samarth, Mr. N. M.
Sen, Mr. N. K.
Singh, Babu B. P.
Sinha, Babu Adit Prasad.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Subrahmanyam, Mr. C. S.
Vishindas, Mr. H.

NOES—29.

Abdulla, Mr. S. M.
 Akram Hussain, Prince A. M. M.
 Allen, Mr. B. C.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Crookshank, Sir Sydney.
 Faridoonji, Mr. R.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.
 Hullah, Mr. J.

Innes, the Honourable Mr. C. A.
 Ley, Mr. A. H.
 Mitter, Mr. K. N.
 Moncrieff Smith, Sir Henry.
 Muhammad Ismail, Mr. S.
 Nabi Hadi, Mr. S. M.
 Percival, Mr. P. E.
 Singh, Mr. S. N.
 Spence, Mr. R. A.
 Stanyon, Col. Sir Henry.
 Tonkinson, Mr. H.
 Webb, Sir Montagu.
 Willson, Mr. W. S. J.
 Zahiruddin Ahmed, Mr.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, the next amendment is likely to take time; we have already sat very late and I beg to propose that the House do stand adjourned till to-morrow.

The Honourable Sir Malcolm Hailey: We shall have no objection to that course, though I cannot agree with the Honourable Member, that, taking our own ordinary hours of work, we have sat very late.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 17th January, 1923.

LEGISLATIVE ASSEMBLY.

Wednesday, 17th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Mr. Deputy President then took the Chair.

QUESTIONS AND ANSWERS.

RAILWAY CONCESSIONS TO TRAVELLERS.

145. ***Mr. K. Ahmed:** (a) Are the Government aware that in the East Indian Railway and the Bengal Nagpur Railway, concession return tickets for the 1st and 2nd class passengers are being issued at a fare and a third during the Christmas and other holidays?

(b) Do Government propose to introduce similar concession return tickets in all State Railways for the 1st, 2nd and Inter class passengers during the Pujah, Christmas and Easter holidays?

The Honourable Mr. C. A. Innes: The introduction of concessions of this kind is within the competence of Railway Administrations and the Government have no doubt that they are fully alive to the desirability of restoring them as soon as circumstances permit, but the Government will bring the matter to the notice of Agents.

Mr. K. Ahmed: A supplementary question, Sir. In view of the fact that the company-managed Railway can grant such a concession, could not the Government of India in the State-managed Railway grant that concession?

The Honourable Mr. C. A. Innes: I have already said that the Government of India propose to bring this matter to the notice of Agents.

Mr. K. Ahmed: When will that be, Sir?

The Honourable Mr. C. A. Innes: Now, Sir.

Sir Deva Prasad Sarvadhikary: Is it at all proposed to restore the old return tickets independent of the Pooja, Easter and X'mas concessions? If so, when?

The Honourable Mr. C. A. Innes: I think that was a question which was asked by Mr. K. Ahmed. All I am prepared to say is that we propose to bring the question of restoring concessions of this kind to the notice of Agents in order that they may consider whether now or at some later date they are in a position to restore these concessions. That, I am afraid, is the only answer I can give at present.

Mr. J. Chaudhuri: Is the Honourable Member aware that the Bengal Nagpur Railway gave some Pooja concessions while the East Indian and Eastern Bengal Railways did not give any concessions? Does he not think it desirable that there should be uniformity in this respect?

The Honourable Mr. C. A. Innes: I was not aware of that fact.

Mr. N. M. Joshi: May I ask, Sir, why these concessions are extended only to 1st and 2nd class passengers and not to 3rd class passengers?

The Honourable Mr. C. A. Innes: I am afraid I cannot answer that question without examination.

Mr. N. M. Joshi: May I know if the Government is prepared to consider this question?

The Honourable Mr. C. A. Innes: No question will be considered without Agents.

INCONVENIENCES TO LOWER CLASS PASSENGERS ON E. B. RAILWAY.

146. ***Mr. K. Ahmed:** (a) Are the Government aware that in the Eastern Bengal Railway there are certain restrictions, (a) for Inter class passengers who are not allowed to travel by the Darjeeling and Dacca Mails when travelling less than 100 miles, and (b) for third class passengers who are not allowed to travel by the Darjeeling Mail trains when travelling for less than 200 miles?

(b) Are the Government aware that these restrictions are causing great inconveniences to the travelling public as there are not sufficient number of available trains for them which are always over-crowded?

(c) Do Government propose in the interest of the travelling public to remove those restrictions as early as possible?

The Honourable Mr. C. A. Innes: (a) Yes. These restrictions were imposed as intermediate and 3rd class accommodation on the trains referred to is limited and the object is to prevent passengers travelling long distances being inconvenienced by other passengers for whom another and a suitable train service is provided.

(b) and (c) Government are not aware that the restrictions referred to cause inconvenience, and do not propose to take any action in the matter.

Mr. K. Ahmed: Are not the Government of India aware that there were a number of trains before the Darjeeling Mail started in the afternoon? For instance, there was the Shillong Mail, passenger and other local trains running within the limited area some time ago?

The Honourable Mr. C. A. Innes: I did not catch the Honourable Member's question.

Mr. K. Ahmed: Is my Honourable friend aware that from Sealdah which is a suburban town East of Calcutta on the other side of Howrah, trains are not for the last two or three years running regularly? For instance, the Shillong Mail is not running at all. It used to start by 2-30 P.M. There were other trains also which used to run within the limited area, and they have also been stopped?

The Honourable Mr. C. A. Innes: The train service is arranged by the Agent, and I have no reason to suppose that the Agent has not arranged a suitable service.

Mr. K. Ahmed: Do I take it, Sir, that the Agent's statement is to be taken as gospel truth and that the Honourable the President of the Railway Board and the Honourable Member in charge are not to answer questions notices of which have been given?

The Honourable Mr. O. A. Innes: The principle of Government is to trust their Agents in all cases unless anything is brought to notice in which the Agent is clearly wrong.

Mr. K. Ahmed: Is it not desirable that the department should be abolished? Is it not a burden on the public revenues?

DAMAGE BY FLOODS IN RAJSHAHÍ DIVISION.

147. ***Mr. K. Ahmed:** Will the Government be pleased to state—
(a) the number of men, women and household animals that died and the amount and extent of the damage including the losses of crops, huts, goods and chattels, etc., sustained by the people during the flood in the districts of Rajshahi Division in September last; and

(b) what was the extent of damages and the amount of loss sustained by the Eastern Bengal Railway?

The Honourable Mr. O. A. Innes: (a) The Honourable Member is referred to the Press Communiqués on points of this kind which have already been issued by the Government of Bengal.

(b) The information is not yet available. It will be supplied to the Honourable Member on receipt.

Mr. K. Ahmed: A supplementary question, Sir. Is it not a fact that Rai Bahadur Ralla Ram, ex Engineer, was deputed by the Government of India to inquire and report on the subject?

The Honourable Mr. O. A. Innes: Yes.

Mr. K. Ahmed: Has he not submitted a Report on the subject at all?

The Honourable Mr. O. A. Innes: I believe he has submitted a Report.

Mr. K. Ahmed: Are we not entitled to get the information that appears in that Report submitted to the Government. If so, may I ask that all these particulars should be supplied to us?

The Honourable Mr. O. A. Innes: That Report deals with technical questions as to whether sufficient waterways are provided in these railway lines. It does not deal with Part (a) of the Honourable Member's question. I would also add that a series of questions have been put in regarding Mr. Ralla Ram's deputation, and I would suggest to the Honourable Member that he should wait till the replies are given to those questions.

Mr. K. Ahmed: May I ask if the Government of India will be good enough to lay that Report on the table so that Honourable Members of this Assembly may look at it?

The Honourable Mr. O. A. Innes: I have already said that the Honourable Member must wait till the replies are given to the questions which have been put in on this subject. I am not prepared to answer questions of this kind without having papers before me.

Mr. K. Ahmed: Will my Honourable friend be good enough to place the Report submitted by Rai Bahadur Ralla Ram on the table of this House?

Mr. Deputy President: I think the Honourable Member has already answered that question.

EMPLOYMENT OF INDIAN AUDIT DEPARTMENT OFFICERS.

148. ***Mr. Pyari Lal Misra:** Have Government ever considered the advisability of employing officers of the Indian Audit Department in charge of establishment work in the administrative offices of or under the Central Government?

INDIAN AUDIT DEPARTMENT.

149. ***Mr. Pyari Lal Misra:** Have Government ever considered the advisability of giving increased opportunities to officers of the Indian Audit Department to acquire experience of the work at the headquarters of the several departments of the Central Government?

The Honourable Sir Basil Blackett: With the Honourable Member's permission, I will answer these two questions together as they deal with the same subject. There is no doubt that it is frequently useful to have an officer of financial experience in charge of the establishment work in an administrative department, especially where the department's expenditure on establishment is large, and for work of this description officers of the Audit department, possessing special qualifications, have from time to time been usefully employed. Government are of opinion that the deciding factor must be the benefit to the administrative department concerned, rather than the personal benefit likely to be derived by an officer from experience gained in such work.

DECREASES IN PASSENGERS AND PASSENGER EARNINGS.

150. ***Mr. Pyari Lal Misra:** (a) Is it a fact that there is a decrease in the number of passengers since the increased railway rates came into force?

(b) Is it a fact the difference between the passenger earnings to date and the amount budgetted for is too big to be covered during the remaining period of the current year?

(c) If so, what steps do Government propose to take to make up the difference?

The Honourable Mr. C. A. Innes: (a) The matter is being carefully watched and comparative figures of passenger traffic on the 10 principal railways are examined every week. These figures include figures for non-budgetted lines but they indicate the effect of the new fares. They show that in the current year up to the week ending 23rd December last there was a decrease of passenger traffic of 2.4 per cent. compared with last year. On the other hand, there was an increase of coaching revenue amounting to 162 lakhs.

(b) The reply to part (b) is in the affirmative.

(c) Government do not propose to take any special action at present as they know that Agents have the matter in mind. Government prescribe only maximum fares. If Agents find that the fares imposed are so high as to affect revenue by driving away traffic they will, no doubt, reduce them. But it always takes some time for the travelling public to adjust themselves to new fares.

PAYMENT OF LAND REVENUE BY RAILWAYS.

151. ***Mr. Pyari Lal Misra:** Is it a fact that certain railways are required to pay land revenue on the lands made over to them, while others are not; and if so, on what basis is the distinction made?

The Honourable Mr. C. A. Innes: Under the terms of their contracts certain railways are entitled to the grant of land by Government free of charge. Such railways pay no land revenue.

In other cases (except those of the Assam Bengal and Tirhoot Railways which have special clauses in their contracts in regard to land) capitalised value of land revenue is paid by the Railways at the time of acquisition.

R. & K. RAILWAY: CLAIM FOR WOOD FUEL.

152. ***Mr. Pyari Lal Misra:** With reference to the item "Rohilkund and Kumaon Railway Extensions—compensation for waiving claim for wood fuel" in the Railway Revenue Budget, will Government kindly state the total amount of compensation, the amount already paid, the amount yet remaining to be paid and why the payments are not charged to the head "Fuel."

The Honourable Mr. C. A. Innes: The compensation payable to the Rohilkund and Kumaon Railway Company for waiving their claim for the supply of wood fuel from Government forests was settled for a lump payment of Rs. 30,000 for all claims up to 31st December 1911 and a recurring annual payment of Rs. 10,000 for 1912 and subsequent years. The payments to the Company on this account to end of 1921-1922 amount to Rs. 1,32,500.

In the accounts of the Company these payments appear as an item of receipt. So far, however, as Government is concerned, the precise method of showing the expenditure is a matter of accounting which is dealt with in accordance with the rules on the subject.

RULES APPLICABLE TO COMPANY-WORKED STATE RAILWAYS.

153. ***Mr. Pyari Lal Misra:** With reference to the answer given to starred question No. 15, will Government kindly state how the rules not applying to company-worked State Railways can be distinguished in the published codes from those that do apply?

The Honourable Mr. C. A. Innes: It is not possible within the limits of a reply to a question or in a general formula to indicate the precise distinction between the rules in the published State Railway Codes that apply to Company-worked Railways and those that do not so apply.

The Honourable Member, however, will be safe in assuming that the rules in the State Railway Codes so far as they relate to classification and allocation of receipts and charges, general procedure of accounts and audit, control of expenditure against grants and estimates and submission of periodical accounts and returns, are more or less as much applicable to Company-worked Railways as to Railways worked by State.

MINOR AND MAJOR WORKS ON RAILWAYS.

154. ***Mr. Pyari Lal Misra:** What is the test applied in deciding whether a given railway work is a new minor work chargeable to working expenses, or a new major work to be paid for out of capital funds? Does

the test relate to the nature of the new work or to the expense it involves? And if latter, when was the test fixed and when was it last revised?

The Honourable Mr. C. A. Innes: In the case of State-worked railways the limit up to which the cost of new minor works should be debited to revenue was fixed at Rs. 1,000 till 1919 and has since been raised to Rs. 2,000. These limits apply to other railways also subject to the provisions of the contracts for their working.

LAND SUPPLIED TO ASSAM-BENGAL RAILWAY.

155. ***Mr. Pyari Lal Misra:** With reference to the answer given on 6th September, 1922, to starred question No. 13, will Government kindly state why the cost of land supplied free of cost to the Assam-Bengal Railway Company is shown in the statement of demands for railway capital expenditure and in what respect this free gift differs from those referred to in the answer to starred question No. 19?

The Honourable Mr. C. A. Innes: Question No. 13, which was answered on the 6th September, 1922, related to State-owned Railways, whereas Question No. 19 answered on the same date had reference to private-owned railways. This accounts for the difference in the treatment of the cost of land. The Assam Bengal Railway is a State-owned Railway and the land required for it is consequently shown in the Statement of Demands for Railway Capital Expenditure, such expenditure being booked separately as Government capital expenditure outside the accounts of the undertaking.

RAILWAY STATISTICS OF PROFIT AND LOSS.

156. ***Mr. Pyari Lal Misra:** With reference to the answer given on 15th September, 1922, to starred question No. 321, will Government kindly state the procedure usually adopted by them (a) firstly, in ascertaining which particular commodity pays and which does not, and (b) secondly in adjusting the rates, so as to make the traffic pay?

The Honourable Mr. C. A. Innes: (a) and (b) Government action in the matter of rates is confined to the fixing of maxima and minima rates. Between the limits fixed Railways are at liberty to fix such rates as they think that the Traffic can bear.

RAILWAY CAPITAL EXPENDITURE.

157. ***Mr. Pyari Lal Misra:** Will Government kindly lay on the table a statement shewing the amounts spent from each of the different sources mentioned in the answer given on 15th September, 1922, to starred question No. 319, and the pages of the Finance and Revenue Accounts of the Government of India for 1919-20, where those amounts have been recorded?

The Honourable Mr. C. A. Innes: The information asked for is being collected and will be laid on the table when ready.

ARREARS OF RENEWALS ON RAILWAYS.

158. ***Mr. Pyari Lal Misra:** Will Government kindly lay on the table a statement shewing the arrears of renewals as they stood on 31st March,

1922, on the Company-worked State Railways in respect only of the following principal items:

- (1) Permanent way,
- (2) Engines,
- (3) Coaches, and
- (4) Wagons?

The Honourable Mr. C. A. Innes: The information asked for is not at present available but the subject is one which the Railway Board have under investigation in connection with the question of depreciation.

REMUNERATIVE RAILWAY PROJECTS.

159. ***Mr. Pyari Lal Misra:** Will Government kindly state what percentage of the estimated cost of a projected railway is added on account of depreciation of property, to the estimate of working expenses in assessing the remunerativeness of the project?

The Honourable Mr. C. A. Innes: The estimate of working expenses of a projected railway is usually based on the actual working expenses of an adjoining line, and this includes the cost of renewals and replacements. No other specific provision is made for depreciation.

POWERS OF GOVERNMENT AND OF RAILWAYS.

160. ***Mr. Pyari Lal Misra:** With reference to page 4 of Volume II, of the Report of the Indian Railway Committee, will Government kindly place in the library a copy of the "Schedule of Powers of the Government of India and of the Railway Department (Railway Board) in railway matters"?

The Honourable Mr. C. A. Innes: A copy of the Schedule referred to by the Honourable Member has been sent to the Library.

CENTRAL PROVINCES PRODUCTIVE RAILWAYS.

161. ***Mr. Pyari Lal Misra:** With reference to the answer given on 6th September, 1922, to my starred question No. 17, will Government kindly lay on the table a statement comparing the estimated traffic as given by the local authorities before undertaking the surveys or reconnaissances and the traffic estimated as a result of the surveys or reconnaissances.

The Honourable Mr. C. A. Innes: Definite estimates of the traffic earnings were not given by the local authorities prior to the carrying out of the surveys.

CARRIAGE OF COAL ON RAILWAYS.

162. ***Mr. Pyari Lal Misra:** (a) Is it a fact that the largest portion of the earnings on account of the carriage of revenue stores is from coal carried over the home line.

(b) Is it a fact that the lowest rate for foreign railway coal is less than the lowest rate charged for the carriage of coal on the home line and if so, on what basis is the distinction made?

The Honourable Mr. C. A. Innes: (a) Yes.

(b) The lowest rate for Foreign Railway Loco. coal is on some Railways lower than the lowest rate for coal carried for the Home Line for certain distances.

Coal for Home Railways is carried at a low flat mileage rate, irrespective of distance, while coal for Foreign Railways is carried at mileage rates calculated on a telescopic scale, the mileage rates being high for short distances, and diminishing for longer distances.

I. M. S. OFFICERS ON SPECIAL TERMS.

163. ***Dr. H. S. Gour:** (1) Will the Government be pleased to state whether it is a fact that the Secretary of State has appointed or proposes to appoint 30 additional I. M. S. officers on special terms?

(2) If so, are the appointments offered or reserved exclusively to Europeans?

(3) Were any of these appointments offered to any European or Anglo-Indian or Indian Medical Practitioners? If not, why not?

(4) Were these appointments made in previous consultation with the Government of India?

(5) If so, will the Government be pleased to publish the despatches on the subject?

(6) Is the Government aware that these appointments have aroused considerable comment in the country and caused great resentment amongst Indian medical men?

(7) Will the Government state what will be the total cost of these appointments?

Mr. E. Burdon: (1) to (5) The attention of the Honourable Member is invited to the reply given on the 15th January, 1923, to the question asked by Rai Bahadur Bakshi Sohan Lal, No. 81.

(6) The Government have seen reports to this effect in the press.

(7) Apart from the special gratuity in lieu of pension, the cost of each of these specially recruited officers will be the same as that of an officer recruited in the normal way for the Indian Medical Service as the former will serve on exactly the same terms as the latter.

EXPENDITURE ON EAST INDIAN AND GREAT INDIAN PENINSULA RAILWAYS.

164. ***Rai Bahadur G. O. Nag:** With reference to the answer to starred question No. 333, printed at page 660 of the Legislative Assembly Debates, Volume III, will Government kindly state, with respect to the East Indian and the Great Indian Peninsula Railways, the amounts sanctioned for programme revenue expenditure for 1922-23 and the approximate expenditure incurred up to 30th September 1922?

The Honourable Mr. C. A. Innes: The information asked in regard to Programme Revenue expenditure for 1922-23, is given below:

	Amount sanctioned.	Expenditure incurred up to 30th September 1922.
	Rs.	Rs.
East Indian Railway	1,73,06,000	58,45,000
Great Indian Peninsula Railway	1,97,75,000	23,25,000

CONCESSIONS ON ASSAM-BENGAL RAILWAY.

165. ***Rai Bahadur G. C. Nag:** With reference to the answer given on 7th September 1922 to starred question No. 175, will Government kindly lay on the table a copy of the report which the railway authority concerned may have made showing that the advantages secured to the Assam-Bengal Railway by the development of Assam more than make up for any immediate loss through the concession granted to Assam tea gardens for conveyance of their coolies?

The Honourable Mr. C. A. Innes: The procedure suggested by the Honourable Member involves printing the report in the Council proceedings, and with a view to avoid extra printing charges I am arranging to furnish him with a copy of the relevant extract from the Agent's letter on the subject.

QUERY REGARDING ASSAULT OF COOLIE AT MOGHUL SERAI.

166. ***Rai Bahadur G. C. Nag:** Has there been any case this year at Moghul Serai of a railway coolie being assaulted by a European railway officer of the East Indian Railway?

The Honourable Mr. C. A. Innes: The Government do not know.

CONCESSIONS ON ASSAM-BENGAL RAILWAY.

167. ***Rai Bahadur G. C. Nag:** With reference to the answer given on 6th September 1922 to starred question No. 13, will Government kindly state whether out of the amount of Rs. 56,42,654 the portion relating to the period ended 31st March 1921, is included in the figure of Rs. 2,83,32,601 mentioned in the answer given on 17th January 1922 to question No. 41 in the Council of State; and if not, why not?

The Honourable Mr. C. A. Innes: The answer to the first part of the question is in the negative. In regard to the second part the Honourable Member is referred to the reply given to starred question No. 155 by Mr. P. L. Misra.

PRODUCTIVE DEBT ON RAILWAYS.

168. ***Rai Bahadur G. C. Nag:** Will Government kindly state the principle in accordance with which all productive debt incurred in connection with railway capital expenditure, that issued in connection with the purchase of railways is alone held to be dischargeable from revenue?

The Honourable Mr. C. A. Innes: The debt incurred in connection with the purchase of main lines only is being discharged from revenue in accordance with the orders of the Secretary of State and the Honourable Member is referred to the correspondence on the subject laid on the table on 6th September, 1922, in connection with question No. 10 put by Mr. N. M. Joshi.

"SERVANT OF INDIA" ON "RAILWAYS AND THE BUDGET."

169. ***Rai Bahadur G. C. Nag:** Has the attention of Government been drawn to the article "Railways and the Budget," which appeared in "The Servant of India" of 20th July 1922, and if so, do they propose to re-group and re-classify the demands either on the lines therein indicated or on any other suitable lines and increase the number of days allotted?

The Honourable Sir Basil Blackett: Government have now seen the article referred to. The number of days for the voting of demands for grants is fixed by the Governor General with reference to the state of business before the Assembly. Government are not aware that the inclusion of railway expenditure in two demands has had the effect of unduly restricting the discussion of the railway estimates within the time allotted, especially as one of the demands for railways comes up for discussion at an early stage of the voting. Any useful suggestions for improving the form of the estimates will always receive due consideration.

STRATEGIC RAILWAYS.

170. ***Rai Bahadur G. C. Nag:** Has the attention of Government been drawn to the article on " Railways and the Budget," which appeared in "The Servant of India " of 10th August 1922, and if so, will they kindly state whether they have considered the advisability of adopting any one of the following alternatives in connection with strategic railways:

- (i) Such railways should be owned by the Army Department and paid for out of non-railway funds. They should be worked by the Railway Department for actual cost for the Army Department, who will take all losses or gains, as is done in the case of some of the railways which are worked by main line companies for actual cost for Provincial Governments, private companies, Indian States and local bodies.
- (ii) Such railways should be taken over by the Railway Department at the cost of railway funds as a going concern for an amount equal to the capitalized value of the estimated net earnings and the difference between this amount and the amount actually spent in construction should be borne by the Army Budget.
- (iii) The Army Budget should make up any shortage in gross earnings necessary to cover interest charges and working expenses.
- (iv) The troops and stores should be carried at such enhanced rates as to produce earnings therefrom sufficient to cover interest charges and working expenses.

The Honourable Mr. C. A. Innes: Government have seen the article in question.

Various alternative proposals have been considered by the Government and the Central Advisory Council and the recommendations made by the latter body are now under the consideration of Government.

THIRD CLASS RAILWAY FARES.

171. ***Rai Bahadur G. C. Nag:** (a) Has the attention of Government been drawn to the article on " Third class railway fares " appearing in " The Servant of India " of 31st August 1922?

(b) Is it a fact that the Indian railways taken as a whole not only do not earn any net profits from the first class passenger traffic, but incur a loss in working that traffic, whereas they earn substantial net profits from the third class traffic?

(c) Is it a fact that the percentage of increases recently introduced in third class fares for distances of over 300 miles is higher than that obtaining in the case of first and second class fares?

(d) If the reply to either (b) or (c) is in the affirmative, do Government propose to remove the inequality (i) either by prescribing the extent to which railway administrations should, within the authorized maxima and minima, vary the fares? or (ii) by revising the maxima and minima?

The Honourable Mr. C. A. Innes: (a) Yes.

(b) It is not possible to apportion the net profits earned by railways in respect of the different classes of passenger traffic.

(c) This is correct in the case of certain railways.

(d) As advised at present Government do not propose to take action on the lines suggested. If the new rates press so hardly on long distance travel as to affect traffic and the railway revenue, Agents will no doubt reduce the rates for such travel.

CHARGE OF ANNUITY PAYMENTS TO CAPITAL.

172. ***Rai Bahadur G. C. Nag:** Has the attention of Government been drawn to the article "Robbing Revenue to pay Capital" which appeared in the "Servant of India" of 21st September 1921 and to paragraph 3579 of the minutes of evidence tendered before the Acworth Committee; and if so, do they propose to treat the annuity payments as a charge to capital?

The Honourable Mr. C. A. Innes: Government have seen the article in the "Servant of India" and also paragraph 3579 of the evidence tendered before the Acworth Committee.

The annuity payments are charged to revenue in accordance with the orders of the Secretary of State. The attention of the Honourable Member is invited to the correspondence on this subject laid on the table on 3th September, 1922, in reply to question No. 10, by Mr. N. M. Joshi.

THIRD CLASS PASSENGERS.

173. ***Rai Bahadur G. C. Nag:** (a) Has the attention of Government been drawn to the article on "Third Class Passengers" in the "Servant of India", dated 28th September 1922;

(b) Do Government propose to publish in their future Railway Administrative Reports information as to the amounts spent in the year on:

- additional goods engines,
- .. passenger and mail engines,
- .. first class carriages,
- .. second class carriages;
- .. inter class carriages,
- .. third class carriages,
- .. wagons?

The Honourable Mr. C. A. Innes: (a) Government have seen the article in the "Servant of India."

(b) They do not consider it necessary to add to information already being published in Appendices 16 and 17, in Volume II, of the Administration Report of Railways in India.

Mr. K. Ahmed: Would not the Government of India like under the circumstances to repudiate the statements and allegations made in those articles of the "Servant?"

The Honourable Mr. C. A. Innes: I do not think that that supplementary question arises on part (b) of question No. 173.

STENOGRAPHERS ON GREAT INDIAN PENINSULA RAILWAY.

174. ***Rai Bahadur G. C. Nag:** Is it a fact that recently one or two stenographers have been brought out from England in the Agent's office of the Great Indian Peninsula Railway Company? If so, what is their pay and whether suitable candidates could not be found in India?

The Honourable Mr. C. A. Innes: The Government have no information.

The question refers to a matter affecting an employé of a railway company whose employés are not under Government control.

Mr. N. M. Joshi: May I ask a supplementary question, Sir? If the servants of the Indian Railways are not under the control of the Government of India I do not know why the Government of India should find capital for the Railways.

The Honourable Mr. C. A. Innes: The point is that we have delegated to Company Railways certain powers in regard to recruitment of staff below a certain level of pay. We give them full discretion in regard to employés below that level of pay.

Rao Bahadur T. Rangachariar: Are we to understand that Government have no voice at all in this matter?

The Honourable Mr. C. A. Innes: We do not as a matter of practice interfere.

Rao Bahadur T. Rangachariar: But where gross cases occur will the Government interfere?

The Honourable Mr. C. A. Innes: I think gross cases should first be reported for our information.

WAGON INSPECTORS.

175. ***Rai Bahadur G. C. Nag:** What is the pay attached to the post of wagon inspectors under the Director of Wagon Exchange?

Is it a fact that all the inspectors are either Europeans or Anglo-Indians, and that there are no Indian inspectors?

Were the appointments filled by public advertisement? If not, why not?

The Honourable Mr. C. A. Innes: The maximum pay attached to the post of Wagon Inspectors under the Director of Wagon Interchange is Rs. 500 a month. So far only two Anglo-Indian Inspectors one on Rs. 400 and one on Rs. 300, have been appointed.

The appointments were not filled by public advertisement because the services of qualified men were obtained from railways.

Dr. Sir Deva Prasad Sarvadhikary: May I ask a supplementary question, Sir? What are the qualifications for the appointment of these Inspectors?

The Honourable Mr. C. A. Innes: I am afraid I do not know. If Mr. Hindley were here, he would be able to answer that question, but I am afraid I must ask for notice.

Dr. Sir Deva Prasad Sarvadhikary: Have there been any Indian applicants? The Honourable Member said there was no advertisement.

The Honourable Mr. C. A. Innes: I have already said that there was no advertisement.

Dr. Sir Deva Prasad Sarvadhikary: Have there been any applicants?

The Honourable Mr. C. A. Innes: I cannot answer that question without notice.

The Deputy President then called on Rai Bahadur Pandit J. L. Bhargava to put his question No. 176 and the question was put.

Mr. K. Ahmed: With regard to question No. 175, Sir. . . .

Mr. Deputy President: I am afraid I cannot allow the Honourable Member at this stage to put any supplementary question.

DEMOLITION OF HINDU TEMPLES.

176. ***Rai Bahadur Pandit J. L. Bhargava:** (a) Is it a fact that the construction of the new railway line by the Great Indian Peninsula Railway Company outside the Ajmeri Gate at Delhi is likely to involve the demolition of some Hindu temples?

(b) Are the Government aware that the Hindu mind is very much exercised over the question and strong resentment is being felt in regard to the contemplated action?

(c) Do the Government propose to consider the advisability of preventing the demolition of the said temples by the Great Indian Peninsula Railway Company?

The Honourable Mr. C. A. Innes: (a) Yes.

(b) Several representations have been received.

(c) Friendly negotiations are in progress and it is hoped the desired object may be attained in such a way as to avoid all possibility of hurting the religious feelings of Hindus.

INTERMEDIATE CLASS ACCOMMODATION.

177. ***Rai Bahadur Pandit J. L. Bhargava:** (a) With reference to my question No. 180 published on page 1600 of the Official report of the Legislative Assembly Debates, Volume II, regarding intermediate class accommodation, will the Government be pleased to state if the railway administrations concerned have succeeded in providing intermediate accommodation on their lines?

(b) If not, by what time they may be expected to remove the strongly felt want of such accommodation?

The Honourable Mr. C. A. Innes: The Government can only supplement the information given to Honourable Member in the reply to the question mentioned by referring him to the answer given to question No. 156 on 8th September, 1922.

WHEAT EXPORTED FROM INDIA.

178. ***Rai Bahadur Pandit J. L. Bhargava:** Will the Government be pleased to state in maunds the quantity of wheat exported from India since the removal of the embargo in September last?

Mr. A. H. Ley: Approximately 35,02,000 maunds up to the 6th January.

COMMITTEE ON ARMS RULES OF 1920.

179. ***Rai Bahadur Pandit J. L. Bhargava:** Will the Government be pleased to state whether the Committee appointed to examine the new Arms Rules of 1920 have submitted their report?

(b) If so, what action has been taken on the same?

The Honourable Sir Malcolm Hailey: (a) Yes.

(b) The Report will be published for general information on the 20th January. The various recommendations contained therein are under the consideration of Government.

REALISATIONS ON POST CARDS, ETC.

180. ***Rai Bahadur Pandit J. L. Bhargava:** Will the Government be pleased to lay on the table a statement showing:

- (a) the actual amount realised by the sale of postcards, envelopes and postage stamps of the value of one anna or less since the introduction of enhanced rates up to 1st January 1923;
- (b) amounts realised from the same sources during the corresponding periods in the years 1920 and 1921;
- (c) the estimated amount of income from the same sources for the year ending on 31st March 1923?

Mr. A. H. Ley: The necessary information is being collected and will be supplied as soon as it is available.

BILL RELATING TO USE OF FIRE ARMS FOR DISPERSING ASSEMBLIES.

181. ***Rao Bahadur T. Rangachariar:** With reference to the Statement made by the Honourable Sir William Vincent in the Legislative Assembly on the 26th September 1921 re the Bill to provide that when fire-arms are used for the purpose of dispersing an assembly, a preliminary warning shall in all circumstances be given,

Will the Government be pleased to state when they propose to bring up the Bill for consideration?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to the answer given by me to a similar question asked by Mr. K. C. Neogy yesterday.

Rao Bahadur T. Rangachariar: A supplementary question, Sir. Have the Government in view any legislation at all in respect of this matter or are they going to content themselves with rules on the matter?

The Honourable Sir Malcolm Hailey: We shall content ourselves with the issue of executive rules on the subject.

Rao Bahadur T. Rangachariar: Will this Assembly have an opportunity of examining those rules before they are issued?

The Honourable Sir Malcolm Hailey: No, Sir.

INDIANS IN FOREST RESEARCH INSTITUTE.

182. ***Rao Bahadur T. Rangachariar**: With reference to the Statement of Mr. J. Hullah re the employment of Indians in the Forest Research Institute, made in the Legislative Assembly on the 15th March 1922 (Debates, Volume II, page 8102), will the Government be pleased to state—

- (1) the names of experts appointed and the time when their period of appointment expires;
- (2) the number of Indians appointed to work under these experts; and
- (3) whether the two Indians referred to in the Statement have qualified themselves and taken the place of experts; and if the answer is in the negative, the reasons for the same?

Mr. A. H. Ley: (1)—

Name.	Date of termination of appointment.
Dr. H. P. Brown (Officer in charge Wood Technological Section).	7th December 1923.
Mr. C. V. Sweet (Officer in charge Seasoning Section).	21st August 1923.
Mr. L. N. Seapian (Officer in charge Timber Testing Section).	11th September 1923.

(2) Only one Indian has been appointed on probation as Upper Grade Assistant to the Expert for Timber Testing. The appointments of Assistants to the other Experts have been held up owing to financial stringency.

The previous statement that two Indians had been appointed was made under a misapprehension as to the nature of the work of an Indian who has, in fact, been appointed to the Chemical and not the Economic Section, and is not working under one of the temporary Experts mentioned in the previous statement.

(3) The answer is in the negative, the reason being that it takes a long period of special study for any one to qualify as an Expert in these subjects.

EMPLOYMENT OF INDIANS IN PAPER SUPPLYING FIRMS.

183. ***Rao Bahadur T. Rangachariar**: Will the Government be pleased to state:

- (1) the names of the firms in India who have contracted with the Government of India for the supply of paper;
- (2) whether the above firms have given facilities to Indians to work as apprentices and if so, the nature and extent thereof;
- (3) whether there are any Indian apprentices working in the firms referred to above, and if so, the number of Indian apprentices working in each firm and their names;
- (4) if there are no apprentices, do the Government intend to take steps to see that these firms entertain Indian apprentices and give facilities for that purpose?

Mr. A. H. Loy: The firms in question are the Bengal Paper Mills, Calcutta; the Titaghur Paper Mills, Calcutta; and the Upper India Couper Mills, Lucknow.

Government have no information regarding parts 2 and 3 of the question.

As regards part 4, the Honourable Member will understand that the agreements made with the Paper Mills are ordinary business contracts, and cannot be regarded as concessions, in return for which Government should insist on the mills entertaining Indian apprentices.

Rao Bahadur T. Rangachariar: May I ask a supplementary question, Sir? I understood from previous statements made in this House that when entering into contracts one of the conditions will be the entertainment of Indian apprentices.

The Honourable Mr. C. A. Innes: May I answer this question, Sir? I think the Honourable Member is mistaken. The statements mentioned referred to special concessions given by Government. I may say, however, that the High Commissioner has been asked to consider whether in placing contracts in England preference should not be given, other things being equal, to firms which do take Indian apprentices, and I have no objection to considering whether we should not adopt the same practice in India provided of course other things are equal.

Rao Bahadur T. Rangachariar: Will the Government be pleased to call for information under clauses (2) and (3) of my question?

The Honourable Mr. C. A. Innes: We will, Sir.

Mr. Jamnadas Dwarkadas: Is the Honourable Member aware that the Fiscal Commission has unanimously recommended that where contracts are given by Government to any firm, this condition should be insisted on?

The Honourable Mr. C. A. Innes: That recommendation will be considered in due course.

OFFICERING OF INDIAN ARMY WITH INDIAN OFFICERS.

184. ***Mr. B. S. Kamat:** (1) Have the Government of India noticed a Reuter's Cable from London published in the Indian papers in early January, in which it is reported that an article in the *Fortnightly Review* gives currency to an allegation that the "Government of India have conditionally accepted a progressive scheme for the complete offciring of the Indian Army with Indian Officers within 30 years?"

(2) If so, will Government be pleased to say if there is any foundation for the statement?

(3) In this connection, will Government of India be pleased to publish their scheme for the Indianization of the Army, if they are prepared to do so?

Mr. E. Burdon: (1) Yes.

(2) and (3) The statement is unauthorised and inaccurate. The question of the measures to be adopted for the Indianisation of the Indian Army is still under correspondence between the Government of India and the Secretary of State and the Government of India are not in a position to make any announcement on the subject.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. W. M. Hussanally (Sind : Muhammadan Rural): Sir, before we begin the business of the day I want a ruling on a point. I gave notice of certain amendments to the Criminal Procedure Code Bill on the 15th instant and I understand certain other gentlemen also have given notices of further amendments to the same Bill. I do not know what the fate of these amendments has been as I have not learnt anything about them. No doubt some of the amendments were out of time because they related to clauses which have already been decided. But other amendments, so far as I can see, are in time. For instance, I have given notice of amendments to sections 250 and 562 and these sections will be taken some time later on. The rumour is that all these amendments that have been sent in after the Session began are not going to be allowed. I should like to have a ruling upon the point from you, Sir, whether they are to be admitted. The only rule that seems to apply to amendments of this kind is rule 76 at page 28 of the Manual of Business and Procedure, which runs as follows :

"If notice of a proposed amendment has not been given two clear days before the day on which the Bill is to be considered, any Member may object to the moving of the amendment and such objection shall prevail, unless the President, in the exercise of his power to suspend this Standing Order, allows the amendment to be moved."

I do not know what is the interpretation that is put upon the words 'before the day on which the Bill is to be considered.' If the interpretation is strictly to be followed, it means 'two days before the day on which the consideration of the Bill commences.' But if the interpretation is to be a little more liberal and to include the day on which particular sections of the Bill are taken into consideration, then these amendments—at least mine—will be in order and within time. Anyway, you have got the power of allowing these amendments to come in under that part of the rule which I have been just quoting, and I would ask you, Sir, to exercise your discretion in favour of those amendments being taken in, for the simple reason that the Bill to amend the Code of Criminal Procedure is a very important one and such amendments should not be stifled and ruled out of order in this way, more particularly when they are strictly in time according to the interpretation I have given.

Mr. Deputy President: The Honourable Member has referred to one or two things which I consider objectionable. First of all, he is basing his objection on rumours which he has heard outside this hall. I think it is open to the Chair to take very strong objection to reference being made to what is happening outside this hall and nobody has any right to refer to rumours which he hears outside its precincts. Secondly, he mentioned that it was the intention of the Chair to stifle discussion on certain amendments. That is another statement to which I take very strong exception. I will give my ruling on these amendments as they come up.

Mr. W. M. Hussanally: I have heard your objections. I beg your most humble pardon. I never meant to say that the Chair was going to stifle discussion upon the subject. What I said was that it was rumoured that it was the intention of Government to stifle discussion. But whatever that be, the reason why I brought this matter up before you this morning is that I have not heard what has become of these amendments. I think I should have heard about them by now whether these amendments are going to be allowed or not, and I think I am in order in asking you for a ruling.

The Honourable Sir Malcolm Hailey (Home Member): The Honourable Member has already incurred a rebuke—if I may say so with all respect—a very just rebuke from you. He is going to get a similar one from me. He says it is the intention of Government to stifle amendments on the Bill further to amend the Code of Criminal Procedure. What basis he has for saying this and on what information he acts, I do not know; he has not vouchsafed an explanation to the House. We have tabled before us 395 amendments on the Bill, yet he suggests that it is our intention to stifle amendments. I must remind him that under the Standing Orders Government has no power whatever in this matter and whatever the malignant intention of Government might be, he is not in order in referring to it. The decision of course is entirely in your hands, and not in the hands of Government, and I am quite sure that any imputation that you are going to yield to the unreasonable demands of the Government in this respect would be resented by the House.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadian Rural): I might with due respect state that, of course, it is not proper in any way to impute motives to Government or the Chair. But so far as this question has been raised, I might say that the interpretation to be put upon the words 'Bill to be considered' does not in any way justify the interpretation 'Bill to be commenced or begun.' I think a liberal interpretation should be put upon them, namely, 'amendments to any provision of the Bill when that provision is being considered' even if those words do not appear there. The object of two days notice for amendments is that the House should not be taken unawares but they should have those amendments printed for them and sent them home so that they may reflect and consider how to deal with them.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadian Urban): With reference to what has fallen from you that the ruling will be given as the amendments come up, may I inquire what procedure is to be followed for obtaining a ruling if the amendments do not appear on the agenda at all? That is the grievance that the Honourable Member (Mr. W. M. Hussanally) has been making. Unfortunately, extraneous matters have come into this discussion which is to be regretted. But we ought clearly to understand what procedure is to be followed when there are amendments notice of which has been given two or three days before the day that they are likely to be taken up and they do not appear at all on the agenda.

Mr. Deputy President: Does the Honourable Member know of any amendments which do not appear on the paper?

Sir Deva Prasad Sarvadhikary: Some have been mentioned.

Mr. W. M. Hussanally: I have given notice of some amendments.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): May I explain? A very considerable number of amendments has been received,—the earliest I think was received at 11-30 on Monday morning, the 15th. I have not attempted to print these and circulate them. As far as possible, I will do so, but if amendments were to come in every day, it would make the task of the Department rather difficult. Sir Deva Prasad Sarvadhikary asked how Members were to obtain a ruling from the Chair if they did not know whether their amendments were on the paper or not. As a matter of fact, the Standing Order which has been cited contemplates amendments without notice and there need not be written

notice at all. There is nothing to prevent any Member of this House getting up at any moment and proposing an amendment to a clause of the Bill under consideration. That motion of his,—the amendment—is then proceeded with unless some Member of the House objects to his moving it on the ground that he has not given notice. It will then be the time for a ruling from the Chair suspending the Standing Order or enforcing the Standing Order. But there is no need for any amendment to be on the agenda paper. Any Member can move at any time with notice or without notice. That is why I think, Sir, you explained that you will have to deal with the admissibility of every amendment when an attempt has been made to move it and not before.

Mr. W. M. Hussanally: Then it will follow that the proposed amendments notice of which has been given ought to be printed and placed on the table?

Sir Henry Moncrieff Smith: I will do that as far as possible. If I receive an amendment at 10-30 this morning I cannot very well have it printed and placed on the table by the time the discussion of the Bill commences.

Mr. W. M. Hussanally: My amendments were sent in on the 15th.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): In the Manual of Procedure of the House of Commons it is laid down that though notice of an amendment is not obligatory it is usual and convenient to give notice of important amendments. I do not think it can be said that it is necessary that notice of the amendment shall be given. It is a matter of convenience for the Members that it should be given. But when the discussion of the Bill starts, it is quite open to any Member at anytime to propose an amendment without previous notice which will be considered to be right and proper, reasonable and just.

Sir Henry Moncrieff Smith: Quite so, subject to the provisions of the Standing Orders.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammudan Rural): Sir, I must say in defence of Government that they have not stifled any discussion. On the other hand, they have given every opportunity to enlarge the discussion. That being so, I think it is very unfair to attack Government. On the matter of amendments, I must say that it is a large, technical and complicated Code and for Members to complain that the amendments which they put forward at a very late hour have not been printed and put under appropriate heads is not fair. This is not a new enactment, not an unfamiliar enactment. It is 70 years or 65 years old and this particular Bill has been before the country and before lawyers for the last 8 or 9 years.

Then to complain against Government that they have not been able to print these is, I think, hardly fair. Well, after all where an amendment has been given, the Member who has given the amendment may move his amendment and the discretion is in the hands of the Chair and I suppose the discussion will take place.

Mr. Deputy President: I must repeat what I said that every amendment will be taken up and considered on its merits. It is for the House to decide whether they object to it or not. We will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move an amendment to clause 11 of the Bill. The amendment which I proposed to move was to the effect that every person arrested under this section 54 shall forthwith be released on bail. On further consideration I find that the amendment which I wanted to move and of which I gave notice is very wide and that in many cases it will be very undesirable. Therefore, Sir, with your permission I may be allowed to amend my proposed amendment and to move it in this form:-

'Every person arrested under this section except under clauses *thirdly* and *sixthly* shall forthwith be released on bail.'

Sir, under section 54, a police officer is authorised to arrest any person at any stage of his investigation or even before that investigation. Yesterday while explaining this section, the Honourable the Law Member was pleased to say that it was during the course of the investigation and after some material had been found by the police officer that the clause *first* of this section comes into operation, but I respectfully beg to differ from him and I beg to submit that this section generally comes into operation at a very early stage of the investigation, just at the moment when the complaint or the report is made to police or the information has been lodged with them. Before investigation or during the course of the investigation if there is any material or any sufficient evidence to warrant the trial of such a man, the police would arrest him under section 167, *i.e.*, under the chapter allotted for investigation of offences. If we refer to section 54, clause by clause, we will find that it is desirable that in certain cases where arrest is to be made the person should be released on bail because at the time of arrest there is not sufficient material for the police to put that man under trial or for an inquiry before a magistrate; and on principle that every person has a right that his liberty should not be restricted unless any offence has been brought home to him, a person arrested under this section should be entitled to be released on bail. Therefore, Sir, unless the police in their investigation find sufficient material and evidence to put him for trial such a man should be entitled to be set at liberty on bail. The only safeguard necessary should be that he may not escape from the trial that may be awaiting him or that may take place after the investigation is completed. Therefore only a security should be asked from him to appear at any time when the police or the magistrate may desire. With this object in view I will take section 54 clause by clause. The first clause of section 54 says:

'Any person who has been concerned in any cognisable offence or against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists of his having been so concerned.'

Now this applies to a very early stage of the investigation and as I have said before under this clause if the arrest is to be made the man should be entitled to be released on bail. Coming to the second clause, it is said that "if the man is found in possession of stolen property, property which is suspected to be stolen or in respect of which some offence has been committed he may be arrested." In this case also, he should be released on bail, because if there is sufficient evidence against him he could be brought up for trial subsequently. In the third clause we find that if any person has been proclaimed by the Government to be an offender, that person may be arrested by the police. In this clause I submit that the police or the Government may have the right to take that man under arrest to the magistrate and have the needful done. In this clause, where the offender

has been proclaimed it is unnecessary to get any further evidence and so he might very well be kept in the lock up. In clause 4, if the man is in possession of any implement of house breaking. . . . I am sorry I made a mistake. This is clause *secondly* and the clause I referred to in connection with stolen property is clause *fourthly*. If a man is found in possession of house breaking implements, some evidence is necessary before that man could be found guilty and the man should be released on bail. Clause 4 relates to stolen property and property that is suspected to be stolen. Here also he should be released on bail. Under clause *fifthly* any person who obstructs a police officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody may be arrested. I submit that in this case the man should be released on bail. There have been cases in practice in which inquiries made subsequently have shown that the arrests were generally unjustified. Sometimes if a man happens to ask the policeman simple questions criticising his action, he is likely to be regarded as having obstructed that police officer in the discharge of his duty and often he is arrested. In this case it will be a very great hardship if the man is allowed to be kept in the lock up. It may be said from the Government Benches that a person who is arrested under this clause for obstructing a police officer is generally released on bail, but I am prepared to cite to them cases in which respectable persons have not been released on bail, when they have been arrested for the offence of having obstructed a police officer and in one case even the Local Government had the inquiry made and on the basis of the report of that inquiry they held that the arrest was perfectly justified though ordinarily that man was entitled to have been released on bail. When even in cases where the provisions relating to bail are liberal, the persons entitled to be so released are kept up in the lock up, then what is to be said of cases of a non-bailable nature where the person be arrested even though it be under section 54. There is no reason to doubt that the police officer will in any way be hampered in the discharge of his duty if the person arrested under this section be released on bail. The person arrested may not be so released if there be a fear that such a man would escape justice or trial. I now come to clause *sixthly*. It says that any person who is a deserter from the Army or Navy may not be released on bail. In such cases it is but proper that the person be not released on bail. Clause *seventhly* relates to persons suspected of having committed offences outside British India. In this case also unless there is proper proof available in British India the persons arrested should be released on bail and be bound to appear before the Courts in a Native State or other territories in alliance with the British Government that made the requisition for the arrest.

Clause 8, Sir, refers to the arrest of

'Any released convict committing a breach of any rule made under section 565, sub-section (3).'

I submit, Sir, that persons coming under clause 8 should also be released on bail. My reasons for that are that under section 565 a person is released on certain conditions and if it is found that he broke certain conditions, then he be again put in the lock up, but after some proof that he did break the condition imposed. In this case also it is necessary to prove that he has broken certain conditions, and unless and until that proof be forthcoming, the man so arrested should be entitled to be released on bail. For these reasons, I submit that the arrest under section 54 should be made subject to release of the arrested person on bail and I commend my amendment, *viz.*, that every person arrested under

[Mr. K. B. L. Agnihotri.]
this section except clause *thirdly* and *sixthly* shall forthwith be released on bail.

Mr. Deputy President: Amendment moved:

"In clause 11, for the proposed sub-section (3) in sub-clause (2), substitute the following:

'(3) Every person arrested under this section except under clauses *thirdly* and *sixthly* shall forthwith be released on bail'."

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I rise to make a suggestion as to the procedure to be adopted before the discussion proceeds any further. We have got a chapter dealing with bails and I think it will be inconvenient to take up the matter like this at this stage. If my learned friend's amendment is discussed in the chapter relating to bail, it would be easy to find a solution for all these difficulties. Some of us have given notice of amendments as regards the nature of the bail and as regards the circumstances under which bail should be granted. If this matter is brought up under that Chapter, there will be no difficulty, because, then, I think, the Government and ourselves will be able to come to some agreement as regards the classes of persons who should be granted bail and as regards the stages at which bail should be granted. If we take it up now, I think it will to a great extent hamper the discussion of the chapter relating to bail. Therefore, Sir, I make the suggestion. If Government is agreeable to that and if my learned friend is agreeable to that, we may consider this matter later on when dealing with the chapter relating to bail.

Mr. K. B. L. Agnihotri: Sir, may I explain the difficulty?

The Honourable Sir Malcolm Hailey: We should have no objection to that course being adopted. It was one of the objections—one of the many objections—that I desired to bring against Mr. Agnihotri's amendment.

Mr. K. B. L. Agnihotri: The difficulty before me is that I wanted an amendment with the object, that a person be released on bail even though he may not be entitled to be so released under the chapter for bail; for instance, in the case of offences punishable with death or transportation for life. Supposing the House decides that persons concerned with offences punishable with transportation for life or with death may not be released on bail, then such a man if arrested under this section will not be released on bail, while under this amendment even such a person if arrested for an offence involving punishment of death or transportation, will be entitled to be released on bail until the investigation against him is completed and until the offence against him has been brought home to him. Here under section 54 a man is liable to be arrested on a mere complaint, on mere information, if it is a reasonable information. This I think is not proper and even such a man should be released on bail pending inquiry.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I support my friend, Mr. Seshagiri Ayyar, and point out that if we accept Mr. Agnihotri's amendment, it will make a mess of the Code. In this Code Chapter XXXIX deals with bail. I want to draw the attention of my Honourable friend, Mr. Agnihotri, to section 63 which says:

'No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.'

The necessary safeguards are provided under this Chapter. A man is arrested for murder. He is caught red-handed and he is a desperate character. Does Mr. Agnihotri maintain that he should at once be released on bail? Is not a householder or a citizen entitled to much more protection than a confirmed criminal? I shall point out to him the safeguards that this Chapter provides. Section 60 says that a man may be arrested but

Mr. Deputy President: Order, order. As Mr. Agnihotri objects to the postponement of this amendment to a later stage, I think the discussion must proceed.

Mr. K. B. L. Agnihotri: With your permission, Sir, I beg to accept the suggestion made by my Honourable friend, Mr. Seshagiri Ayyar, that my amendment may be considered under the Chapter for bails. I have no objection to that.

Mr. Harchandrai Vishindas: The proper procedure for Mr. Agnihotri is to withdraw this amendment.

Mr. N. M. Samarth: I oppose the course proposed. Let us discuss this particular amendment on its own merits. I think Mr. Agnihotri in assigning reasons has sufficiently demolished the case for the amendment and let us dispose of it once for all. It has nothing to do with the amendments of the sections in regard to bail, which are proposed by my friends over there. I therefore submit that the consideration of the amendment be proceeded with in spite of the fact that he has withdrawn it. He has no permission to withdraw. Unless we allow him he cannot withdraw his amendment.

Mr. Deputy President: The question is that Mr. Agnihotri be given leave to withdraw his amendment.

Mr. K. B. L. Agnihotri: I do not want to withdraw my amendment, but I only want to have the consideration of the amendment postponed to a later stage.

Rao Bahadur T. Rangachariar: May I formally move that the consideration of this amendment be postponed till we come to Chapter XXXIX, and make a correction of what Mr. Samarth said. We will be placed in a very awkward position when we come to deal with the amendments which we have given notice of as regards bail. If we refer to Rule 33 on page 85, we find that an amendment on a question must not be inconsistent with a previous decision on the same question come at the same stage of any Bill, so that if we come to any decision on this question, we will be tying our hands down when we come to deal with the Chapter concerning bail. (Mr. N. M. Samarth: 'No.') That may be my friend, Mr. Samarth's view, but we will be tying our hands if we come to any decision now. Merely because we are angry with Mr. Agnihotri because he has brought it at a particular stage or that he has given reasons that have demolished his amendment, let us not tie our hands now in dealing with the substantial question of bail, which is a very important question. Let us deal with this amendment when we come to that Chapter, when we can exhaustively deal with it and postpone the decision till we come to Chapter XXXIX. I therefore formally move that it be so deferred.

Mr. Deputy President: The question is:

'That the consideration of Mr. Agnihotri's amendment be deferred until the clauses of the Bill relating to Chapter No. XXXIX are reached.'

The Assembly then divided as follows:

AYES—46.

Abdulla, Mr. S. M.
 Agarwala, Lala Girdharilal.
 Agnihotri, Mr. K. B. L.
 Ahmed, Mr. K.
 Ahmed Baksh, Mr.
 Asjad-ul-lah Maulvi Miyan.
 Ayyar, Mr. T. V. Seshagiri.
 Bagde, Mr. K. G.
 Bajpai, Mr. S. P.
 Barua, Mr. D. C.
 Basu, Mr. J. N.
 Bhargava, Pandit J. L.
 Chaudhuri, Mr. J.
 Cotelingam, Mr. J. P.
 Gajjan Singh, Sardar Bahadur.
 Gulab Singh, Sardar.
 Hussanally, Mr. W. M.
 Ibrahim Ali Khan, Col. Nawab Mohd.
 Ikramullah Khan, Raja Mohd.
 Iswar Saran, Munshi.
 Jafri, Mr. S. H. K.
 Jannadas Dwarkadas, Mr.
 Jatkari, Mr. B. H. R.

Joshi, Mr. N. M.
 Kamat, Mr. B. S.
 Lakshmi Narayan Lal, Mr.
 Man Singh, Bhai.
 Misra, Mr. B. N.
 Muhammad Hussain, Mr. T.
 Mukherjee, Mr. J. N.
 Nabi Hadi, Mr. S. M.
 Nand Lal, Dr.
 Neogy, Mr. K. C.
 Rangachariar, Mr. T.
 Reddi, Mr. M. K.
 Sarvadhikary, Sir Deva Prasad.
 Sen, Mr. N. K.
 Singh, Babu B. P.
 Sinha, Babu Adit Prasad.
 Sinha, Babu Ambica Prasad.
 Srinivasa Rao, Mr. P. V.
 Stanyon, Col. Sir Henry.
 Subrahmanayam, Mr. C. S.
 Venkatapatiraju, Mr. B.
 Vishindas, Mr. H.
 Yamin Khan, Mr. M.

NOES—27.

Aiyar, Mr. A. V. V.
 Allen, Mr. B. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Davies, Mr. R. W.
 Faridoonji, Mr. R.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.

Innes, the Honourable Mr. C. A.
 Ley, Mr. A. H.
 Mitter, Mr. K. N.
 Moncrieff Smith, Sir Henry.
 Muhammad Ismail, Mr. S.
 Percival, Mr. P. E.
 Ramayya Pantulu, Mr. J.
 Samarth, Mr. N. M.
 Singh, Mr. S. N.
 Spence, Mr. R. A.
 Tonkinson, Mr. H.
 Webb, Sir Montagu.
 Zahiruddin Ahmed, Mr.

The motion was adopted.

Rao Bahadur T. Rangachariar: My amendment relates to section 56 (1) of the Code of Criminal Procedure which, as it is sought to be amended, will run as follows:

'When any officer in charge of a police station or any police officer making an investigation under Chapter XIV requires any officers subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may be lawfully arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.'

The object of my amendment is that as in the case of warrants, as provided in section 80 of the Code, the contents of this order in writing should be communicated to the person to be arrested. That is the object of my amendment, when I say that the provisions of section 80 of the Code shall apply to the execution of the order in writing referred to in

this section. A slight alteration has been made in my draft by the Legislative Department, which I accept, and, therefore, I will move it in the form in which they have put it, namely:

"That in clause 12 after the word 'inserted' the following shall be added, namely:

'The officer so required shall before making an arrest notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.'

I, therefore, Sir, move that amendment in the form suggested by the Legislative Department.

Sir Henry Moncrieff Smith: Sir, the Honourable Mr. Rangachariar, by accepting the redraft of his amendment, which has been suggested to him by the draftsman, has removed one of my objections to the amendment of which he gave notice. The amendment in the form in which he drafted it was obviously unsuitable. It was necessary, if anything were to go into the Code at all, that there should be a self-contained provision in section 56 requiring that the officer who received the order in writing should on the lines of section 80 inform the person he was arresting of the substance of the order. But the redraft does not remove all my objections to this amendment. In the first place section 56 and section 80 deal with two entirely separate matters. Section 80 deals with the case of a man who is being arrested on a warrant, a warrant being laid down by the Code as a condition precedent to his arrest. It is the case of a less serious offence and it is reasonable that the man should be told what he is being arrested for. In section 56 we have the case of a person being arrested without a warrant. Now what happens in the ordinary case. The officer in charge of the police station or the officer making the investigation can arrest a man without a warrant. Does he tell the man anything? Does the law require him to tell the man anything? It does not, he just effects the arrest. No doubt it may be desirable for his own protection that the officer making the arrest should give the person some information, but the law requires nothing at all to be said to the man who is being arrested without a warrant. That being so, when the officer in charge of the police station or of the investigation deposes to somebody else his power to make the arrest by an order in writing, what additional reason has arisen that the person to be arrested should be informed of the substance of the order in writing? I think that we must draw a distinct analogy between the two cases of arrest without warrant and arrest with warrant. The Code itself says that where there is arrest without warrant it is quite unnecessary to tell the man you are arresting the offence with which he is charged.

Here again I would remind the House that there are safeguards against unlawful arrest and abuse of this power and I would like to take this opportunity of clearing up what appeared to me to be a misunderstanding in the minds of certain Members yesterday in this matter. It was suggested by more than one Member that there were all sorts of difficulties in the way of prosecuting a police officer for abusing his powers of arrest without warrant and we were referred to section 197 of the Code of Criminal Procedure. Now, if Honourable Members will look at that section and read it carefully, they will find that it applies to a very limited class of cases. An officer, a public servant—and I do not deny that a constable is a public servant—cannot be prosecuted without previous sanction in cases where he is only removable by the Local Government or some superior authority. That is the only restriction. Now, you do not want the sanction of Local Government or of some superior authority to remove a constable. I believe, as a matter of fact, that the lowest officer to whom

[Sir Henry Moncrieff Smith.]
that section applies, would be an Assistant Superintendent of Police. If I am wrong, my friend, Mr. Tonkinson, will correct me.

Rao Bahadur T. Rangachariar: Inspector of Police in Madras.

Mr. H. Tonkinson (Home Department: Nominated Official): Deputy Superintendents of Police.

Sir Henry Moncrieff Smith: My friend, Mr. Tonkinson, tells me Deputy Superintendents of Police. After all, the whole of the arguments used on this point were based on the dishonesty of the constable. We were not talking about Deputy Superintendents or Assistant Superintendents or of any superior officers. Therefore, there are the safeguards, as I said yesterday, and I think the House will now be prepared to admit that these safeguards exist. As I said just now, it may be desirable for a police officer for his own protection to inform the man of the cause of his arrest; that is entirely from the police officer's own point of view, but nothing is required by the law. I suggest that this amendment is quite superfluous.

Mr. T. V. Seshagiri Ayyar: Sir, the Honourable Member has been giving exceedingly good reasons for accepting the amendment proposed by Mr. Rangachariar. He said that a police officer, when he arrests, need not give any information to the person arrested. In the case of a warrant there is this guarantee, that the case goes before a superior officer, it goes before a Magistrate and, therefore, there is the guarantee that the matter has been considered fully by the authorities. Therefore, when a warrant is issued, there is some guarantee that there has been an offence committed. In the case of a policeman arresting without warrant, if he has not to give information to the person arrested on what charges he is being arrested, on what grounds the arrest has been made, it would be leaving the arrested person in a very unenviable position.

For example, his relations might like to know why this man was arrested, and they might be in a position to give evidence for the purpose of proving that the arrest is illegal and improper. Under these circumstances it is absolutely necessary where a police officer acts without a warrant of arrest that he must notify to the person who has been arrested the reasons for arresting him. If he has not got to give reasons, that will put the arrested person in a very grievous position. If it has not been the law hitherto, it is absolutely necessary that the law should be made to be more kind to the accused than it has been hitherto; and I think the reasons given by Sir Henry Moncrieff Smith are the very reasons which should induce this House to accept the amendment proposed by Rao Bahadur Rangachariar.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I wish to confirm what has fallen from Sir Henry Moncrieff Smith, and draw attention to the particular point that we must always consider the extreme cases in regard to proposals of this sort. Suppose we get the case referred to by Mr. Chaudhuri of a policeman who sees a murder being committed by a man. According to this proposal he has to produce an order in writing to show it to the man. There are cases in which there is absolutely no need for showing the order in writing to the man. It depends upon the particular circumstances of the case, and the policeman can exercise his discretion in the matter. He is allowed to do so. He can show it if he wishes to do so, but he is not obliged to.

Again, this is a provision which has been in force for many years. No objection has ever been raised to it; and now at the last moment it has been brought up.

I would also just like to draw attention to the fact that section 56 comes under the heading of 'Arrest without Warrant.' The whole procedure there is entirely different from the procedure followed where an arrest is made *with* warrant; not merely are the two parts of the Code different, but the whole procedure right through is different. It is a matter for the discretion of the police officer, and no definite provision is necessary in order to compel him to communicate the order in writing to the man whom he may be arresting.

Mr. W. M. Hussanally: I am afraid, Sir, I cannot agree with Sir Henry Moncrieff Smith or my friend, Mr. Percival. I think the reasons given by both of them would support the amendment moved by Rao Bahadur Rangachariar being carried.

In the case of a police officer arresting a person without a warrant, he does it on his own responsibility; but when he deposes a subordinate officer to go and make an arrest on his behalf, the responsibility does not lie with the man who actually arrests the offender. Therefore an order has to be given to him in writing to go and arrest the man. And if he is in possession of the order, then I do not see why that order should not be shown to the person. It is in the nature of a warrant; though not a warrant by a Court of law, at the same time it is in the nature of a warrant which he possesses at the time he makes the arrest; and therefore there is nothing lost by the policeman showing that order to the man whom he is about to arrest. For the sake of his own safety, I think that order ought to be shown to the man he is going to arrest. All the same he arrests without a warrant no doubt, because a warrant means an order by the Magistrate, whereas this is an order not by a Magistrate but by a superior police officer, and therefore the section rightly lies within the chapter on "Arrests without Warrant." Therefore I say it is in the interest of the person making the arrest as well as in the interest of the accused that the order be shown to him, and I hope the amendment will be carried.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I desire to oppose this amendment. Mr. Seshagiri Ayyar spoke with much force on the desirability of introducing a provision in the Code to make it necessary for a police officer when arresting without a warrant to explain to the person arrested why he is taken into custody, and he based his support of this amendment—which refers to the case of a policeman who is instructed by another police officer to arrest without a warrant, he based his support of this amendment on the desirability of introducing a similar amendment into section 54. Now, Sir, if the matter is of such importance as Mr. Seshagiri Ayyar would have the House believe, why did he not introduce an amendment to section 54?

Mr. T. V. Sheshagiri Ayyar: An oversight.

Mr. P. B. Haigh: Quite so; an oversight. The matter is of such small importance that when the principal section was before the House Mr. Seshagiri Ayyar did not find it necessary to amend that section.

Rao Bahadur T. Rangachariar: Section 54 has not yet left the House.

Mr. P. B. Haigh: The Bill has been before Honourable Members for months and months. They have had plenty of opportunity to examine its provisions, and if this is a matter of so much importance, certainly Honourable Members should have introduced an amendment to section 54, and put the amendment in this section as a mere corollary to that.

Now, as regards Mr. Hussanally's argument, he says it is very desirable that the policeman who is furnished with a written order should show it to the person arrested. Well, in 99 cases out of 100, it will be desirable, and the police officer in his own interests will show it. But there is no need to make it compulsory. But I think it may be fairly contended as against the amendment that an amendment of this sort ought not to be put in now at this stage when it will render the whole position of section 54 illogical. I will again repeat that the proper course to adopt would have been to amend section 54 and let the amendment under this section follow as a corollary to that; and I trust, Sir, in order to prevent confusion creeping into the Code by amendments being introduced 'through an oversight' that the House will reject this amendment.

Mr. Harchandrai Vishindas: Sir, I find that every speaker who rises on his hind legs to oppose the amendment, as a matter of fact supports it. The best illustration is of the Honourable the last speaker, who said that in almost all cases probably a police officer will communicate these contents. Well then, why not make it actual law? That shows that it would be in the interests of justice and that it would be desirable that a police officer should communicate the order, or the particulars which are subject matter of the amendment, to the person arrested. I draw the conclusion from that that he thinks it would be desirable in that case. If it is desirable, then surely it is safer to have that on the Statute Book.

Then Mr. Percival referred to the case which was cited by Mr. Chaudhuri. Supposing there was a case in which a police man catches red-handed a murderer, where is the necessity of explaining the offence to that man? But he forgets that section 56 does not relate to these cases. Section 56 relates to the case of one police officer deputing his duty to another police officer. So that a case won't arise under those circumstances, of a police officer catching red-handed a murderer. That argument therefore cannot hold water. Another argument put forward by Mr. Percival and which was a mere repetition of arguments that were put forward day before yesterday and yesterday, was that for so many years, 60 or 65 years, this provision has remained on the Statute Book and therefore it should be allowed to continue even now. I think that is a very feeble argument, because if that argument were to stand, it would follow that once a particular law is passed it should never be amended. I contend that anything that suggests itself by way of commonsense to mankind by their experience and by their powers of reasoning may be introduced even if it was not made the subject matter of the original law. At this very moment you have the instance of Mr. Seshagiri Ayyar telling you that it was through oversight that he did not suggest the amendment in section 54, when he was taxed by the previous speaker, because there are many things that do escape our reasoning, or our memory or our observation.

But that is no reason why this provision should not come into 56. I think that kind of argument was entirely beside the point; because Mr. Seshagiri Ayyar did not propose an amendment to section 54, therefore he is out of court when he supports an amendment to section 56. The only valid argument for an opposition to take up would be to show that such

an amendment under section 56 is not relevant, that it does not fit into the section, is not appropriate. I say it is appropriate. The words that Mr. Rangachariar has embodied in his amendment which has been laid before you, Sir, do fit in with section 56 as it stands. Therefore there is nothing in that objection. So, I say, Sir, as I said in the beginning that the case for the amendment is being strengthened from time to time from the mouth of every speaker who gets up to oppose it and therefore it should be supported.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadian Rural): I propose, Sir, that the question be now put

The motion was adopted

The amendment* under discussion was adopted.

Clause 12, as amended, was added to the Bill.

Clause 13 was added to the Bill.

Rao Bahadur P. V. Srinivasa Rao (Guntur *cum* Nellore: Non-Muhammadian Rural): Sir, the amendment that stands in my name is that proviso (a) to sub-section (6-A) in clause 14 be omitted. That proviso runs thus:

'Provided that no such inquiry shall be made if, in the opinion of the Court in which the claim or objection is preferred or made, the claim or objection has been designedly or unnecessarily delayed.'

Honourable Members will be able to see the importance of this amendment if they will consider the provisions embodied in these new sub-sections. It will be seen that under section 88, the Court, issuing a proclamation under section 87, may at any time order the attachment of any property, moveable or immovable, or both, belonging to the proclaimed person. Now these new provisions relate to claims preferred as regards property attached by an order of the Court under section 88. Under sub-section (6-A) if any claim is preferred within six months from the date of the order of attachment, such claim should be inquired into and the Court may allow or disallow it. These provisions are perfectly reasonable and I have no complaint against them. You have next to see the provision embodied in sub-clause (6-C):

'Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6-A) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute.'

Thus it will be noticed that under sub-section (6-A) the magistrate is bound to inquire into a claim put forward within six months from the date of the order of attachment, and that claim may be allowed or disallowed. If the claim is inquired into and disallowed the party is given a remedy by suit under sub-section (6-C). Now what is the effect of this proviso which I wish to be deleted? If inquiry is refused by a magistrate on the ground that the party has unnecessarily or designedly delayed, though he is within six months prescribed, the result is that no order of disallowance could be made under (6-A), and therefore he has no right of remedy under sub-section (6-C). A right to sue is given only when an order of disallowance is made and an order of disallowance can be made only after an inquiry under (6-A). Therefore if a magistrate holds that, though a claim is within the time fixed there has been unnecessary delay or that delay has been designedly made, then there can be no inquiry and no disallowance and

* *Vide* p. 1187 *supra*.

[Rao Bahadur P. V. Srinivasa Rao.]

the party is left without any remedy by a suit. I think this is really unreasonable and inequitable. If in sub-section (6-C) the words are added— "Any person whose claim or objection has not been inquired into"—I shall not have much to say. As sub-section (6-C) stands, the party is left without any remedy whatsoever; there is no provision by way of appeal in the Criminal Procedure Code and he has no right to bring a suit to establish his right to the property, simply because a magistrate thinks that the claim has been unnecessarily or designedly delayed. Honourable Members know that criminal courts are not presided over, as in the case of civil Courts, by officers who have had judicial training and who are well versed in law. We know there are magistrates of the first class, of the second class and of the third class, and that many of these are taken from the clerical department and have absolutely no legal training or knowledge whatever. It is difficult therefore to expect that they can bring a really judicial frame of mind to bear on the disposal of these claims. It is easy for a magistrate to say "You have unnecessarily delayed in this case." The words are elastic enough. For these reasons, Sir, I move that this proviso be deleted, and I hope that the amendment will commend itself to this Honourable House.

Mr. H. Tonkinson: Sir, we are dealing now with those provisions of the Code which relate to processes to compel the appearance of persons and particularly of those in sections 87 and 88 of the Code. Now under section 87 when a warrant has been issued a Court may publish a written proclamation if it has reason to believe that the person against whom the warrant has been issued has absconded or is concealing himself. If a proclamation has been issued the Court may issue an attachment order under section 88. Under that attachment order the movable or immovable property of the proclaimed person may be sold. The amendments proposed by the Bill will be clear if Honourable Members will refer to the edition of the section in which amendments are shown *in loco*. In the section provisions have been introduced relating to claims by third parties. We have not had such provisions in the Code before, and the Honourable Mover of this amendment has definitely stated that he has no complaint against them. I understand that he considers that it is a most desirable amendment of the Code. He objects, however, Sir, to the proviso (a). Now, Sir, these provisions are due partly to Sir George Lowndes' Committee and partly to the Joint Committee. When they drafted these provisions they had before them very similar provisions in the Code of Civil Procedure relating to cases in which claims are preferred to or objections made to the attachment of property in execution of a decree. Honourable Members in this House are no doubt very fully acquainted with the Code of Civil Procedure. I would refer to rule 58 of Order XXI and if Honourable Members will compare the wording of that rule with the wording of the proposed sub-section (6-A) of section 88, they will see that this rule has been adopted by the draftsmen. The proviso to sub-rule (1) of Rule 58 of Order XXI of the Code of Civil Procedure reads as follows: "Provided that no such investigation shall be made where the Court considers that the claims or objections are designedly or unnecessarily delayed." Now, Sir, we have had no provisions of this kind before. If the third party in question designedly and unnecessarily delays his application, surely we ought not to add to the labours of our magisterial courts in the work of investigating such claims. It is true, Sir, that the Honourable Member bases his

objection upon another point altogether. He refers to the provisions of the proposed sub-section (6-C). Now, Sir, I will repeat once again what I said before that we have had no provisions regarding inquiries into claims by third parties who object to attachment of their properties hitherto. Does, however, the Honourable Member consider that if a proclamation has issued and if attachment of the property of third parties has been made by mistake in the past, that then that third party could not bring a civil suit to recover his properties? And in what respect, Sir, will the present law in this matter be affected? The proposed sub-section applies only to cases where a claim or objection has been made and inquired into by the court. If the claim or objection has not been made and inquired into by the Court, there is absolutely no doubt, Sir, that notwithstanding the provisions of the proposed sub-section (6-C) the third party will be able in a civil court to recover his property. As, Sir, the Honourable Member does not object in principle to the proviso (a) but merely to this one point, and in view of what I have said as regards that, I hope he will be able to withdraw his amendment.

Mr. K. B. L. Agnihotri: Sir, I rise to support the amendment moved by my friend, Mr. Srinivasa Rao. The reply from the Government Member has not shown us the necessity of retaining this proviso (A). He has compared the new provision in this clause with that provided in Rule 58 of Order 21 of the Civil Procedure Code. If we compare these two provisions, we find that the provision made in Rule 58 does not prescribe any period of limitation for such objections while in the sub-clause which we have added to the clause now under consideration, we find that the period of limitation for preferring objections has been prescribed to be six months. When once we prescribe the period of limitation for preferring objections, where is then the necessity of limiting the right of a man as is done by this proviso (A)? Either we should do away with the period of limitation prescribed or we should do away with the proviso (A). I would rather prefer to do away with the proviso A, because when we provide the period of limitation of six months, every person who wants to bring in an objection is at perfect liberty to put in his objection even after the expiry of five months and 20 days after the attachment. Why should we limit further that he should put in his objection say 10 days after the attachment of his property? Therefore, I submit, Sir, that proviso A should be deleted as proposed by my Honourable friend. Moreover, as to the plea that a person is entitled to go to the Civil Court even if such an objection has not been admitted or is rejected by the Criminal Court, my humble submission is, that a man should be allowed to have a summary remedy also, which will be obtained in a shorter period, instead of a remedy which will be obtained in a far longer period as is the case in the Civil Courts? Therefore, this proviso A is absolutely unnecessary, and every man should be given the right to put in his objection within the period of limitation provided in this clause, and proviso A should be deleted.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, my reading of sub-section 6 (A) with the proviso (A) leads me to think that the latter renders the former nugatory. In section 6 (A) the words are as follows: "If any claim is preferred to, or objection made to the attachment of, any property attached under this section, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such

[Dr. Nand Lal.]

property and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part." Now the proviso (A) says 'No such inquiry shall be made if, in the opinion of the Court, in which the claim or objection is preferred or made, the claim or objection has been designedly or unnecessarily delayed'. Now, Sir, I point out to the House that in sub-section (A) a certain specific period is fixed, which, for all intents and purposes, may be considered as limitation for instituting that claim, by the third party. It is a statutory time allowed by the Code, but when we come to proviso (A), it eloquently tells us "no, the question of limitation will not be taken into consideration at all". A door is open to a Magistrate or to a Court which may decline to make the inquiry if according to his or its way of thinking the claim is delayed unnecessarily or designedly. Sir, when a claim is lodged within six months from the date of attachment of a property, it cannot be considered to have been designedly delayed. Therefore, the argument which has been advanced from the Government Benches, I may very respectfully submit, has got no force. Now, reliance has been placed on the provision of the Civil Procedure Code. That provision is embodied in Order 21, Rule 58, of that Code. I need not read that provision, because it has already been referred to by Mr. Agnihotri. The crucial point, which is to be seen, is whether in Order 21, Rule 58 of the Civil Procedure Code, any limitation is provided. But a simple perusal of that provision will prove that no time limit is given there. Therefore, the Legislature very rightly, and very wisely, provided that, if the claimant is too late, intentionally, or unnecessarily, then his claim will not be attended to. Why? Because the Civil Court is fully competent to give determination on the question of delay, but here, the Criminal Court has not been given that competency. Here the law has, as I have already submitted, clearly specified six months. Any claim which comes before the expiry of that period of six months cannot be considered too late. Therefore, the analogy which has been drawn, with due deference to the Government Benches, is altogether misplaced. Therefore, the motion for amendment seems to be a very forcible one. It commends itself and I can entertain every hope that the official Benches will feel inclined to agree to it, unless they want the provisions of the Criminal Procedure Code to last until the Court and subsequently the lawyers argue this point.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, my submission in support of the amendment and against this clause is based on two grounds.—(1) the inconsistency which this clause involves, and (2) its impracticability and clumsiness. The doctrine that rights are lost by acquiescence or delay, short of the specific period provided by limitation, is now exploded. Here, we have in clause 6-A a specific limitation of six months provided for the making of an application under it. Six months is not a very long time, as things move in the courts of law in this country, for a person to find out, if he was absent, that his property has been attached and for him to formulate his claim. Having given that six months definitely by law, and having provided in clause (b) that, if a claim is made within the time prescribed, the death of the claimant shall not cause it to abate but his representative may carry it on, nevertheless in the middle we have this clause (a) introduced, which leaves it to the ideas and idiosyncrasies of each particular Magistrate as to whether or not a claim should be inquired into, albeit it may be within the time-

prescribed. That, upon the face of it, is inconsistent; and I think that above all things it is essential that a Legislature should be consistent with itself. But the impracticability of clause (a) is still greater. It provides that inquiry is to be refused where the claim or objection has been 'designedly or unnecessarily delayed'. A claimant comes up five months after the attachment and makes his application. The court may, under 6-A, inquire into it. Or the court may, under this sub-clause (a), do what? Refuse off-hand to inquire into it? No,—hold a preliminary inquiry to question whether application has been 'designedly or unnecessarily delayed.' Now, how is the court to do this? Surely no one will support a Magistrate who says: 'You might, I think, have made this claim within one month, you have made it in two months; I think you must have designedly or unnecessarily delayed', and so saying summarily throws out the claim. No High Court would allow a Magistrate to dispose of the matter in that way. Therefore, every court called upon to inquire will have to hold a sort of preliminary inquiry, take evidence and so on, as to whether the claim or objection has been designedly or unnecessarily delayed. Obviously, all the time that is taken in holding that preliminary inquiry might be very much more profitably spent in holding an inquiry on the merits of the claim.

Therefore, it is submitted, that clause (a) seems to be, more or less, a draftsman's error. Nothing better than that. And I support the amendment that it should be removed.

Sir Deva Prasad Sarvadhikary: Sir, I think the Government would be well advised in accepting this amendment, and saving time unless under sub-clause (6-C.) it wants to see the work of the civil courts very much added to. Mr. Tonkinson is commendably anxious that the work of the criminal courts should not be added to. The inevitable result of summarily dealing with these investigations under 6-A (a), as has been very aptly pointed out, will however be to add considerably to the work of the civil courts.

There is a further reason—a small reason from certain points of view but fairly big from others. Six months is never too long in these matters, even with regard to civil proceedings. Where an attachment of property has taken place in a village in a criminal case, we can well imagine and picture to ourselves the commotion and almost the panic that takes place in the family or among the share-holders. It takes a longer time for them to gather themselves up as it were and obtain advice and to take their claims to the court than a civil attachment would involve. That is another phase of it that makes it very necessary that the limitation of six months should not be interfered with in the way that is proposed. Supposed parity of reason between the Civil and Criminal Codes, as has been pointed out, cannot for a moment hold water, for the circumstances are utterly different. I do not think what is given with one hand under clause 6-A should be taken away by the other under clause 6-A (a).

Mr. N. M. Samarth: I have, Sir, an amendment to propose to this amendment. My amendment is:

"That the following words be added at the end after the words 'unnecessarily delayed,' namely:

'Beyond the six months from the date of such attachment'."

Now, my reason is this. It may be that you provide here six months. There are many cases in which the High Court or the Court before which

[Mr. N. M. Samarth.]

the case goes has power to excuse delay and an application may be made to show that, although six months have really expired—well, it may be by two days or three days, there was sufficient cause for delay and in such a case the proviso will say that no such inquiry shall be made if, in the opinion of the court in which the claim or objection is made, the claim or objection has been designedly or unnecessarily delayed beyond six months but not if it has been so delayed with lawful excuse or with excuse which may be permitted.

Therefore, I submit that the following words be added at the end: "beyond the six months from the date of such attachment".

The Honourable Sir Malcolm Hailey: With regard to the amendment which has been put forward by Mr. Samarth I wish to call your attention to the fact that it is one of substance. We have provided in the Bill for a period of six months. Our only dispute at present is whether the investigating Magistrate should be allowed to refuse an inquiry in cases which have been unnecessarily delayed within that six months. Mr. Samarth's amendment is really a proposal to increase the period of six months.

Mr. N. M. Samarth: It will be made clear by my amendment.

The Honourable Sir Malcolm Hailey: Mr. Samarth's proposal is an entirely new point of substance which it is, I suggest, inadvisable to admit at this stage.

With regard to Mr. Srinivasa Rao's amendment, our feelings are that it would be better if the Bill were allowed to stand as drafted. It was very fully considered by the Joint Committee and accepted by them. But it is not a point on which we are inclined to attach great importance, and, I would add in the interests of the time of the House, that it is not a point on which we should ourselves press for a division. I think it would be better, therefore, if we simply accept the excision of proviso (a) and pass on.

Mr. J. Ramayya Pantulu: I do not think, Sir, that the amendment proposed by my friend, Mr. Samarth, can be accepted.

The Honourable Sir Malcolm Hailey: It has not even been admitted.

Mr. J. Ramayya Pantulu: Is it not before the House?

Mr. Deputy President: No. The original question is before the House.

Mr. J. Ramayya Pantulu: Then I support my friend, Mr. Srinivasa Rao's amendment. The law has fixed the period of six months within which any objection can be made, and having given those six months, it proceeds by means of proviso (a) to take away that right by giving power to the Magistrate to reject a claim or not to entertain the claim on the ground that the matter has been delayed. Having fixed a period within which claims can be made I think the law ought not attempt to take away that right. I therefore support the amendment of my friend, Mr. Srinivasa Rao.

Mr. R. A. Spence (Bombay: European): I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The amendment moved is :

'That in clause 14 in the proviso to proposed sub-section (6-A.) omit clause (a).'

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I move that :

"In sub-section (6 BB) omit the words 'or second'"

By adopting my amendment, sub-section 6 BB would read as follows :

'Provided that, if it is preferred or made in the Court of a District Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first class or to any Presidency Magistrate, as the case may be, subordinate to him.'

In Civil Courts, it is the Court in which the objections are filed that decides the objection. The Joint Committee say in their report about clause 14 :

"The sub-sections which the Bill adds to section 88 imply that the Court which issues an order of attachment or endorses the same under sub-section (2) is to investigate and determine a claim or objection. We think that a limited power to transfer claims and objections for disposal to subordinate Magistrates would be useful, and we have, therefore, provided that District Magistrates may transfer such cases to Magistrates not below the rank of second class Magistrates, and that Chief Presidency Magistrates may likewise transfer cases to Presidency Magistrates subordinate to them."

Sir, from this it is clear that the court in which the objection is preferred is the proper court to decide the objection, but some power has been given to the Chief Presidency Magistrates and the District Magistrates to transfer such objection cases to the file of any other subordinate Magistrate. The Joint Committee provide in the Bill that such objections may even be transferred to the second class Magistrates who could dispose of such cases. But I do not know why they did not extend that power to third class Magistrates. So far as I can understand, I think that their reason in limiting this power was that probably the third class Magistrate was not regarded as very efficient in deciding such objection cases. They have therefore limited it to second class Magistrates only. My submission is that on that very ground on which that limitation has been made even the second class Magistrates should be debarred from inquiring into such objection cases that are filed before the court of the District Magistrates and the discretion that has been given to the District Magistrate should not be extended far enough. He should only have power to transfer such cases to first class Magistrates who are more experienced than Magistrates of the second and third class, and they only should be empowered to inquire into such cases that might be transferred from the Court of the District Magistrate. Therefore, Sir, I submit that the power for transfer given to second class Magistrates to inquire into such cases be taken away and be restricted to first class Magistrates. The cases before the District Magistrate are very serious and sometimes it may happen that even the objection cases may also be important. With these words, Sir, I commend my amendment for the consideration of the House.

Mr. H. Tonkinson: Sir, the Honourable Member has explained that he wishes that the right of transferring inquiries into these claims which is given to the District Magistrate and to the Chief Presidency Magistrate by the proviso to proposed sub-section (6 BB) should be restricted so as to enable the District Magistrate and the Chief Presidency Magistrate to transfer such inquiries to Magistrates of the first class only. He takes his

[Mr. H. Tonkinson.]

objection, Sir, upon the ground that Magistrates of the second class are not competent to make such inquiries. If that, Sir, is his objection, I would venture to suggest that he ought to have proposed amendments to other provisions of this section. He himself, Sir, drew attention to the provisions of proposed sub-section (6B). Under that sub-section claims or objections under sub-section 6A may be preferred or made in the Court by which the order of attachment is issued. Now, Sir, what courts issue orders of attachment?

Mr. K. B. L. Agnihotri: I may explain, Sir, that it is not my object that Magistrates of the second class should not be empowered to inquire into objections regarding property attached and filed in their courts, but my only point is that the District Magistrate should not have power to transfer inquiries into objections filed in his Court to Magistrates of the second class.

The Honourable Sir Malcolm Hailey: Is the Honourable Member raising a point of order?

Mr. K. B. L. Agnihotri: I was simply explaining the object of my amendment which I thought was not properly understood.

Mr. H. Tonkinson: I will proceed, Sir, with the remarks which I was making when the Honourable Member interrupted me. I was indicating that the only ground which he had given in favour of his amendment was the ground that second class Magistrates were not sufficiently efficient to hold these inquiries. I was pointing out, Sir, that second class Magistrates will make these inquiries, and now when he interrupted me he says he does not object to that. That being so, I will proceed somewhat further to indicate what cases will usually be covered by the proposed proviso to sub-section (6B). If Honourable Members will refer to sub-section (2) of section 88 of the Code of Criminal Procedure which we do not propose to amend at present, they will find that orders for the attachment of property may be issued for the attachment of property in other districts than that in which the Magistrate issuing the order exercises jurisdiction. Those warrants of attachment may be executed in such other districts if they have been endorsed by the District Magistrate or the Chief Presidency Magistrate. Well, Sir, the proviso will generally take effect in these cases. We do not want to require the Chief Presidency Magistrate or the District Magistrate to hold the inquiries in such cases, and I submit that second class Magistrates according to the Honourable Member who has moved this amendment, are fully competent to inquire into such claims or objections if there are claims or objections in regard to attachments issued by the Court. Thus, Sir, there is no reason whatsoever why such inquiries should not be transferred to them in these cases to which I have referred.

Mr. K. B. L. Agnihotri: Then, why not extend it to third class Magistrates?

Mr. Deputy President: The question is that the amendment be made.

The motion was negatived.

Rao Bahadur T. Rangachariar: My amendment is No. 25 which runs as follows:

"At the end of clause 14 insert the following:

'(6D). If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from attachment'."

I must briefly explain to Honourable Members what is the procedure with reference to proclamation and attachment of property. Sections 87 and 88 of the Code are the sections dealing with that subject. Under section 87 "If any Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation." Section 88 authorises the Court in the following terms:

"The Court issuing a proclamation under section 87 may at any time order the attachment of any property, moveable or immoveable, belonging to the proclaimed person."

So that, even before the 30 days are over the Court is entitled to order the attachment of the property, both moveable and immoveable. The object of this proclamation and attachment is a compulsory process to compel the party to appear in obedience to the summons or warrant of the Court, and there is no provision here ordering the release of property from attachment in case he complies with the condition contained in the proclamation. This is a slip, I take it. Whereas section 89 provides that if within two years from the date of attachment any person whose property is or has been at disposal of Government—or has fallen at the disposal of Government after the time specified, appears and shows that he has sufficient cause for not appearing, then the property shall be restored to him or, if the property had been sold in the meanwhile, the proceeds shall be restored to him. But if he appears within the time limited, there is no provision ordering the release of attachment. An attachment has got some legal effect as Honourable Members are aware. It prohibits the party from alienating the property. It prohibits the Civil Court from attaching the same property over again and various other complications do arise. Therefore it is necessary that once the condition on which the attachment has been made is fulfilled, the attachment should cease *ipso facto*. Therefore, in order to make it clear, I propose this that if the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from attachment. I therefore move the amendment as it stands in my name.

Mr. H. Tonkinson: Sir, my Honourable friend, Mr. Rangachariar, has suggested that the omission of this clause is due to a slip. I would suggest that the amendment that he has moved is quite unnecessary, in view of the provisions of sub-section (7) of section 88. I am aware that Mr. Rangachariar referred to this sub-section himself. That sub-section says:

"If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government."

That is the only provision, Sir, which we have had hitherto. If the person appears in response to the proclamation, then clearly the property never becomes at the disposal of Government, and as for the Magistrates—what have they done hitherto all these years? They always at once release the property from attachment as my Honourable friend is quite aware. If it goes on beyond this period to such periods as are dealt with in section 89, which has been referred to, then we have provisions for the restoration of the property or the net proceeds to the proclaimed person. I think it is quite unnecessary to make an addition of this proposed sub-section to section 88 of the Code.

Mr. T. V. Seshagiri Ayyar: What Mr. Tonkinson fails to note is this. If there is an attachment, it debars the alienation of the property; and it puts a difficulty in the way of the property being dealt with. It may be that under sub-section (7) the Government may take certain action under certain contingencies. Suppose the Government does not take such action. Still the attachment is there, if once an attachment is made, unless there is an order of Court releasing the property from attachment, the attachment will subsist. What we want is that there should be power to make an order releasing the property from attachment. If you make a provision for releasing the property from attachment under that same sub-section, it may not be necessary for Mr. Rangachariar to press his amendment. But there must be a provision somewhere that if the person does appear within six months the property shall be released from attachment. The attachment should not be allowed to subsist, for that will make it impossible for the man to deal with the property. That was the point made by Mr. Rangachariar and Mr. Tonkinson has failed to meet it.

Sir Henry Moncrieff Smith: Mr. Seshagiri Ayyar says that there must be an order releasing attachment, and that unless this amendment is made in the Code, there will be no order withdrawing the attachment. That is entirely wrong. If the man appears within six months, then the attachment is automatically withdrawn. (*Voices:* 'No, no.') What I mean is that the Magistrate automatically makes an order withdrawing the attachment.

Mr. T. V. Seshagiri Ayyar: Give him that power.

Sir Henry Moncrieff Smith: It is quite unnecessary and quite superfluous. The original framers of the Code cannot have omitted this provision by an oversight. The Code has been overhauled again and again and every time this particular amendment has been regarded as unnecessary. It has been left for Mr. Rangachariar after all these years to discover what he thinks has escaped the attention of the Legislature.

Rao Bahadur T. Rangachariar: I never had a hand in it before.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. Deputy President was in the Chair.

Mr. Deputy President: Mr. Rangachariar's amendment No. 25 is before the House.

Amendment moved:

"At the end of clause 14 insert the following:

"(6D). If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from attachment."

The question is that that amendment be made.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, I move Amendment No. 27 which runs as follows:

"After clause 14 insert the following clause:

"14A. In sub-section (7) of section 88 of the said Code, the words 'or until the final disposal of any claim preferred or objection made under the provisions of this section' shall be inserted between the word 'attachment' and the word 'unless'."

Amendment No. 26 will be moved later. When a claim petition is made in reference to an attachment made to property by a third party, it has to be made within six months from the date of the attachment and there will be an inquiry and decision under the procedure prescribed in clauses 6A and 6B. Now, under clause 7 of that section, Honourable Members will notice that if the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of Government, but it shall not be sold until the expiration of six months from the date of the attachment. That is all that it provides. It does not provide for a case where a claim is made and not disposed of within six months. Then the property may be sold as the section stands now. I therefore propose that the property should not be sold until after six months (retaining it as it is) and we must also ensure that the property should not be sold until the claim is disposed of. That is the object of the amendment. The wording as it stands in print I wish to alter somewhat simply to bring out the meaning clearly. The wording as I propose now will be: "or until any claim preferred or objection made under sub-section 6A has been disposed of under that sub-section, whichever period is later." That is to say, six months is allowed for objections being made. There may be one claim, there may be more than one claim. Suppose one claim is made and that is disposed of within the six months and then too the property should not be sold for six months, because you may get other claimants within the six months. Therefore I provide "whichever period is later." If there is any claim at all, that is disposed of. If there is no claim, six months should elapse, so that the property should not be sold till the matter is clear that there is a claim or there is a claim which is disallowed. For that purpose I propose the amendment.

The Honourable Sir Malcolm Halley: Did the Honourable Member say "date" or "period"? Is it "whichever date is later"?

Rao Bahadur T. Rangachariar: Which do you think is better? I will bow to you. The thing is until the claim is disposed of. It contemplates a period. "Whichever date" I do not mind. I bow to whatever suggestion you may put forward.

Mr. Deputy President: Amendment moved:

"That clause 14 be re-numbered 14 (1) and that to that clause as re-numbered the following sub-clause be added, namely:

'2. In sub-section (7) of the same section after the words 'date of attachment' the words 'or until any claim preferred or objection made under sub-section 6 (A) has been disposed of under that sub-section, whichever date is later'."

The Honourable Sir Malcolm Halley: I think it will be perfectly suitable as now framed by Mr. Rangachariar if the word 'and' is substituted for the word 'or.'

Rao Bahadur T. Rangachariar: That is what I originally thought. I quite accept that. It brings out the meaning. We may omit the words "whichever date is later." It will run thus:

"And until any claim preferred or objection made under sub-section 6 (A) has been disposed of under that sub-section."

Mr. Deputy President: Amendment moved:

"That clause 14 be re-numbered 14 (1), and that to that clause as re-numbered, the following sub-clause be added, namely:

"(2) In sub-section (7) of the same section, after the words 'date of attachment' the words 'and until any claim preferred or objection made under sub-section (6A) has been disposed of under that sub-section'."

The question is that that amendment be made.

The motion was adopted.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Although my motion* comes under amendments, what I have really proposed is not an amendment or alteration of a sentence or word in clause 14, but what I have proposed, is an explanation of certain words. So, it will be necessary for me to read the clause itself, and then point out why this explanation is necessary in this case. Sub-section (1) of section 88 runs as follows:

"The Court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person."

In sub-clause (3) of the same section we find:

"If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made:

(a) by seizure; or

(b) by the appointment of a receiver; or "

and so on. Then we find also in sub-section (4):

"If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to Government be made through the Collector of the district in which the land is situate, and in all other cases:

(c) by taking possession; or

(f) by the appointment of a receiver; "

and so on.

Now the explanation that I want to be added, is this: The words 'belonging to the proclaimed person' are capable of interpretation in such a way that they will entail hardship unless they are explained and probably the whole object will be spoiled. That is why I wish to add an explanation that when the offender is a member of a joint family, 'property belonging to the proclaimed person' means the specific interest of such a person. Sir, perhaps, in a country like England or France, or other countries where people generally live separately, this explanation will be absolutely unnecessary. In a country like England or France probably as soon as an infant grows up, and becomes a man or a major and wants to marry, he will seek a home of his own, and unless he has a home of his own, probably he will not marry, so that practically all grown up men live separate. But in the case of India, whether they be Hindus, Muhammadans, Indian Christians or Parsees, or hold other religious beliefs, generally they live in joint families. You find in a family a grand-father, grand-mother, father, son, uncle, nephew, niece, perhaps a great-grand-father and a great-grandson all living together, and if a son wants to live in a separate home, he is looked down upon as having broken the home and having separated from his parents. It is looked upon with disapproval

* To clause 14 add the following at the end:

To sub-section (7) of the said section 88, the following shall be added:

Explanation:—When the offender is a member of a joint family, property belonging to the proclaimed person means the specific interest of such person."

if a son or brother should live separate, but in other countries it will probably not be looked at in the same sense. The result is, in India, people almost invariably live in joint families. As regards the rights of different persons, it may be different. In the case of a Hindu who is governed by the Mitakshara law the right of survivorship and co-partnership come in. Hindus living under the Daybhaga law, the Indian Christians and the Muhammadans, Sikhs and others also live in joint families. They may not have ancestral property, but still they hold property jointly. If a person, who has committed an offence does not appear, somehow or other, the Court is justified in issuing a warrant and then a Proclamation and attachment side by side. Under section 87:

"If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation."

And section 88 provides:

"The Court issuing a proclamation under section 87 may at any time order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person."

The Court is not to wait even 30 days after issuing the proclamation, but may at any time order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person. Now if such a proclamation is issued, what will be the result? Really a person may have gone to any interior part of the country on business or trade. Then what happens? We know that every place is not accessible to the railway; nor have we got postal or telegraphic communication. A man may go into the interior somewhere where you cannot get a letter even in a fortnight, and if he seeks to come home from there to a railway station or a distant place, it may take a fortnight to travel from such interior place to the headquarters station. And in the meantime a proclamation will have been issued against him without his knowledge. Of course it will be to the interest of the complainant to represent that he is concealed, or if the police do not find him in the house, and do not take further steps and say, the man is concealing himself, what has the Magistrate to do? A warrant has to be issued, a proclamation has to be issued and the man's property is to be attached. I must say here, before any guilt is established, not only is the man punished but all the members of his family are punished by the attachment order because the attachment order provides that the property can be taken possession of and so on. To be more clear I shall say, for example, several persons are living jointly; they have no ancestral property, but have acquired a house. No sooner this attachment order is issued, what will be the result? The Receiver will come and take possession of the house. Suppose I am living with my brothers and their wives and children in a house. Suppose the house belongs to A, B, C, and D jointly and attachment orders are issued against the property as belonging to D, there is no wrong in taking possession of it, because it belongs to D as well and you cannot find fault with a Magistrate because he has issued an order of attachment against the same property for it belongs to him. Suppose I have a cow and my brothers and other members of the family have a share in the cow and my children and their children are living upon the milk of the cow. Now, if I have committed some offence, or if for some offence alleged against me, the police comes and takes possession of the cow, under an attachment order by a Magistrate, you cannot blame the

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Magistrate for his action saying it belongs to me. There is no safety in such procedure. If the cow is taken possession of, my brothers' children, or my own babies would be deprived of her milk. Say I have a house and am living under the Hindu Mitakshara family law. There is my wife who has got a right of residence in the house. Now are you going to punish my wife and turn her out although she has committed no offence, simply because a case has been filed against me rightly or wrongly and I have not appeared before a court not having any knowledge of such a fact? And will that law be sound and for the benefit of society and even in the interests of criminal law? I submit, Sir, this will be really a very hard and a very unwise law, if it will be a law where an innocent person can be turned out of a house because it jointly belongs to another. If for instance there is a joint partnership, business or firm and a case is filed against one of the members of the firm for some supposed crime. Suppose he has gone away somewhere on business and other members are carrying on the business. If this is really the law, you cannot blame the Magistrate for attaching the partnership property or the joint property belonging to the firm. It also belongs to the offender undoubtedly. He may have a hundredth share or a tenth share, but it belongs to him, and the property may be attached and taken possession of.

I need not multiply instances to show how this law will entail hardship on innocent members of a family because by the custom of the country they are living together. No provision has been made in this case. I submit, Sir, the House will consider the reasonableness of the explanation I have given, not only in the interests of members of joint Mitakshara families but of all members of the Hindu or Muhammadan community, or Parsees or Indian Christians, or any community that is living jointly. Other members should not be punished for the alleged offence committed by an accused person.

Now, Sir, I have explained the other difficulties. Probably the prosecution may say, if a man is concealing himself, 'Attach the property and the other members of the family will be compelled to produce him.' The object of our criminal law is never to punish innocent people. It is a very laudable object to punish the guilty and I have never said a thing whereby a guilty person should escape or not be brought to trial. What I say is that the other members should not suffer. Supposing a man in a village has committed an offence. There is the complainant to produce him, there is the police also to find him out, there are so many agencies really to find out the man. It may be the case that a complaint has been lodged against a person who has perhaps gone away on business or without his knowledge some false complaint has been filed against him and it has been made to appear to the Magistrate that the man is absconding or concealing himself. The section says:

"If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself, etc."

So that as soon as a representation is made the Court can issue an attachment. It generally happens that the police comes and says 'so and so is concealing himself' or the complainant comes and tells the Magistrate 'so and so is concealing himself, we cannot find him, issue a warrant against him and also this proclamation and attachment order.' Then, the result is that we have to punish the other members of the family

who are quite innocent, who would themselves be interested to point out the accused if he could be found.

Now, Sir, probably it may be said 'Well, there are already provisions for a claim; if any person's property is attached, the other members having any right or claim to the property can lay a claim.' My submission to this House is, that is really the most undesirable part of it. Now, Sir, the average family is not rich nor can they file a claim. You cannot simply go to the court and file it; you must come with money to file a claim. You must substantiate your claim, and by that time what has happened? Your wife, who never came out, is in the street and your children are somewhere not knowing where to get their food. If you had any granary or paddy or gram or wheat in your house, all that is attached. You have no food, no house to live in and no cloth to wear. Can you imagine any one in such circumstances coming and laying a claim very easily? He must pay his pleader, his mukhtear or his petition writer, whoever he may be, and must pay his court fees and adduce evidence. After all this paraphernalia has been gone through, he does not know what the decision of the Magistrate will be in such a case. If the whole provision was not on the Statute Book, it would be really wholesome, but, since there is a provision, and since some offenders may evade a trial, I think, when the Crown is prosecuting or when the Crown is the complainant, as the burden of proof always lies on the prosecution, this burden must also lie on the prosecution to specify the interest of the accused person. The prosecution can very easily find it out; I do not think there will be any difficulty. If a particular person lives in a family, his relations or interests are known to the complainant or to the police, whoever lodges the complaint. Under the Hindu law the complainant knows this man has got a certain share in the property. Even under any other system of law you must know that he has so much share or that other persons like his wife and mother have got a right of residence or his old grand-mother or old grand-father has got a right of residence. These things can be known very easily and it ought to lie on the prosecution to show the interest that an accused has in a property. Of course, so long as you do not proceed against property there is no trouble, but once you attach property you do not touch the accused alone, you touch all the relations, all the surroundings, all the members. For instance, a poor tenant has some fields and you come and take away the paddy heaps he has harvested. The poor tenant has toiled the whole year to get some paddy from the field and you come and take away his paddy, simply because it belongs to the landlord. This morning we had so much discussion about this attachment. I submit this House will remember these difficulties of attachment and the trouble and expenses one has to undergo over these attachments. Why put a man to all this trouble, why drag him to Court and then so charitably release his property after putting him to so much trouble.

This House will also remember that, even in the Civil Procedure Code, when you attach property, at least some things are exempted from attachment, for instance, the implements of a workman or some paddy grains or paddy seeds for the poor peasant or some other things which are absolutely necessary. I think that is not at all illiberal. Will our Criminal Procedure Code be so illiberal as not to leave anything? You will attach everything without exception. No exemption of property is made under this, you lose everything. Supposing there are two brothers who have got a pair of bullocks for ploughing the land. One brother has committed or is supposed to have committed some crime. You come and take away the pair of

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bullocks and do not spare for the other brother even one bullock with which he could otherwise have cultivated his land. It is very hard to attach the property of a proclaimed person who is responsible for all this business, because it may belong to ten persons as well as to the proclaimed person.

Then, Sir, for wrongful attachment under the Civil Procedure Code there is some remedy. But, supposing a man wrongfully applied to the Court and said 'So and so is concealing himself' and the court issues an order of attachment for all the property, there is no provision for protection against the wrongful attachment of his property under this Code. If it is done under the orders of the Magistrate, the civil court will say 'You cannot proceed, you have no remedy practically, it was an act of a Court.' It would mean an action and then you would have to make the Secretary of State for India a party. But in practice this is never done. The

3 P.M. interest is never specified. So in the case of joint families it is absolutely a hard and difficult procedure that has been laid down here. Under these circumstances I propose that this explanation should be added, so that the Magistrates, whether they be third class or second class, whether they be new men or experienced men, may not commit an error and innocent people may not be harassed. With these words I propose that this amendment should be carried.

Mr. J. Ramayya Pantulu: I think, Sir, that the amendment proposed by my friend, Mr. Misra, is quite unnecessary, because under the section what the Court attaches is the property belonging to the defaulting man. What the property of the defaulting man is, is a question to be decided in each case as it comes up. The rights of members of a joint family are not the same all over India. They are different under different laws. Mitakshara in that respect is different from Daybhaga. Whatever it is, what the property belonging to a defaulting member is, is a question of fact to be decided in each case as it comes up. I do not see what will be gained by adding an explanation to that section, and I therefore think that this amendment is quite unnecessary.

Mr. W. M. Hussanally: Sir, I endorse every word of what my friend, Mr. Pantulu, has said and I think the amendment proposed by my friend, Mr. Misra, is unworkable. It is impossible for the attaching officer to know what the specific interest of a particular person would be in a joint family estate. That is a matter of fact which must be ascertained on a regular inquiry and that inquiry will come in when a claim is put in by the other members of the joint family, to claim that property or specific share of the property as their own. In the commencement when a property belonging to a person is attached, the officer attaching has absolutely no grounds of inquiry as to what specific interest that man has in the property. Therefore I say the amendment proposed will be entirely unworkable and I think quite unnecessary.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I rise to support the amendment, but I may preface my point by stating at once that the amendment proposed suggests wholly a question of onus—that is to say, it suggests that the person attaching the property of an absconder should start with the idea that the property he is going to attach is the property of the absconding person. There is a great deal in a clear formation of this preliminary idea, and the difficulties arising from indiscriminate procedure have been pointed out by my friend, the

proposer of the amendment. In the Civil Procedure Code when an attachment is intended, an application has to be filed in which a declaration has to be made as to the property intended to be attached. The petition has to be verified and it has to be stated that to the best of the declarant's knowledge, information or belief as the case may be, the contents are true. But there is no such obligation laid upon the Magistrate who proceeds to attach the property of an absconder and therefore a certain amount of carelessness is likely to come in and does come in, at times. That is a thing which ought to be avoided, if possible. No doubt a judicial inquiry cannot be held at that stage, but if Magistrates come to know that they have got to pay some attention to the matter and make out a *prima facie* case connecting the property to be attached with the absconder before they proceed against the property of the man, it will certainly be a step forward towards the realisation of the object of the amendment. I submit, Sir, if the point be looked at in that way, there is something in the amendment. If it be accepted, Magistrates, before attaching the property of the absconder, will try and ascertain, as far as possible, whether it really belongs to the person who has committed the offence. That being so, a safeguard which is not to be found now in the Criminal Procedure Code will be introduced into it by indirect means, by the proposed amendment. Therefore, Sir, I submit that instead of putting indiscriminately all persons who may have some interest in the property wrongly attached, to the necessity of coming into court and proving his case, in order to save it from wrongful disposal, the Magistrate should be required to pay more attention to this matter of attachment, and find out in the beginning whether the property that is going to be attached is really the property of the absconder or not. Therefore, Sir, I submit that the amendment ought to meet with acceptance in the House. There is nothing harmful in the proposed amendment. It merely attempts to clear up the question of the duty of a Magistrate in this connection to a greater extent, than now. The difficulties which are likely to arise and are likely to be faced in the beginning of the proceedings are calculated to be removed, to a great extent by the House adopting the underlying principle of the amendment.

Rao Bahadur T. Rangachariar: I wish to offer some words of explanation for the consideration of the Mover of this amendment to say whether his amendment is really necessary. The explanation deals with the joint family. Now a joint family may be under the Dayabhaga law or under the Mitakshara. Take the case of the Mitakshara family. The law differs from Province to Province as regards the right of an undivided member of an undivided family. In Madras every member has got the right to alienate his interest in the property or rather his share, at the date of the alienation, in the property. In other Provinces where the Mitakshara law prevails, he has not got that right. No doubt in all Provinces the Court can seize and sell the interest of an undivided member in the family property. Therefore to speak of specific interest of an undivided member in a joint family jars on my ears, because there is no such interest in the joint family property. There is no specific property. It is not consonant with law to speak of an undivided member having a specific interest. You can talk of undivided interest—that is, his share on partition, if a partition should take place.

This section has stood so long and I do not think any difficulty has been felt in the application of it. It is not a new wording. The wording has been there all the time and the section has not given any trouble at all. The matter came up once before the Madras High Court, and there

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it was decided by my Honourable friend sitting on my left when he was on the Bench and another learned Judge. But of course you cannot seize the whole property, you can only seize the undivided interest of the absconding member. Even if a Receiver is appointed—and in that case I believe a Receiver was appointed—the Receiver can only take the interest of the undivided member, restoring the rest of the profits to the family members.

My Honourable friend, Mr. Misra, no doubt has pointed out the difficulties in the way; but of course his explanation is not likely to remove those difficulties. How does he remove those pictures that he has drawn to us of a wife and other members of the family being thrown on the streets and all that? It is still open under his explanation to attach the undivided interest of the absconder, and when you have attached you can appoint a Receiver and of course there must be some remedy and some means of getting at the offender. Therefore I do not think really it would improve matters if we add this explanation. On the other hand you are introducing a new thing; probably in provinces where the man has not got alienating power, it may be possible for them to contend that it is not property belonging to the offender at all, whereas now you make a definite statement by adding the explanation here saying that in the case of a particular joint family he may have an interest in that property. Therefore it is better to leave it as it is because the law differs from province to province and it has not created any difficulty so far and the specific interest is unknown to law, and therefore you will be introducing a thing which is unknown to law. I do not think, therefore, we will improve matters by adding this explanation.

Rai N. K. Sen Bahadur (Bhagulpur, Purnea and the Santhal Parganas Non-Muhammadan): Sir, the Honourable Mover seeks to add an explanation to the words used in section 88—'belonging to the proclaimed offender.' He wants to have an explanation added that the words 'belonging to a proclaimed offender' in the case of a joint family should mean the specific interest of such person. This explanation if adopted will complicate matters more than the difficulties already pointed out. In a joint family governed by the Mitakshara law where the law of survivorship prevails, there is no member who can say what his specific interest is in his family property; he has got an undivided share, but not a specific share; unless there is an amicable partition made between the members of the family or unless there is a partition suit instituted in a civil court and the matter is decided and the interest defined, no one can say what his specific interest is. In a case where there is an attachment under section 88 the Magistrate has to attach the property 'belonging to the offender.' In a joint undivided family that would mean the undivided interest of that offender and as has been pointed out by the Honourable Mr. Rangachariar it has been held by the Madras High Court that even an undivided share in a joint Hindu family can be attached. But if an explanation is now added, and if it is said that you must attach the specific interest of the offender, what would be the result? The result would be that the Magistrate must specify the interest of the offender before he can put up the property to sale. Will the House expect the Magistrate to go to the civil courts and have a partition suit instituted and have the interest of the offender defined before he can put up the property to sale? Certainly, Sir, this House cannot expect Magistrates to go to civil courts to have the interest of an offender defined before they can put a property to sale. Furthermore if you put in the words 'specific interest' there will

be no purchaser forthcoming, unless the specific interest has been defined; so that if you add these words as an explanation, the complications would become more complicated. Then, Sir, you will find that the result of this amendment if accepted would be that an offender will be at large with immunity and the other members of his family will have every facility to screen him and keep him from the law. I consider, therefore, that this amendment, although the object in bringing it may be good, is not one which this House can accept or ought to accept. The illustrations given by the Honourable Mover regarding the cow and a house, I am sorry, do not appeal to me in any way. The offender, if there is a cow in the family, has got some interest—an undivided share—in it. The cow has to be attached, but a portion of it cannot be attached. You cannot say to the court "well, this portion of the cow is the specific interest of the offender." You have to attach the cow and take it to court, sell it and sell the undivided share, whatever it is, in the cow and the other members of the family may have the sale proceeds. That is all that can be done. In the case of a house the undivided share of an offender can be sold, and I do not think any case has cropped up till now where the ladies of the house have been turned out of the house because the offender's share has been sold. So, Sir, I have tried my level best to find if this amendment can be accepted, but I am sorry that I have not been able to follow the argument of the Honourable Mover that this amendment will improve the situation. On the contrary, my own impression is that it will complicate matters more than what he has described. With these remarks I beg to oppose the amendment proposed by the Honourable Mover.

Mr. J. Chaudhuri: I beg to move that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is that the amendment be made.

The motion was negatived.

Clause 14, as amended, was added to the Bill.

Mr. B. N. Misra: Sir, I beg to move the following amendment:

"In clause 15 insert the following at the beginning:

"In sub-section (1) of section 103, for the word 'two' the word 'five' shall be substituted."

Sir, as regards searches it is provided that there should be two or more respectable inhabitants of the locality to attend a search; the officers generally take only a small number, say two persons and they are really the village headmen or some others who are really interested in the prosecution. Now under clause (5) of this section we have "Any person who without reasonable cause refuses or neglects to attend and witness a search under this section when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code." So strictly speaking there will be no difficulty in getting more witnesses.

In excise and other cases where smuggling of opium and other drugs are in question, generally the department comes forward with one or two informers who attest the search list when it is made. In these cases other villagers or respectable men are not called to attest the list. Strictly speaking, in any village two or more people can be found, and there will be no difficulty to get more persons to avoid suspicion. There is another difficulty, Sir. Sometimes you have got only two witnesses in the search list; sometimes they fall ill or they don't come, and when the case comes

[Mr. B. N. Misra.]

up it has to be adjourned from time to time till those witnesses turn up. (A Voice: "There is the word 'more'.") Well, if you take the word "more", accept them as five, there is no objection to that; but the difficulty is, if there are only a small number of witnesses, it is not good, because some of them may happen to be interested only in the prosecution, or sometimes they may not be present when they are called, on account of illness or any other cause, and the case will have to be adjourned many times. It is of course a simple matter, my amendment does not really deal with the substance, but it is simply a safeguard. If there are more persons it is better. That is why I have put the word 'five' in place of the word 'two'. Instead of giving the option to two, you can have more than five and there will not be any hardship. With these observations, Sir, I commend my amendment to the House.

The Honourable Sir Malcolm Hailey: I do not know, Sir, whether the House desires that I should argue this section? (Cries of "No, No.") I am probably right in assuming that they think this amendment is unnecessary.

(A Voice: "Unworkable".)

(Voices: "The question may now be put".)

Mr. Deputy President: The question is that the amendment be made. The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): Sir, the amendment that stands in my name reads thus:

"Omit clause 15 or in the alternative if the amendment to omit the whole clause fails, add the words 'if necessary' after the word 'may' in sub-clause (1)".

I would speak only on the first part of my amendment for the omission of clause 15. Clause 15 gives power to a police officer making an inquiry to compel any person to sign as a search witness. He may issue an order in writing to them or any of them so to do. After that clause you have "After sub-section (4) of the same section the following sub-section shall be added, namely: 'Any person who without reasonable cause refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code'." I may submit, Sir, that really speaking this sub-clause creates a new offence or rather brings a certain act within an offence which does not already exist. In 26, Madras, 449, it is held that refusal to sign a search is an offence under section 187 or 188, and it is now held that a police officer should be given authority to ask anybody whom he likes to sign as a witness. If that order is in writing and if the person to whom it is issued refuses to sign, then he is liable to be prosecuted under section 187.

This practically means giving an additional power to the inquiring police officer there and then to ask anybody to be a witness and then, if he refuses, to prosecute him under section 187. I submit, Sir, that in creating any new offence or say in bringing any acts within the sphere of any offence by a new Act of Legislation, a very good case should be made out in favour of this innovation. Personally, I have not known many cases where the police officers have found very great difficulty in finding such witnesses. The effect of this amendment would be that the inquiring officer will have an additional means of harassing respectable people in the villages whomsoever he would like to do. There might be certain persons who would be

expected to be defence witnesses or there might be certain persons who for certain reasons may not be able to sign the search list or they would not like to be put to the trouble of signing that search list, and when we find that there has not been any special difficulty up till now and we have done without this power for so many decades, I see no reason why this innovation should now be made.

The Honourable Sir Malcolm Hailey: As Mr. Man Singh says, this is of course a case in which we add a new penalty to the Code. I recognize that it is our duty to explain clearly to the House the circumstances in which we propose to add this provision. I can best do so by reading an extract from the recommendation of Sir George Lowndes' Committee—which dealt with this matter, and which added this clause:

"We accept the proposal of the Bill to penalise an unreasonable refusal or neglect to attend as a search witness, but would make it a condition precedent that the person in question should have been required to attend by an order in writing from the police-officer. In order to make this clear, we have, in addition to the new sub-section (5), made a small amendment at the end of sub-section (1).

We think that the power thus given to the police, practically to compel the attendance of respectable witnesses from as near as possible to the place where the search is to be effected, should go far to put an end to the objectionable practice of bringing semi-professional search witnesses from a greater distance, and will also prevent the frustration of searches by the unreasonable refusal of witnesses to attend, which, we understand, is by no means uncommon. If executive instructions are issued to the police that, with this new sub-section to back them, they are, whenever possible, to require the attendance of respectable witnesses from the immediate vicinity, we think that a considerable improvement will be effected."

The new provision therefore has two aspects. Firstly, it is designed to prevent the frustration of searches by witnesses refusing to attend. That, of course, is a provision made to assist the administration of justice. But secondly, as the recommendation I have just read out to the House clearly shows, it is also intended to prevent an actual malpractice—a malpractice of which I dare say some here have seen instances—namely, the practice of bringing in as search witnesses men who are practically professional witnesses. It was, therefore, made for the protection of the public. Now, it is true, as Bhai Man Singh says, that we have done without this provision for a number of years. He implies, however, that, because we have done without it for a number of years, we ought still to be able to dispense with it. Surely not, Sir, if malpractices actually occur, and if we can prevent them by the insertion of this provision. He is, I think, afraid mainly of the penalty section. I may point out that this section only becomes operative if any person, without reasonable cause, refuses or neglects to attend. I do not argue the case regarding the requirement that notice should issue in writing since this is really only a condition precedent to the penalty provision. For my own part I do not feel that it is in any way unreasonable that when searches have to be made, the ordinary citizen should be required to assist in such searches and to witness and sign the search list; it is not a very heavy or very onerous requirement, and it is far better that power should be given to compel the attendance of respectable witnesses than that it should be left entirely to the discretion of the police to bring in their own semi-professional witnesses.

Bhai Man Singh: May I know if any special difficulty has been felt up till now?

Mr. W. M. Hussainally: I may tell my Honourable friend that in large cities, especially Karachi, as a Magistrate I know that the police have had difficulties in finding people to go with them to witness searches very often.

Rai G. C. Nag Bahadur: (Surma Valley cum Shillong: Non-Muham-radan): I bear the same testimony from my experience also.

The Honourable Sir Malcolm Hailey: I see on looking through our files that the Local Governments have frequently pointed out the necessity for some such requirement as this, owing to the difficulty frequently experienced in obtaining search witnesses. I would further point out to the Honourable Member, in justification of the provision which we propose to insert, that it was published at an early date as part of the Bill and I think that we have received only one criticism of it, and that criticism was of a very mild nature. It merely suggested that, in issuing executive instructions, we should make it clear that witnesses should come from the immediate vicinity.

Mr. Deputy President: Amendment proposed:

"Omit clause 15."

The motion was negatived.

Bhai Man Singh: I do not propose to move the other part* of my amendment.

Mr. K. B. L. Agnihotri: Sir, I propose an amendment to clause 15. My amendment runs as follows:

"In clause 15, sub-clause (1) after the words 'to do', add the following proviso:

"Provided that no pleaders, barristers, solicitors, attorneys, or mukhtars shall be required to attend and witness the

My object in moving this amendment is that these are the persons who have to deal with courts of law and who have to deal also with the accused and the offenders in such cases and also with the property involved. These are the persons that may have to conduct the prosecution or the defence of such offenders and may have to file suits regarding the property damaged or destroyed in the search. Therefore so far as possible, these persons should be left alone. I therefore propose, Sir, that these persons should not be required to attend and witness the search as is intended under section 103. They are exempted from being jurors or assessors. I therefore submit, Sir, that my amendment be accepted by the House and clause 15 be amended accordingly.

Mr. W. M. Hussanally: May I request my Honourable friend, the Mover, to add the words 'medical men'?

The Honourable Sir Malcolm Hailey: Here again, Sir, is a matter which I am doubtful if the House desires that we should argue at length. There are many members of this honourable profession in the House and I am not at all sure that Mr. Agnihotri really voices their wishes in this matter. May I point out one consideration? I do not suppose that members of the legal profession have any stronger desire than other classes of society to avoid their obligations to the public, and to their fellow-men. They are probably as ready as any men to recognise their duties. Again, busy men as they are, they are not the only busy men in ordinary life. My friend, Mr. Hussanally, pointed out that there are doctors, and he might have added that there are engineers, there are merchants who have equal difficulty in giving up their time. It is difficult, therefore, to see why we should make an exception in favour of this one class. But I can

*"Add the words 'if necessary' after the word 'may' in sub-clause (1)."

give a substantive reason why, on the other hand, it is advisable to include them, for I can imagine no class of men are more likely to keep a critical eye on the proceedings of the police than the class to which Mr. Agnihotri refers.

Reo Bahadur T. Rangachariar: There is some misapprehension on the part of the Honourable the Home Member. The object is not to save ourselves the trouble of taking part in this sort of function, but really to enable an accused person to have the services of pleaders and barristers in case he has to defend himself. That is why they are exempt from jury, and that is why they should be exempted from this sort of work which renders them liable to be called as witnesses. If perhaps at a remote place there are only one pleader or two and they are called on to witness a search, they would disable them from defending the accused person because they will be witnesses and the accused will be prejudiced. It is a well-known rule in the Bar and in the profession that no person who is a witness in a cause can undertake the conduct of such a case. It is a well-known rule amongst us and I do not think that any respectable member of the profession will depart from it. If he is likely to be called as a witness, he should refuse the brief. It is therefore throwing a disability on the profession and that is why this amendment is sought to be made.

Colonel Sir Henry Stanyon: With all deference to those members of my profession who take a different view, I venture to oppose this amendment. I agree with the Honourable the Home Member in saying that the members of our profession ought to take their fair share in furthering the administration of justice. I do not think that if I were a witness to a search, that mere fact would, upon any ground of forensic etiquette with which I am acquainted, prevent me from acting as counsel either on behalf of the prosecution or on behalf of the defence in the case which might arise as a result of that search. Moreover I think that the proposed amendment is largely unnecessary. We should look at the practical effect of the proposed exemption. We have a great deal of protection in the natural aversion of a police or other searching officer to ask any barrister or pleader or other member of the legal fraternity to take part in his investigation or search proceedings. It is true, as has been remarked, that members of the legal profession are exempt from service on juries. It seems curious and inconsistent that they are not exempt from service as judges; and perhaps there may be arguments against their exemption from juries. But analogies are not safe, and on this simple matter of exemption of the profession from witnessing searches, I say that the danger to the profession is so remote and so small that we need not encumber the Code with this amendment.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): I support the amendment on monetary grounds. I think every member of the Bar who practises on the criminal side has to fear this a great deal and he must support this amendment. Supposing a police officer thinks that such and such a man is my client and reposes great confidence in me, he may be tempted just to take me as a search witness. And if I happen to be a search witness my position will be very critical because I will not be able to accept a brief on behalf of my client and at the same time be a witness against him. On this point I think it is advisable that this amendment should be accepted and a proper latitude and a free hand should be given to the legal practitioners who should not be hampered in the discharge of their proper duties.

Mr. J. Ohaudhuri: I would oppose this amendment. In the interests of the general public it is important to select reliable witnesses and it is very difficult to get the proper sort of persons to attend a search party. Apart from the narrow view that my professional friends take, I think it will be in the interests of the public that they should get some respectable people to accompany them in the search and if they are lawyers, it is all the better and therefore I oppose this amendment.

Dr. Nand Lal: I support this motion for amendment which speaks for itself. I do not only look to the monetary interests of the lawyer class but also to the practical phase of the question. Supposing a Barrister or a Pleader or a Vakil or a Mukhtar is brought on the list of those persons who may be called upon as witnesses to see the search and the time fixed for searching the house is, say, 10 o'clock and he has got two cases in which he defends the accused in Court, he cannot perform two public duties. The latter is not less responsible than the former. The police ask him to come as a witness. He ought to perform that duty but on the other hand he has got his professional duty to defend an accused. For the defence of the case of his client he, as you know, is responsible. He cannot perform two duties at one and same time. He must ignore one to do the other. Therefore, it will not serve any useful purpose to bring members of the Bar on the list of witnesses who may be called upon to examine or witness the search, and, consequently, an exemption may be extended to them. And we have got a very faithful analogy in support of it, which is this, that lawyers are not enlisted as assessors or jurymen and the underlying principle is,—that in the first place they are very busy, and in the second place, their profession is of great usefulness to the public at large. Therefore, it is quite proper that exemption may be given to them and I am in favour of this amendment which has so ably been moved.

Mr. T. V. Seshagiri Ayyar: Sir, I do not wish to give a silent vote upon this matter. It is not a question of pure selfishness on the part of the legal profession, which has prompted Mr. Agnihotri to move this amendment. The position is this. If a lawyer is asked to be present at a search and thereby to become a witness to the search, in the subsequent stages when the case itself is being heard, (if he is a witness), he would not be allowed, as decided by the Allahabad High Court, to appear as a pleader. It is not only handicapping him at the outset, but it will make it impossible for him later on to do any work for the client who knows him and wants him. After all, the search would not suffer by excluding this class of persons. It has been considered as a good principle of law, that persons who are connected with its practice should be exempted from serving on the jury. And what is the necessity for making a change now and asking lawyer to witness the search? Any number of people could be got to witness the search. To make a lawyer witness the search and subsequently debar him from being of service is putting a double penalty upon him, which I do not think this House should countenance. I therefore think that Government and this House should accept the amendment which has been moved.

Mr. W. M. Hussanally: I rise, Sir, to oppose this amendment, chiefly on the grounds mentioned a few minutes ago that if lawyers are to be exempted, there is much more reason why medical men should be exempted, also because they are very frequently concerned with cases in which the life and death of their patients are concerned. Suppose, Sir, a medical man is on his way to visit his patient, and that it is a very urgent

call, and on the way he is waylaid by a police officer and compelled to attend a search, what is the poor man to do? Is he to visit his patient or is he to obey the commandments of the law and accompany the police officer? If lawyers are to be exempted, I see no reason to compel medical men to attend these searches, and if medical men are to be exempted, why not Engineers? Then, practically it comes to this that all professional men are to be exempted from attending such searches. The difficulty pointed out is not very great. As regards the contention that lawyers will not be able to defend their clients, if they are witnesses to the search, as a rule there are a number of lawyers in almost every station, so that if one gentleman has been by chance waylaid by a policeman to attend a search, there are a number of other gentlemen available to be engaged in defending the client.

Mr. J. Chaudhuri: I move that the question be now put

The motion was adopted.

Mr. Deputy President: Amendment moved:

"In clause 15, sub-clause (1) after the words 'to do', add the following words:

'Provided that no pleaders, barristers, solicitors, attorneys, or mukhtars shall be required to attend and witness the search'."

The question is that that amendment be made.

The motion was negatived.

Clause 15 was added to the Bill.

Rao Bahadur T. Rangachariar: We now come to the chapter dealing with the power of Magistrates to demand security for keeping the peace. The first of those sections is 106. Section 106 enables a Magistrate to impose a double penalty. He convicts the person and sentences him to the punishment he deserves, and in certain cases he is also authorised to demand security from that person by ordering him to execute a bond for a sum proportionate to his means, with or without surety, for keeping the peace for such period, not exceeding three years, as he thinks fit to fix. So that is an additional punishment imposed on an accused person who is convicted. Naturally therefore the law restricted it to certain cases where the public peace was likely to be involved by the crime committed by the accused person, so the language of section 106, as it stood was:

"Whenever any person accused of rioting, assault or other offence involving a breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation, is convicted of such offence—"

then the Magistrate may impose this additional punishment. Now the object of the amendment proposed by Government to this clause is to enlarge the scope of the offence for which such an order can be made. In the first place, I do not think any case has been made out for making any amendment of this section 106. I have been looking at the literature furnished by the Government in respect to this matter. All I find is that in the report of the Lowndes Committee there is a small paragraph, on page 4, on the notes on clauses—I do not know if Honourable

[Rao Bahadur T. Rangachariar.]

Members have got their copies with them—clause 18 (1) was the proposed clause apparently; I have not seen what that clause was. They say:

“We do not like this amendment. We would, however, redraft section 106 (1) as shown in the amended Bill. We think that it is better to enlarge the scope of this section by including all offences under Chapter VIII of the Penal Code, than to involve the Court in an inquiry whether the offence of which the accused has been convicted, though not involving a breach of the peace, was nevertheless likely to have occasioned a breach.”

That is the reason which they give for including the whole of Chapter VIII. The amendment now made by the Joint Committee to this Bill as it was originally put in is to exclude only, as Honourable Members will find, section 153A from out of that Chapter, because the amendment, as it now runs, reads:

“Whenever any person accused of any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under section 153A thereof, or of other offence involving a breach of the peace, or of abetting the same.”

So that they retain the words ‘or other offences involving a breach of the peace’. Now I do not see how by the proposed section they are in any way making it easier for Magistrates to come to a conclusion. Section 106, as it stands, specifies certain offences, namely, rioting and assault, assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation or other offences involving a breach of the peace. So that specified offences are named there as instances of offences involving a breach of the peace. Now the whole of Chapter VIII of the Indian Penal Code is supposed to include offences involving a breach of the peace. If you will look at Chapter VIII it includes all sorts of offences and I do not see why the whole of the Chapter is included except section 153-A, which is a well-known section dealing with the creation of differences between different communities. I will briefly run through the various sections coming under Chapter VIII of the Penal Code. First of all we have being a member of an unlawful assembly. Unless, therefore, the events connected with the transaction were such that the particular unlawful assembly were guilty of acts, although they did not actually commit acts of rioting which would indicate that it was likely to involve a question of a breach of the peace, then it was left to the discretion of the Magistrate to impose this penalty. Now, ‘whenever a person accused of an offence under section 143 is convicted.’ It leaves it open to the Magistrate to impose this additional penalty, whether really the public peace is threatened or not. After all, this is a preventive section and not a punitive section. That has to be remembered. It is preventive, that is to say, the Court has to be satisfied that the person convicted is also a person likely to commit hereafter a breach of the peace. In order to prevent that breach of the peace, security is demanded, it is not an additional punishment which is in contemplation. The whole object is to prevent a breach of the peace, it must be necessary for the Court to be satisfied that a breach of the peace is probable. Therefore, it would have to depend upon the facts of each case, upon the circumstances of each case whether really such preventive action should be taken. In the case of rioting, of course, it is obvious; that is why the Code has taken care to specify it. In the case of assault it is obvious. There has been a breach of the peace, and, therefore, if he is a man likely

to continue such acts, then, of course, it will be necessary to impose this penalty.

Again if a man is convicted of assembling armed men, then obviously his object is to commit a breach of the peace; or if he is convicted of criminal intimidation, where, of course, by force he extorts property and other things—in such cases the Code has left it at that. In Madras I have not found that there have been any cases of difficulty felt by Courts in applying section 106. There have been hardly any cases where the Courts found any difficulty in construing this section and I do not find there in the commentaries (which are voluminous) any very serious cases which involved the Courts in any considerable difficulties. Let us remember also that by no amount of legislation can we avoid difficulties in Courts. You may have the most ably drawn Code. I do not think there can be any better Code than the Indian Penal Code, and even there you find frequently difficulties arising in the Courts. Courts exist for such difficulties. Courts exist to construe the real intention of the Acts; and therefore I do not think it is necessary to consider that as a valid ground. I will use the argument adopted by the Government benches yesterday, that where a Code has worked well without much difficulty you should not tamper with the Code. A case has still to be made out. No reason is given in Lowndes Committee's Report. They think it is advisable. • Why should they think so? Have they condescended to give reasons why all the sections under Chapter VII should be included?

I propose just to draw the attention of Honourable Members to Chapter VIII. 'Joining an unlawful assembly'; 'Joining and continuing in an unlawful assembly.' As we all know, even women and children get caught in an unlawful assembly and it is very difficult for them to extricate themselves. Without warning an assembly is ordered to disperse, and they still continue to be members of an unlawful assembly. Is it contemplated that in such cases the Court should be empowered to impose this additional burden? Of course where they may be armed with deadly weapons and all those things, and again, knowingly join or continue in an unlawful assembly of that sort the case will be different. I do not know why, on the reasoning adopted by them here, this Joint Committee excluded 153-A from the scope of the Bill. When you promote enmity between classes, that is the surest method of bringing about a breach of the peace and yet that is excluded. I do not know why. (Mr. N. M. Samarth: "As a sop to Cerberus.") They give no reason.

Section 154 deals with an owner or occupier of land not giving information of a riot on his land. Such a person may be convicted. I don't see why he should be called upon to give security and be punished also for not giving information. Why should he be called upon to give security as if a riot is going to take place periodically unless it is shown that it is a place where frequent risings occur? It may be a temple dispute or a land dispute between rival parties. Why should you assume that he is not going to give information? After all the punishment is for not giving information of a riot. Once he is convicted, why should he be called upon to give security for keeping the peace? He is not a rioter. He is owner of the land on which the riot took place. Once he is convicted he is sure to take the lesson to heart and next time a riot takes place on his land he is sure to give information. But how has he committed an offence for which you can demand security? I think, Sir, the whole thing is merely due to the fact that the Lowndes Committee said so and it must be so.

[Rao Bahadur T. Rangachariar.]

This measure has come before us without proper examination of the various sections. I do not think it is necessary to tinker with the Code as it is. It has not led to any practical difficulty. The Courts have administered it without causing any irritation to the public, nor has the public peace suffered by not enlarging the scope of this section.

Therefore, Sir, I would leave well alone, even if it is unwell, to adopt the language of my Honourable friend from the United Provinces whom I welcome to this Assembly as one who contributes weighty and valuable additions to our debates—even if it is unwell, as we cannot improve it, let us leave it at that. I therefore propose to omit clause 16 (1) which proposes to amend the present section.

The Honourable Sir Malcolm Halley: Mr. Rangachariar began by arguing that this was an attempt to take greater powers on the part of Government. But from his subsequent remarks it is clear that he laid no great stress on that statement. He realised (what is indeed a fact) that this provision of the Bill was intended merely to clear up doubts. I have read through all the papers on the subject; there never was a suggestion that we required to take greater powers in this respect. The contrary is really the case; for it is clear that under the existing Code the Court might pass an order against a man who had been convicted under 156A, whereas the new clause omits this section. Mr. Rangachariar himself thinks that it should be able to pass such an order. By this Bill we exclude . . .

Rao Bahadur T. Rangachariar: It is anomalous that it should be omitted and other comparatively innocent offences should be included.

The Honourable Sir Malcolm Halley: Well, as to that, I will give the House the precise reason why the Lowndes Committee excluded 153A. They received a forcible representation on the subject from the Madras Vakils' Association. Whether Mr. Rangachariar is still a member of that association or not I am not aware; whether he joined in that representation or not I am equally unaware. . . .

Rao Bahadur T. Rangachariar: It must have been done in my absence.

The Honourable Sir Malcolm Halley: I must have the fact as it stands. But to return; the reason why this clause was introduced in its present form was simply to clear up doubts. The first authority which complained that the Act was not sufficiently precise was one entitled to consideration even from the Madras Vakils' Association; it was the Calcutta High Court. In 1911 the High Court suggested that the wording of the section was too narrow. When the matter was subsequently commented on by the various judicial authorities consulted, many pointed out that the wording left the Courts doubtful; a man might be convicted of an offence—but I will give the exact words of one critic:

"Whereas the section provides that an order cannot be passed against a convicted person unless he is convicted of an offence of which breach of the peace is a necessary ingredient it often happens that the scope of the offence discloses a likelihood of breach of the peace even though accused is guilty of an offence of which breach of the peace is not a necessary ingredient."

The first proposal placed before the Lowndes Committee was therefore to redraft simply in order to do away with that doubt, a doubt which forces the Courts continually to inquire whether the particular offence did or did not involve a breach of the peace or

was likely to cause a breach of the peace. They objected however to the form of words proposed and thought it simpler to draft in the sense of the present clause, under which any offence punishable under Chapter VIII of the Indian Penal Code other than an offence under section 153A could be made the subject of an order by the Magistrate. That is the simple explanation why we have got this particular form of draft. That there was actually a difficulty arising from the drafting of the existing Code is, I think, clear. Mr. Rangachariar said that he was unaware of any ruling which showed that the matter had been in doubt by the Courts. Well, I have here a reference to what seems to me a very large number of rulings on that particular point. It seems to me that the commentaries show that there has been very great doubt on the subject, and that it has involved a good deal of trouble to the Courts. I quite agree with Mr. Rangachariar, and it is a proposition which I welcome from him, that where a section of procedure has stood for many years and has involved the Courts in no difficulty, it is better to let it stand; but that is not the case here; it is clear from the commentaries that this section has actually involved the Courts in a good deal of difficulty.

Now I come to the substance. I am prepared to admit with Mr. Rangachariar that in taking the whole of Chapter VIII—and its scope is somewhat extended—we may have gone somewhat beyond the strict requirements of the case, though the difference is more nominal than real. It is perhaps unnecessary that we should include such a section as 154: I agree with Mr. Rangachariar as to the absence of necessity for including such a section. A remark of the same nature might equally be made perhaps against 151. We are quite willing, as far as we are concerned, and provided that we can get the clause into a form in which there will be no difficulty involved on the part of the Courts in the matter of interpretation, to exclude such sections as seem to be entirely unnecessary. I think that if that were done, Mr. Rangachariar's point of substance would be met, while at the same time the work of the Courts would be facilitated, and facilitating the work of the Courts of course makes things easier to the public. I should be quite prepared to indicate when we come to discuss the subsequent amendments exactly what are the sections which we think it unnecessary to include, but I would put it to the House that it is advisable that we should have something definite on the lines of the drafting now proposed instead of leaving the Courts to determine on each occasion whether an offence on which a conviction had been secured did or did not involve a breach of the peace.

Rao Bahadur C. S. Subrahmanayam: Sir, in regard to this clause. I must say that I cannot agree with my Honourable friend, Mr. Rangachariar. These words in Chapter VIII have been put in order to prevent the Courts from embarking upon an enquiry as to the character of the offence. That is one object. Another object is that power is vested in Courts of first class Magistrates and higher magisterial Courts, and that power would be exercised only after considering the evidence that is placed before the Courts. If a Court comes to the conclusion that there is in the character of the people whom it had convicted a tendency to repeat the offence, this power will be utilised; it is not in every case where men are convicted that these powers would be utilised. Therefore it is the Courts trying the case which will decide the matter. Now in regard to conviction also, there is the safeguard of scrutiny by a higher Court. Well, that is so far as the merits of this case is concerned. Now we cannot admit that offences coming under this Chapter are offences which ought not to be put down in

[**Rao Bahadur C. S. Subrahmanayam.**]
 the interests of society—I shall not use the words ‘law and order’ which are frequently used. When there are powerful landholders or powerful people behind, such offences are committed; they are not offences committed by peaceful inhabitants, and therefore a provision like this is necessary. You cannot say that the provision is unnecessary nor can we sneer at a provision like this. But with regard to the recommendation which is contained in the Lowndes Committee Report, I, as a member of the Joint Committee, will always look with great deference to a recommendation made by that Committee. That Committee consisted of the most eminent lawyers, men of great ability, and I should deprecate, with all respect to Mr. Rangachariar, speaking lightly of that Committee, because at that time and probably even now you cannot find a set of men who have obtained such great eminence in law as that Committee.

Rao Bahadur T. Rangachariar: I do not deny that.

Rao Bahadur C. S. Subrahmanayam: Therefore, it is hardly fair to say because the Lowndes’ Committee said so and they have not condescended to give reasons their decision should not be respected. Well, I think the amendment has tended to simplify the task of the Courts which do require a certain amount of definite guidance and the power is not used by irresponsible persons, it is used by the superior Courts. Therefore, I think this clause ought to be retained and I am sorry I must oppose my friend, Mr. Rangachariar’s amendment. 153A was omitted for the strong expression of opinion coming from the colleagues of my Presidency: “Section 106 as now revised may in times of political excitement be used so as to bring into disgrace prominent leaders on the one side or the other whom the Magistrate may not like. The section as it stands at present is sufficient for the purpose of preventing the commission in future of similar offences by convicted persons.” It is with regard to that emphatic expression of opinion that 153A was excluded. This is the opinion of the Madras Vakils’ Association, of which my friend, Mr. Rangachariar, is an ornament. Therefore, I think we would do well to leave the clause as it is.

Mr. N. M. Samarth: Sir, I also oppose Mr. Rangachariar’s amendment. I do not think by leaving the section in the fluid state in which it is at present we improve matters. There has been, so far as the nature of offences for conviction of which security may be required is concerned, a good deal of discussion and division of opinion and the amended provision in the Bill, such as it is, at any rate, makes it definite that offences must fall under Chapter VIII of the Indian Penal Code; but the other clauses of that section remain and those clauses will limit again the application of certain of the sections of Chapter VIII of the Indian Penal Code to which I would draw attention.

The section proceeds to say:

“And such Court is of opinion that it is necessary to require such person to execute a bond”, for what?, “for keeping the peace.”

Further, ‘such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties’—again for what?—‘for keeping the peace during such period’. The application in practice or judicial decisions in reference to this clause of this section will, therefore, be that it must be an offence which will involve the necessity for the offender to keep the peace and not

other offences falling under Chapter VIII of the Penal Code, which do not relate to keeping the peace. If the clause remained, the natural interpretation in a court of law would be, or at any rate it is quite open to an accomplished lawyer like Mr. Rangachariar to argue before a Court and argue successfully, that the restriction therein laid down must govern the application of the section to a restricted class of offences under Chapter VIII of the Indian Penal Code.

Rao Bahadur T. Rangachariar: There are two independent conditions—one is conviction for special class of offence, and the other is proof of necessity for making the order.

Mr. N. M. Samarth: But what does the law require? Keeping the peace. That is the essence of the matter, and none of the offences which do not involve the necessity of keeping the peace would come under the purview of that section. Therefore, it is important to my mind that the section should stand as it is in the Bill and I am opposed to Mr. Rangachariar's amendment and am in favour of the proposed amendment of the section as contained in the Bill before us.

Mr. J. Chaudhuri: Sir, I also cannot support Mr. Rangachariar's amendment. It will, I think, be to the prejudice of the general public if section 153A is left out of this section. We considered that in the Select Committee and we deliberately arrived at the conclusion that section 153A should be excluded from the scope of section 106. What does my friend gain by leaving the section as it is? He does not gain anything at all. I invite his attention to the words of the present section, "other offences involving a breach of the peace". That expression is comprehensive enough to include all the offences mentioned in Chapter VIII of the Indian Penal Code and much more. As regards section 143, i.e., being members of an unlawful assembly, an assembly does not become unlawful unless they have a common object of committing an unlawful act. This implies that the object of the assembly is more or less to break the peace. But the mischief of including section 153-A—will be much greater. That will be the result of Mr. Rangachariar's amendment.

Rao Bahadur T. Rangachariar: No, no. I did not say that at all. My friend is entirely under a mistake. I did not say section 153A should be included. I say leave out all the sections and leave it to the court as it was.

Mr. J. Chaudhuri: I would rather specifically leave out 153A because 153A falls within a different category. What is known as the law of sedition in English law is embodied in the Penal Code under the two sections 124A and 153A. Promoting enmity between classes, in English law, is well-known to form part of the law of sedition. So I would not leave any ambiguity with regard to these sections. We have always advocated the liberty of the press and of public meetings. A man may deliver a speech or write an article and it may be interpreted as rousing racial feeling and such racial feeling as likely to cause breach of the peace. We ought not to empower the Magistrate to act under section 106, Criminal Procedure Code, in such cases. That is why we have advisedly exempted offences under sections 153A and 124A of the Indian Penal Code from the scope of section 106, and I do not think that if we accept Mr. Rangachariar's amendment it will be any improvement or that we shall be safeguarding public interests in any way. That is why as a Member of the Joint Committee and as a Member of this House I oppose the amendment.

(Several Honourable Members: 'Let the question be now put'.)

Mr. Deputy President: The question is that the question be now put.
The motion was adopted.

Mr. Deputy President: Amendment proposed is:

"Omit clause 16 (i)."

The question is that that amendment be made.

The motion was negatived.

Mr. Deputy President: I think it will be convenient if the House considers the next two amendments and the first portion of the third amendment together.

Mr. J. Ramayya Pantulu: I do not want to press my amendment No. 82.

Mr. Deputy President: It will be convenient if the House takes Bhai Man Singh's amendment No. 33 and the first remaining portion of Mr. Agnihotri's amendment No. 34. I therefore propose to call upon the proposer of amendment No. 33 and Mr. Agnihotri and then to consider one by one sections of the Indian Penal Code which are dealt with in the two amendments.

Bhai Man Singh: The second portion of my amendment is as follows:

"For the words and figures 'other than an offence punishable under section 153 A' substitute the words and figures 'other than the offences punishable under sections 143, 144, 145, 150, 151, 153, 153A, 154, 155, 157, 158, 159 and 160'."

Of course, I would request you, Sir, to take those sections separately, because as a matter of fact

Mr. Deputy President: I have already informed the House that I propose to do so.

Bhai Man Singh: I would simply speak about section 143. This is a section that is included in my amendment as well as my Honourable friend Mr. Agnihotri's amendment. The offence under this section consists simply in being a member of an unlawful assembly. I should submit that it is quite a different thing to be a member of an unlawful assembly at a certain time and to be guilty of rioting. Really speaking, section 106, Criminal Procedure Code, is meant to bind down persons who are of a temperament that is very dangerous to the public peace. A person may be merely a member of an unlawful assembly and simply for being such a member, section 106 provides that extra punishment for him. There is no reason why that extra punishment should be inflicted on such a person simply because he is a member of an unlawful assembly. I may also submit that the Madras High Court and the Punjab High Court have under the existing law held that being a member of an unlawful assembly does not come within the purview of section 106 of the Criminal Procedure Code. Section 106, as it at present stands, as my Honourable friend, Mr. Chaudhuri, has just pointed out, contains the general words 'offences involving a breach of the peace'. Both these High Courts have held that being merely a member of an unlawful assembly is an offence involving a criminal breach of the peace. There is no reason why we should expand the sphere of section 106 and include this section therein.

Mr. K. B. L. Agnihotri: I take it that we ought to proceed section by section. I would therefore speak later on the other sections in my amendment and will for the present confine my remarks to section 143. My reasons for moving for the substitution of these sections are exactly those as were suggested by the Madras High Court Vakils Association on whose weighty authority even the Home Member and the other Members of the House declined to delete clause 16 (1) as proposed by my friend, Mr. Rangachariar. Sir, as was pointed out by Mr. Rangachariar there may be assemblies which may at some time or other be declared to be unlawful assemblies and there may be people who may happen to be in those assemblies quite innocently but because of the assemblies having been declared unlawful assemblies they are likely to be convicted under the law, in which case they are liable also to be bound over under section 106. The House, I hope, has it in its experience and knowledge that during the year 1921 there were many cases when assemblies were declared unlawful that would otherwise have been lawful so much so that even at the capital place of a province the Congress Committee meeting was declared an unlawful meeting and some persons attending that meeting were convicted. If section 106 is made applicable to the case of such people, even respectable and educated people would be liable to be bound over and therefore I submit that a section which does not involve the use of force or collection of armed people for using violence should be omitted from the purview of section 106. With these words I support the amendment that section 143 should be deleted from the operation of section 106 and be included in the exceptions.

Mr. Deputy President: The question is that section 143 of the Indian Penal Code be included among the exceptions.

Mr. T. V. Seshagiri Ayyar: I wish to make a general observation in regard to the procedure that should be adopted in eliminating certain sections. The principle which ought to be kept in mind is one which would enable Courts to construe this section on the theory of *ejusdem generis*. You have for example in this section the words 'or other offence involving a breach of the peace.' The rule that ought to be observed by the Legislature is that the offences which go before must also belong to the same category. That is the principle of what is known as construction by *ejusdem generis*. You must have the same class of cases to proceed as is mentioned in the general clause coming after. The question therefore which this House will have to decide in excluding or including certain sections, is whether those sections involve an offence relating to the breach of the peace. If that is not the intention of the Legislature, then I think the wording of the section should be completely altered. Now, as regards section 143, I do not see why it should be included. It simply is a punishment section. In section 143, you will find nothing relating to any offence. You will find two or three sections of that nature. I do not think there will be any difficulty so far as section 143 being tacked on to section 153A. But, as I said, the principle which I want the Government benches to keep in mind—and I want the Honourable the Law Member to advise the Government in the matter—is the principle of *ejusdem generis*. You cannot have any offence which does not involve a breach of the peace included in this category of sections; and so far as section 143 is concerned, I do not think the House will feel any difficulty.

The Honourable Sir Malcolm Halley: Punishment for what? Do you wish to include the definition section or the offence section?

Mr. T. V. Seahagiri Ayyar: Certainly not. Punishment does not create an offence. You do not create an offence under that section.

Mr. Deputy President: The question is that section 143 of the Indian Penal Code be included among the exceptions.

The motion was adopted.

Mr. Deputy President: The question now for discussion is that section 144 of the Indian Penal Code be included among the exceptions.

Bhai Man Singh: I do not want to press for that.

Mr. Deputy President: The question for discussion now is that section 145 of the Indian Penal Code be included among the exceptions.

Bhai Man Singh: So far as section 145 is concerned, the case is just the same as of section 143, except that the assembly is ordered to disperse and it does not break up but continues. It is also practically the same thing as section 151, which provides against continuing to be a member of such assembly when it is commanded to disperse. I think, Sir, that exactly the same arguments apply in favour of section 145 as in favour of section 143, except that in the one case they have been commanded to disperse and in the other case they have not been so commanded. I submit that the mere fact that a command of dispersal has been given does not make a man guilty of having committed riot or breach of the peace. I see no reason why he should be bound over under section 106. If a member of a certain committee which is declared to be an unlawful assembly for certain political or other reasons is not to be bound over under section 143, there is no reason why he should be bound over for continuing to be a member of that assembly.

The Honourable Sir Malcolm Hailey: Sir, I think we have to look to the whole intention of this part of the Code. The intention here is to place an instrument in the hands of Magistrates which will be, in its truest sense, preventive. Now there is a great difference between a person who merely joins an unlawful assembly, (for he may frequently be in doubt up to the last minute whether that assembly is unlawful or not) and a person to whom the following description applies:

"Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, . . ."

He can be under no kind of doubt as to his action. Mr. Rangachariar said that it was ridiculous to make women and children who continued in such assemblies liable to an order under section 106. But, it is first of all necessary that they should be charged and convicted under this section 151, and it is exceedingly unlikely that they will be so charged. And you will never arrive at satisfactory legislation if, in considering your law, you emphasize only extreme cases that might be brought under a section, oblivious to the fact that you must provide for ordinary cases, and good cases, for which provision is required. There are undoubtedly cases for which we must provide under a section of this nature; I can conceive, and I am sure the Members of this House would be able to conceive, of highly dangerous assemblies, highly criminal and violent in their nature, which have been commanded to disperse, and members of which are rightly convicted because they have refused to disperse. There are such cases, and

it is only reasonable that in the cause of law and order and the public generally, persons so convicted should subsequently be held to security.

Rao Bahadur T. Rangachariar: I can recognise that such a man mentioned by the Honourable Member ought to be punished. The question is whether the offence is one which is likely to be repeated by the individual. Unlawful assemblies, as is well known, take place in the excitement of the moment. There is some temporary exciting cause and unknowingly some people join, and several other people join the assembly because they have got a temporary grievance. Unlawful assemblies are not recurring diseases; they always have got a provocation behind them. That provocation may be great or small, but often you will not get unlawful assemblies in this country without some provocation behind them. You are postulating here that such men should be bound over to keep the peace. They may be persons who have got some temporary grievance, perhaps a revenue grievance or something which excites them at the moment and therefore they join the assembly. You do not expect them to go on joining unlawful assemblies. Have you ever come across such cases? It is really confusing the issue by saying it is a dangerous offence. It is a dangerous offence, and therefore you punish the man, but the question is, is it an offence likely to be repeated by the individual, and is it necessary to impose this further penalty? That is why the Legislature would generally drop this. Now you want to include it. What is the reason given? That it is a dangerous offence. But is it a reason why you should go on demanding security for three years as in the case of a habitual offender? I therefore think, Sir, no reason is made out why 145 should be included.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, I am afraid my Honourable friend, Mr. Rangachariar, in the observations which he has offered upon this particular matter, has ignored a very material portion of the original section 106 of the Criminal Procedure Code. In order to bring any case of a conviction under any one of those sections mentioned in the Act, two things are necessary, not one thing only to which he has over and over again referred in the course of his observations. It is not merely conviction under the sections named that will justify an order under section 106. The Code goes on to say something further and it is to this second requisite that I wish to invite the attention of the House in particular. The first paragraph of this sub-section (1) merely describes the particular sections of the Penal Code, a conviction under which may make a man liable to the order specified in this section. But the second paragraph goes on to say 'and such Court (i.e., the Court convicting that man) is of opinion that it is necessary to require such person to execute a bond for keeping the peace' that the order under section 106 will be passed. That is to say, the mere fact that a man has been convicted under any one of these sections will not necessarily make him liable to furnish security under section 106. It is only when the Court is further satisfied, by reason of the peculiar circumstances of the given case before it, that it is essential in the interests of the maintenance of public tranquillity that such order should be passed that the Court will pass the order. In other words, the Court will not pass an order under section 106 in every case in which it chooses to convict a person. It is really the second essential mentioned in this section 106 that lies at the root, at the basis of the order requiring a man to furnish security.

Mr. T. V. Seshagiri Ayyar: Then why differentiate? Put in the whole Penal Code.

The Honourable Dr. Mian Sir Muhammad Shafi: Let me illustrate my meaning. My Honourable friend has laid emphasis on the case of an ordinary conviction for being a member of unlawful assembly, or offences of a similar kind. Now, supposing a man has been convicted for being a member of an unlawful assembly. Six months after that he is again convicted for being a member of an unlawful assembly. Six months or a year after that he is again convicted of a similar offence. Now, the mere fact that he has been convicted of what my Honourable and learned friend supposes to be a very ordinary offence may or may not justify the passing of an order under this section. But, when a man has repeatedly been twice or thrice convicted of this simple offence, will not the Court then be satisfied that, in the interests of public tranquillity such a man is obviously a habitual offender, a man who is given to committing this so-called simple offence, and will then call upon him to furnish security. The section requires in express terms that the Court should be of opinion that it is *necessary* to require such person to execute a bond for keeping the peace. I, for one, have not the slightest hesitation in saying that, ordinarily, the courts of law will not consider it necessary to pass an order under this section unless by reason of the particular circumstances of the case before them they are satisfied of that necessity. Therefore, I submit that it is really beside the point to say that an offence described under a certain section is a simple one and ought not therefore to be included.

Rao Bahadur T. Rangachariar: May I draw the attention of the Honourable the Law Member to section 110 (e) which deals with a person who habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace. That section provides for that class of cases.

The Honourable Dr. Mian Sir Muhammad Shafi: I merely gave an instance; that is all.

Rao Bahadur C. S. Subrahmanayam: With regard to this amendment of section 145, I think my Honourable friend, Mr. Rangachariar, has got in his mind the use of the section in regard to political assemblies—that is, assemblies which are called by that name. But if he excludes those political assemblies, if he looks to the use of the section in cases not involving any political matters, probably he will think that the section is all right.

Now take the case of religious processions. There is a dispute in regard to certain religious processions, and a certain set of people are convicted of being members of an unlawful assembly on one occasion. It is well known that on a subsequent occasion the leaders or some of the men concerned in the first offence will repeat the same kind of offence. Now in such cases is it not well that such a section should be put into the Code.

Again take the case of the rights over immoveable property. On one occasion the obstructors may be charged for being members of an unlawful assembly. The trying Courts know full well that the offence will be repeated. It may be that these people who have violated the law sincerely feel that they have a right which has been disturbed. Whatever their feelings or convictions may be, the fact remains that if the Court is

convinced that these people will repeat the offence, is it not better in the interests of those people themselves that they should be told that action under this section will be taken in order to prevent them from doing it. The ordinary class of cases which this section will cover are not political matters but matters in which there is party feeling in regard to private or communal rights; and therefore the use of the section, which can only be made by superior Courts—that is, first class Magistrates and other superior Courts—is not I think likely to lead to any cases of misuse. Therefore I say that if my Honourable friends will just for a moment forget such cases of the use of this section with regard to political assemblies and look to the application of it with regard to the ordinary affairs of the country, then I think there can be no doubt in their minds as to the need for this provision.

One word I would like to say here with regard to the use of this section against political assemblies. Every power, every authority which has got the upper hand uses its power to suppress contrary opinions of a political character—not only in this country but in other countries. You may attenuate this section as much as you like; they will find other sections for their purpose. You cannot prevent that by mutilating the general law of the country. You can prevent it by the exercise of such powers as you have in this Council and elsewhere; and therefore on that ground I should be sorry to see this section attenuated. After all, an unlawful assembly is a more serious thing than an offence committed by an individual. It involves a number of innocent men. Offences which comes under this section oftentimes involve innocent men. When innocent men are involved by the action of these obstinate lawbreakers, you cannot, in order to protect these innocent men, let the really guilty men, the prime movers in a disturbance, go scot-free. One of the consequences of this is that less guilty men, by joining or helping in the formation of such disturbance, also get into trouble. You cannot prevent this and I do not think they deserve to be protected from getting into the clutches of the criminal law. Therefore I strongly appeal to the House to consider the matter dispassionately, taking into consideration the general state of affairs of the country and not merely political matters.

(An Honourable Member: "I move that the question be now put.")

The motion was adopted.

The question that section 145 of the Indian Penal Code be included among the exceptions was negatived.

Mr. Deputy President: The question is that section 149 of the Indian Penal Code be included among the exceptions.

Mr. K. B. L. Agnihotri: Sir, section 149 of the Indian Penal Code refers to persons in an unlawful assembly of which one member or some members are guilty of violence. It reads:

"If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence is a member of the same assembly is guilty of that offence."

Sir, there is much force in what my friend, Mr. Subrahmanayam, has put before the House that if we keep aside the political side or political

[Mr. K. B. L. Agnihotri.]

assemblies from our consideration then the provisions for binding over persons convicted of being members of an unlawful assembly is often necessary and should be allowed to remain. But we have omitted section 158A on the same basis. It is in times of panic and excitement that such sections are found to be very harsh in their operation. It thus becomes necessary that we should exclude such sections from 106 and there is no possibility of any hampering of justice or cheating justice in any way or doing away with the principles of law and order if we delete these sections that I have enumerated in my amendment. Because if a man is found to be dangerous he is convicted; if he is found guilty of any of these offences he is convicted and he is convicted for a period which the Magistrate may think will be quite enough to give a cold douche to his rashness or indiscretion. Further, after his return from jail, if the Magistrate finds that this man has not improved he can certainly bind him over under section 107, and there is no necessity why section 106 be made to apply to the case of such persons. If after binding him over under section 107 it appears that the man is incorrigible he can certainly be proceeded against under section 110. So there are ample provisions to meet the justice of the case and law and order will not be disturbed in any way if we were to include such sections as 149 and 150 in the exceptions under this Act. With these words, Sir, I commend to the House my proposal that section 149 be deleted and included among the exceptions to the section.

The Honourable Sir Malcolm Hailey: Sir, I do not think it is necessary 5 P.M. to argue this section.

Mr. Deputy President: The question is that section 149 of the Indian Penal Code be included among the exceptions.

The motion was adopted.

Bhai Man Singh: Sir, I want section 150 to be included in the exception, but I do not press it.

The Honourable Sir Malcolm Hailey: If the Honourable Member presses this, we shall have a long discussion.

Bhai Man Singh: I do not press it myself.

Mr. K. B. L. Agnihotri: I do not press it myself.

Bhai Man Singh: Sir, 151 practically goes with 145.

Mr. K. B. L. Agnihotri: I do press for it, Sir, because section 151 says:

"Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace after such assembly has been lawfully commanded to disperse shall be punished, etc."

and there is no reason why section 151 should not be excluded, because it is exactly the same as the section that deals with the membership of an unlawful assembly. If an assembly has been declared to be unlawful by certain legal technologies some people who happen to be members of that assembly may continue in that assembly and will be punished. It will thus happen that innocent persons may be involved. How is it possible that such a man will repeat that offence if once convicted. Therefore I submit that 151 may be included in the exceptions.

The Honourable Sir Malcolm Hailey: When you put the motion to the House, Sir, Bhai Man Singh gracefully withdrew his amendment, while my friend Mr. Agnihotri in spite of cries of 'withdraw' from various parts of the House still maintains his claim.

Rao Bahadur T. Rangachariar: You are also willing to concede.

The Honourable Sir Malcolm Hailey: We argued the case of 145 at some length, and the House agreed that 145 ought to be maintained.

Rao Bahadur T. Rangachariar: We did wrong then.

The Honourable Sir Malcolm Hailey: If I consider that the House does wrong I do not permit myself to say so. But with regard to section 151 (which is very strongly analogous to section 145,) the House will see that it is necessary, in order to fall within the scope of the section, that a person should knowingly join or continue to join in an assembly likely to cause a disturbance and should stay on after such assembly has been commanded to disperse. There is therefore a double requirement which must be complied with before he becomes amenable. It is only reasonable, therefore, to conclude that a person who does take such action is a person who is likely to repeat it. We are indebted to Mr. Subrahmanayam for the recognition that we must not in connection with this section think purely of political offenders. We have seen many cases of assemblies which had no connection with politics, and which led to very violent results, rioting, arson and murder. They are common enough in districts addicted to violence; they are well known to Magistrates in charge of such districts, and the case of those concerned in them has to be considered by those who legislate for the maintenance of order and justice. I do not believe that anybody who really had at heart the general peace of our districts at large would care to deprive magistrates of preventive powers in such cases as these, and I shall appeal to the House to deal with this on exactly the same lines as 151; it would be entirely consistent to do so.

Bhai Man Singh: Sir, by way of personal explanation I might say that I am strongly in favour of bringing in 151 in the exceptions. Why I did not press my point was that, since my amendment regarding 145 was defeated, I thought that there was no use in pressing this now.

The Honourable Sir Malcolm Hailey: You are quite right. There is none.

Mr. Deputy President: The amendment moved is that section 151 be included among the exceptions.

The question is that that amendment be made.

The motion was negatived.

Bhai Man Singh: Section 153 refers to giving provocation with intent to cause a riot. A man might say or do something in a heated moment and a riot may be caused. He may be quite careless at a certain time—it is not so great an offence that anybody should be liable to be bound down. I do not wish to say anything more at this late hour.

The Honourable Sir Malcolm Hailey: Neither do I, Sir, as the Honourable Member has deplored.

Mr. Deputy President: The amendment moved is that section 153 be included among the exceptions.

The motion was negatived.

Bhai Man Singh: I move that section 154 should be included among the exceptions. I think the case for the inclusion of section 154 among the exceptions is perhaps the strongest. The offence consists of an owner or occupier of land not giving information of riots. One really fails to understand why a man who fails to give information, if he is convicted, as he can be under section 154, should be considered such an offender that he should be liable to be bound down for so many years to keep the peace or to be of good behaviour. I think it would be terrible for any body who does not come out to give information of a certain riot that has taken place. I own land at Ambala, supposing a riot takes place and I don't go out to give information, one really fails to see where the dangerous character in me is if I do not go out to give information, that I the poor fellow should not only be convicted under section 154 but should also be bound down for three years.

The Honourable Sir Malcolm Halley: Sir, I have not interrupted the Honourable Member while arguing his case because I saw the argument gave him considerable pleasure. But he knew already from what I said before that we did not intend to dispute the inclusion of section 154 among the exceptions.

The motion was adopted.

Bhai Man Singh: Sir, I move that section 155 should be included among the exceptions. My arguments for 155, if not more weighty, are no less weighty than for section 154—which refers to the case of “a person for whose benefit or on whose behalf a riot takes place and who does not use all lawful means to prevent it.” It is quite a different thing to judge a man's character while doing a certain act, or while abetting it, but it would simply be a very dangerous doctrine to extend these things and to call a man dangerous who does not use all lawful means to prevent it. All lawful means would mean a good deal. Supposing there is a very good man: there is a certain dispute about his land or something of the sort and certain people begin to fight. He says “don't fight for God's sake.” He is not such a strong man that he should be able to go and actually stop them from fighting or to be able to go and take some other steps to stop the affray or the riot. I do not understand why he should be taken to be such a dangerous man that he should also be bound over for three years over and above being convicted under section 155.

The Honourable Sir Malcolm Halley: The kind of case that is contemplated by this section is something as follows. There is a dispute about a land, and the landowner knows that a certain section of his retainers or it may be his tenants are likely to attack and cause a riot—a well known case of this kind caused a serious disturbance some time ago—and he does not take lawful means to prevent their doing so. Taking lawful means for preventing their doing so may frequently be merely the issue of an order that none of his servants should use violence. But he stands to gain by the result of the riot. He benefits by the act of his servants and he does not take lawful means to prevent it. Therefore, he does not discharge his obligations to the State or to the Society. (An Honourable Member: “If he is convicted?”) If convicted, it is proved that he has so failed, and should be held to security. That is the class

of offences contemplated by this section; the House will see its effect more fully by reading the section itself than by merely referring to the schedule.

Mr. Deputy President: Amendment moved is:

"That section 155 of the Indian Penal Code be included among the exceptions."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—27.

Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Baipai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Kamat, Mr. B. S.

Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Siroar, Mr. N. C.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—32.

Abdulla, Mr. S. M.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Bagde, Mr. K. G.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridooji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.

Holme, Mr. H. E.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Sen, Mr. N. K.
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Stanyon, Col. Sir Henry.
Subramanayam, Mr. C. S.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. Deputy President: The question is that section 157 of the Indian Penal Code be included among the exceptions.

Bhai Man Singh: I do not press this, nor those relating to sections 158 and 159 of the same Code.

Mr. Deputy President: The question is that section 160 of the Indian Penal Code be included among the exceptions.

Bhai Man Singh: I would like to read out the definition of affray to my Honourable friends here.

Section 160 says:

"Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to one hundred rupees or with both."

[Bhai Man Singh.]

Again section 159 says:

"When two or more persons by fighting in a public place disturb the public peace they are said to commit an affray."

This is such an ordinary thing, that every man at some time or other commits this offence and I do not see why such a serious aspect should be given to it and why should we take it as such a serious thing. It means that everybody in the world should be impotent and should have absolutely no spirit in him. My friend Dr. Nand Lal has pointed out that whereas the sentence is for one month the man can be bound over for three years. I think, Sir, you will see the strange position of law if you include this section within the purview of section 106.

The Honourable Sir Malcolm Hailey: If the remark regarding the universal tendency to indulge in assault had been made in Ireland, instead of in a peaceful Assembly like this, I could have understood it better. I should be sorry to think with Bhai Man Singh that everybody is liable to commit an affray at times. To turn to the law. Let me point out to him that section 106, as it now stands, contains these words "assault or other offence involving a breach of the peace." Now, it seems to me that if we retain in the preventive sections the words "assault or other offence involving a breach of the peace" we are equally entitled to retain in those sections the offence of affray. It is exactly the kind of person who, as Bhai Man Singh says, is liable to repeat assaults or affrays that we desire should be bound over to keep the peace.

Mr. Deputy President: The question is:

"That section 166 of the Indian Penal Code be included among the exceptions."

The motion was negatived.

Mr. Deputy President: The question is:

"That in clause 16 (1) for the words and figures 'section 153 A' the following be substituted:

'Sections 143, 149, 153 A or 154.'

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 18th January, 1928.

LEGISLATIVE ASSEMBLY.

Thursday, 18th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Mr. Deputy President then took the Chair.

QUESTIONS AND ANSWERS.

REPORT BY, RAI RALLA RAM BAHADUR ON RAILWAY EMBANKMENTS AND FLOODS IN BENGAL.

185. ***Mr. J. Chaudhuri:** (a) Have the Government of India made any enquiries as to what extent the railway embankments were responsible for the disaster, caused by the Northern Bengal Flood in the Naogaon Sub-Division and the eastern portion of Bogra district on the 26th of September last? If so, have the Government of India received any report with regard to such enquiries? When will the Government be in a position to place the report on the table and publish it for general information?

(b) Was Rai Ralla Ram Bahadur deputed to make the enquiry? If so, when and on what terms? Was he not the officer responsible for the construction of the broad gauge line between Sara and Santahar and above?

(c) In deputing him to enquire, did the Railway Board take into consideration the fact that he was to pronounce judgment on his own work? Why did not the Board associate with him an independent expert railway engineer and an expert irrigation engineer to hold the enquiry and submit a joint report?

Mr. C. D. M. Hindley: (a) Enquiries have been made and a report received. It is hoped to publish it shortly.

(b) Rai Bahadur Ralla Ram was deputed to make the enquiry early in November 1922. The terms have not yet been finally settled.

Rai Bahadur Ralla Ram was Engineer-in-Chief of the Eastern Bengal Railway from 1913 to 1919 during which period work was in progress on the broad gauge line Sara to Santahar and above. This line was built alongside the meter gauge line which was built more than 40 years ago.

(c) All relevant facts were taken into consideration in deputing Rai Bahadur Ralla Ram to make the enquiry.

An independent expert Railway Engineer in the person of the Senior Government Inspector of Railways (Circle No. 2) and the Irrigation Officers of the Bengal Government were associated with him in holding the enquiry, but a joint report was not considered desirable.

BREACHES CAUSED BY FLOODS.

186. ***Mr. J. Chaudhuri**: Will the Government be pleased to state the length of the breaches in the permanent way on either side of the Adamdighi Station of the Santahar-Bogra line and at what cost the temporary diversions were made for restoring traffic along the line?

Mr. C. D. M. Hindley: The length of the breaches was 600 feet on the east and 1,320 feet on the west of Adamdighi Station.

Information regarding the cost of restoring traffic on the line referred to is not yet available.

Mr. J. Chaudhuri: Will the Honourable Member furnish the information when it is received,—will he ask for information as to the cost of making a temporary diversion on either side of the breaches?

Mr. C. D. M. Hindley: Do I understand that the Honourable Member wishes to know the cost of making temporary diversions to carry the traffic?

Mr. J. Chaudhuri: Yes, owing to the breaches. My point is that it is better to provide waterways than to incur expenditure for repairing breaches. Will the Honourable Member obtain the information?

Mr. C. D. M. Hindley: I can obtain the information later.

FLOOD WATER CHANNELS ON SARA-SIRAJGUNGE RAILWAY.

187. ***Mr. J. Chaudhuri**: (a) Are the Government aware that two very important monsoon flood-water-channels have been dammed since the construction of the Sara-Sirajgunge Railway between Dilpashar and Lahiri Mohanpur Stations and that the railway agents have been repeatedly petitioned by the agricultural population of the neighbourhood for the opening out of sufficient waterways and thus save their crops from being annually submerged?

(b) Will the Government enquire if the late President of the Railway Board remember that this fact was mentioned by me to him in 1921 as also that an adequate opening for free passage of flood water was urgently required at the 153rd mile of the Sara-Sirajgunge Railway and he promised to enquire of the agents of that Railway and take steps for providing such water passage and will the Government be pleased to state what steps had been taken by the Railway Board and the Agents, in that connection?

Mr. C. D. M. Hindley: (a) Complaints and petitions regarding the insufficiency of waterways in the locality referred to have been brought to the notice of Government.

(b) Government have ascertained that the matter is as stated by the Honourable Member. The matter was brought to the notice of the Railway Administration and estimates called for. The original proposals are now being revised having regard to the floods of September 1922.

Mr. K. Ahmed: Who is responsible for these disastrous floods?

Mr. C. D. M. Hindley: In reply to that question, I can only ask the Honourable Member to await the report of Rai Bahadur Ralla Ram which will be published shortly.

• WATERWAYS AND EMBANKMENTS ON SARA-SERAJGUNJ RAILWAY.

188. ***Mr. J. Chaudhuri:** Has Rai Ralla Ram Bahadur now recommended that opening should be provided where the Bamanjan river had been completely blocked by the high and massive railway embankment at the 153rd mile of the Sara-Serajgunj Railway and another important water passage blocked at the 154th mile?

Mr. C. D. M. Hindley: Rai Bahadur Ralla Ram has recommended one opening between mile 153 and mile 154.

BRIDGE OVER DILPASHAR RIVER, BENGAL.

189. ***Mr. J. Chaudhuri:** (a) Are the Government aware that the bridge over the Dilpashar river not being of sufficient height and width, the river develops such a strong current at the bridge during the monsoon that boats can not pass along it without grave danger and that it will appear from the local police report that many boats have been known to capsize there resulting in losses of life and cargo?

(b) Do the Government propose to make an enquiry with regard to this from the District Magistrate of Pabna and the Sub-Divisional Magistrate of Sirajgunge and take steps for remedying the defective construction of the bridge?

Mr. C. D. M. Hindley: (a) The attention of Government has been drawn to the alleged loss of boats and lives at the Dilpashar bridge which is mentioned in a pamphlet by the Honourable Member on the Bengal floods.

(b) The necessity for the inquiry suggested does not arise as a scheme for substituting larger spans at this bridge has already been approved.

APPOINTMENTS TO I. M. S.

190. ***Mr. J. Chaudhuri:** (a) Will the Government be pleased to state whether the Secretary of State for India has consulted the Government of India with regard to the 30 appointments that he proposes to make in the Indian Medical Service? Have these appointments been made in England and, if so, on what principle have the selections been made?

(b) How many Indians were temporarily appointed by the Government of India to the Indian Medical Service, during the War and how many of them have been provided with permanent appointments and how many of them are still serving in the temporary capacity and how many have been demobilized?

(c) Have the claims of those who are still serving in the temporary ranks of the Indian Medical Service for being appointed permanently to at least half of the 30 appointments, been represented to the Secretary of State by the Government of India and if so, with what result?

(d) What is the total strength of the permanent staff of the Indian Medical Service at present and how many of these are Europeans and how many Indians?

Mr. E. Burdon: (a) and (c) The attention of the Honourable Member is invited to the reply given to question No. 81, recently asked by Rai Bahadur Bakshi Sohan Lal.

(b) The total number of Indians granted temporary commissions in the Indian Medical Service during the war was 1,004; of this number, 97 have been granted permanent commissions. The number still serving in a temporary capacity is 154, while the number of officers demobilised plus casualties is 753.

(d) The present strength of the Indian Medical Service is 700; of this number, 554 are Europeans and 155 Indians.

REVERSE COUNCIL BILLS.

191. ***Mr. J. Chaudhuri:** Have the Government of India made up the account of the losses that were incurred over the sale of the Reverse Council Bills? If so, will they be pleased to state the amount?

The Honourable Sir Basil Blackett: It has been calculated that the loss on the sale of Reverse Councils in 1920, *i.e.*, the difference between the number of rupees received in India and the cost at which the funds for meeting the Reverse Councils were remitted to England, amounts to between 28 and 29 crores of rupees. A Memorandum on Exchange gains and losses during the five years 1917-18 to 1921-22, inclusive is about to be published in response to a request which was made in the other House last year.

Mr. T. V. Seshagiri Ayyar: As regards the sales of Council Bills now being advertised, do the Government expect to profit out of these, or are they likely to have the same result as in 1920?

The Honourable Sir Basil Blackett: The question of profit and loss in exchange is rather a difficult one to answer questions about, when you have a rate for accounting purposes which is 2 shillings and a rate of something like 1s. 4d. obtaining in the market. There is obviously a theoretical loss as compared with the 2s. rate; on the other hand, at the present moment exchange is being sold at something over 1s. 4d. and there is obviously a gain as compared with 1s. 4d.

Mr. T. V. Seshagiri Ayyar: Why are Government advertising for the sale of Reverse Councils?

The Honourable Sir Basil Blackett: These are not Reverse Councils. They are Council Bills, and, as was publicly stated at the time, the sole purpose of the sale of Council Bills at the present moment is to put the Secretary of State in funds for the purpose of meeting Indian expenditure at Home, and it does not imply a decision for or against any particular policy.

Mr. Jamnadas Dwarkadas: What will be the effect of the sale of Council Bills on imports and exports?

The Honourable Sir Basil Blackett: That is certainly a question of opinion, but obviously what the sale of Councils at the present moment is doing is to pay for a certain number of exports.

Mr. J. Chaudhuri: Is it not the proper thing when exchange shows an upward tendency? It does not prejudice Indian finances?

The Honourable Sir Basil Blackett: I do not think that question really arises, but perhaps I may be allowed to express the opinion that it is

better, if you have to remit, to take advantage of the moment when exchange is there than to be forced to remit at a moment when exchange is not there.

INDIA'S WAR DUES.

192. ***Mr. J. Chaudhuri:** (a) What was India's total war dues from England at the close of the financial year 1919-1920 in rupees at the then current rate of exchange and how and where have the same been paid and how much has been credited to Indian revenue in all in equivalent of rupees? (b) What losses, if any, has India suffered owing to fall of exchange in respect of such war transactions?

The Honourable Sir Basil Blackett: (a) and (b) The amount due by the War Office to the Government of India (including expenditure incurred in England by the India Office on behalf of the War Office) at the end of 1919-20 was £715,316. This amount was repaid by the War Office in April, 1920. The outstanding amount was for March, 1920, when the rate of exchange was 2s. 9d. the rupee and at the time of payment the rate was 2s. 8d.

The claims against the War Office were converted at the rate of exchange current for the month or period in which the expenditure was incurred by the Government of India and there was therefore no loss on exchange on the transactions.

EXPENDITURE ON N.-W. FRONTIER EXPEDITIONS.

193. ***Mr. J. Chaudhuri:** Will the Government be pleased to state the total expenditure incurred in connection with Waziristan and other North-West Frontier expeditions from 1920 to the end of 1922?

Mr. E. Burdon: The total military expenditure incurred in connexion with the North-West Frontier and the occupation of Waziristan, including the Wana Column, during the years in question, was as follows:

	North-West Frontier expeditions.	Occupation of Waziristan and Wana column.
	Rs.	Rs.
1920-21	6,81,80,544	14,40,10,490
1921-22	8,76,544	6,92,79,139

The figures under North-West Frontier expeditions for 1920-21 represent arrears charges on account of the Afghan War and those for 1921-22 readjustments on account of the Afghan War.

Mr. K. Ahmed: Is it worth while spending such a huge amount of money considering that there is not much prospect of getting back the amount spent?

Mr. Deputy President: That is a matter of opinion.

Mr. J. Chaudhuri: Are these figures with which my Honourable friend has furnished me inclusive of the expenditure up to the end of December, 1922?

Mr. E. Burdon: No, those figures are not available yet.

OPERATIONS ON N. W. FRONTIER.

194. ***Mr. J. Chaudhuri:** (a) How many officers and men are now employed in active service in the North-West Frontier? (b) What is the strength of the aircraft and airmen in active service there? (c) Have the air operations resulted in any saving in military expenditure there? If so, to what extent?

Mr. E. Burdon: (a) and (b) It would not be in the public interest to furnish the information desired by the Honourable Member.

(c) In so far as the matter can be judged by present experience, it cannot be said that the air operations have yet effected a saving in military expenditure.

UNSTARRED QUESTION AND ANSWER.

NON-CO-OPERATION MOVEMENTS.

87. **Lala Girdharilal Agarwala:** (a) Are the Government aware that non-co-operation against the present system of government is being preached and practised extensively in India by a certain section of the people?

(b) If so, are the Government aware of the causes of the non-co-operation movement?

(c) Have any steps been taken or are they proposed to be taken to remove the causes which lead to the non-co-operation movement?

The Honourable Sir Malcolm Hailey: (a) I am aware that it is preached; I am not aware that it is extensively practised.

(b) and (c) The Honourable Member is referred to the White paper published in England and reproduced in the columns of the Press in India on 18th May, 1922. I cannot, within the limits of an answer to a question, enter upon an exposition of causes and policy.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadian Urban): Sir, may I ask if anything can be done to improve the temperature of this room?

Mr. N. M. Samartha (Bombay : Nominated Non-Official): May I ask in what direction?

The Honourable Sir Malcolm Hailey (Home Member): Does the Honourable Member refer to the moral or physical temperature?

Mr. Deputy President: I take it that it is the Honourable Member's intention to draw the attention of the Department concerned to the temperature that prevails at present and to warm it up. (*Rao Bahadur T. Rangachariar:* Yes.) Well, I have received complaints from several Members with regard to this matter and I am sure the Department concerned will do the needful to meet the wishes of the Members.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: We will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadian): Sir, I move that:

"At the end of sub-clause (i) of clause 16 the following be added:

'for the words 'three years' the words 'one year' shall be substituted'."

Section 106 comes under the Chapter for the prevention of offences. Under that section, if a Magistrate is of opinion that it is necessary to require some person to execute a bond for keeping the peace, the Court may call upon such person to execute a bond to be of good behaviour for a period not exceeding three years. So far as I have been able to find out, Sir, before the amending Act of 1898 the period specified under this section was only one year and it was changed to three years in the amended Code. In section 107, which is also a preventive provision the period fixed for a bond to prevent a breach of the peace is only one year. Similarly in section 108, also a preventive section, the period is fixed at one year. It is only under section 106 that somehow or other the period has been fixed at three years. Under sections 107 and 108 when a breach of the peace is apprehended a man can be bound over for one year. But under this section after a man is convicted of a breach of the peace, he is, in addition to that, asked to execute a bond. Under this section he has therefore to suffer two penalties instead of one, as is provided in sections 107 and 108. Moreover the punishment for the offences specified under section 106, may even extend up to seven years. Under these circumstances I submit that a period of three years in section 106 is rather excessive. It should ordinarily be fixed at one year, and if at the expiry of that period the man has not improved, then action may be taken against him under section 107 or 108. It is not necessary that at the very moment of conviction for an offence a man should be made to suffer the additional penalty of being bound over for three years. I therefore commend to the House that the period of three years provided under section 106 is excessive and unnecessary, and in its place a period of one year be prescribed.

The Honourable Sir Malcolm Halley (Home Member): The Honourable Member is I think inaccurate in his history of the case. If I understood him correctly, he said that, until the revision of 1898, the period had only been one year. I find, however, that in 1861 the period was one year if the order was passed by a Magistrate and three years if the order had been passed by a Court of Session. Subsequent Codes, for instance the Code of 1882, give three years when passed by a Magistrate. The provision, therefore, has stood for a considerable period of time.

Now, I do not wish to lay too much stress on the mere length of time during which this provision has stood in our Code. I think it can be defended on its merits. The Honourable Member says that, since under section 107 one year is sufficient, the period of three years under this section is, to use his own words, "rather excessive." I note that on this occasion he is milder in his condemnation of the preventive sections of our laws than he has sometimes shown himself, and he is obviously not fully convinced of the injustice of providing this period of security. But what

[Sir Malcolm Hailey.]

are the facts? Under section 106 a man must already have been convicted of an offence and it must be an offence, as we saw yesterday, of a nature which argues in itself that he is likely to repeat an action which will lead to a breach of the peace or other disorder. Now, there may be parts of the country where people generally are of so peaceable a disposition that violent breaches of the peace, at all events on a concerted scale, are not common. But those who know Northern India will bear me out when I say that there are areas where vendettas live long with its baleful history of crime, there are places where a village quarrel once begun involves not only long litigation but a long history of violence. Is it unreasonable, therefore, that, when people have been convicted of rioting or one of the graver offences which we left yesterday in the section, that the Magistrate should say "There is every reason to believe that these people will continue in their career of violence. It is no use my binding them to keep the peace for twelve months. There will be no really preventive or deterrent effect unless I am able to bind them over to keep the peace for three years." That is not an unreasonable requirement in itself. But there is another side to the question. When the Magistrate has a case of this kind before him he is himself able to temper punitive justice. He can give a shorter period of imprisonment if he knows that by a due use of this salutary section he will secure a longer period of keeping the peace; and this constitutes the substantive reason why it is necessary and advisable to provide for so long a period as three years. I do not remember that we have received suggestions elsewhere for curtailing this period. As I have said, it has stood long. I would put this consideration to the House that, if the public generally, if legal associations generally, if the High Courts, in commenting on the provisions of our amending Code, have found nothing seriously at fault with a provision of this nature, it is inadvisable here and now to upset it on what seems to me at all events *a priori* considerations and on—and I do not wish to use too harsh a word—the somewhat vague considerations put forward by the Honourable Member.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I am afraid I must join issue with the Honourable the Home Member with reference to the last portion of his remarks. We are here, Sir, as representatives of the people and we cannot delegate our functions to other persons however highly placed they may be. We are here to see that legislation is properly enacted. The mere fact that other persons have not noticed the hardship of a particular legislative provision is no ground for us to refuse to consider that question on its merits. Sir, let us consider this question on its merits. I am really surprised that the Government should take this attitude on a matter like this. Here we have yesterday included offences which ought not to have been included under this section. The Honourable the Home Member told us to-day that we have taken care only to include offences which involve a likelihood of a repetition of a breach of the peace. I doubt whether we have done so at all. If two women quarrel in a bazar, that is a common affray. If we, for instance, go to a railway station and have hot words with the railway or the ticket clerk, that is an affray. It is a public place. And, for instance, if some of us lose our temper here and exchange hot words, as may not be unlikely, that is also an affray. For all these things you can give one month's simple imprisonment or even let off with a fine of Rs. 5. But the section says you may be called upon to give security for a period not exceeding three years.

The Honourable Sir Malcolm Hailey: Will the Honourable Member kindly read the definition of "affray."

Rao Bahadur T. Rangachariar: I will gladly be corrected if I am wrong, but I do not think I have overdrawn or underdrawn the picture.

The Honourable Sir Malcolm Hailey: But read it.

Rao Bahadur T. Rangachariar: Anyway, in simple offences for which a man may merely get a fine you still give the power to a Magistrate to bind him over for keeping the peace for three years. Look at the hardship of it; look at the difficulties of getting sureties. After all you have to get sureties to stand for you and they have to be watching your movements for three years. It will be a considerable hardship on people to produce those sureties. What is the necessity for giving such long periods, as if the man will not improve within the year. It is merely keeping a sort of machinery in *terrorem* over his head. Look at the moral effect it has upon the man. You do not give him a *locus poenitentiae* and you keep him as a suspected citizen and make him more and more troublesome to the country. I do not think it is at all right that this sword should be kept hanging over a man's head for such a long period. One year is a reasonably long period and I do not see that there should be any objection to reducing it. I do not understand what is the logic of it. As we all know this period commences after he comes out of prison. First of all he is sentenced to imprisonment for the offence and there he is safe away, it may be for one year, for two years or for three years, as the case may be. Having been in jail, he comes out and then security is to commence from that date for two years or three years after the date of his release from jail. You do not give him a chance to improve; on the other hand, you make a worse citizen of him than he would ordinarily be.

Therefore, considering it from all points of view, I submit that the amendment moved is a modest one and I commend it to the House.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, the Honourable Member declined the invitation of the Honourable the Leader of the House to read the definition of an affray.

Rao Bahadur T. Rangachariar: I have not got it with me, otherwise I would have done so.

Mr. H. Tonkinson: So I propose to do so now. Section 159 of the Indian Penal Code reads as follows:

"When two or more persons by fighting in a public place, disturb the public peace, they are said to 'commit an affray'."

I would only invite the attention of the House to the fact that section 106 has always included assault. It has also always included offences involving a breach of the peace. Sir, if two or more persons disturb the public peace by fighting in a public place, surely that is an offence involving a breach of the peace. The section in question has always been included within the purview of section 106 and could not have been excluded having regard to the words which follow in section 106 as it will be when amended by the Bill.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): What do you mean by "disturbing the public peace" when two people quarrel in the street.

Mr. H. Tonkinson: Those are the words, Sir, in the Code.

Mr. T. V. Seshagiri Ayyar: True, but you can disturb the public peace by words.

The Honourable Sir Malcolm Hailey: You certainly cannot commit an affray.

Mt. H. Tonkinson: "By fighting in a public place" are the words in the section.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I think there is some misapprehension with regard to the scope of this clause to which exception is taken by the Honourable Mover of the amendment and those who sustain it. The arguments that they have advanced in support of the amendment appear to me to proceed upon this basis, that in every case a man is to be bound down for three years. It is nothing of the kind. That period is merely a maximum giving power to a Magistrate in an extreme case to pass the maximum sentence. The actual term which is to be fixed for each particular case must necessarily be left to the discretion of the tribunal called upon to make the order. A celebrated lawyer of England once said that the wisest rule that the brain of man can devise can be reduced to an absurdity by putting up an extreme case. I readily admit that if upon a first conviction for a simple affray in the street or at a railway station a Magistrate were to convict the parties, fine them Rs. 10 each and then bind them down for three years, the order would be an absurdity. But I will take the very illustration which my extremely able friend, Mr. Rangachariar (if I may so speak of him) took, that of an affray caused by the action of a railway official at a railway station. Now I take it that my friend has come from time to time to Delhi. Let us suppose that on the platform there is a ticket-collector, an Irishman, with an uncontrollable temper. We will take it that his rudeness leads to an affray which comes before a Court and for which he is punished during one session of this Assembly. At the next session he repeats his rudeness to my friend again, and again brings about an affray. On this occasion the Magistrate says "It is not enough to fine you. You are evidently a man who has not got much control over himself and therefore I will bind you down to keep the peace for a year." Notwithstanding that, at the next session the whole thing is repeated once more. Surely, in a case like that, though it is only an affray, the whole of the public will call upon the Magistrate to tie down that man for three years so that the public may have peace for that time at least. That is a case of a simple affray where the wise discretion of the magisterial power would be able to meet the case to the satisfaction of all people. This is only an enabling term to meet all possible cases. It is in one case of affray probably out of a hundred in which any Magistrate would resort to these powers at all; and it is certainly not more than one case out of five hundred in which he would be impelled by his sense of justice to fix anything like the maximum period. Therefore I say that we are not condemning all offenders to a three-year bondage. We are merely giving a Magistrate a maximum power which would be rightly exercised by him in a case which was extreme. Therefore unless it can be shown that granting this power to the Magistrate has been the cause of abuse or undue persecution or injustice in the past, we ought not in this work of amendment to interfere with an old standing rule.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the amendment has been based on a number of grounds—as for instance, that the preventive section 107 of the Criminal Procedure Code only fixes one year, that in the case of a man who has already been convicted, section 106 will be applied simply to prevent him from committing the same offence again, and that in the present Criminal Procedure Code we have only this session introduced also Chapter VIII of the Indian Penal Code, therefore the period of three years seems to be very excessive. To my mind, none of these grounds has categorically been refuted. Now the grounds which have been advanced in opposition to this amendment are that the law relating to three years has stood the test of many years, that it is simply a period which will hardly be used in practice in respect of petty cases, and that it is a maximum period which in all cases probably will not be resorted to. These are the grounds which have, as already submitted, been advanced in opposition to this amendment. Now we have got to examine these grounds. After having compared them I feel constrained to arrive at this conclusion, that the contentions, raised on behalf of the Government, have no force.

Now, great emphasis has been laid on the interpretation of sections 159 and 160, Indian Penal Code. When I read the provisions of section 159 the words which I think have got greater applicability are the words “disturb the public peace.” But when we come to the provisions of section 107, Criminal Procedure Code, the words are “likely to commit a breach of the public peace.” Now the Honourable the Home Member will readily accede to my contention that there is a great difference between these two forms of wordings “To commit a breach of the public peace” and “to disturb the public peace.” These two different expressions have got quite different meanings. I think he will agree with me when I raise this point that to disturb the public peace is of a very mild character, and if he concedes that, then he will, I believe, concede so far as the mitigation of the period also goes. Now, Sir, at the time of framing any rule or making any rule of law, three things ought to be taken into consideration very seriously; one the propriety of that rule of law; and the propriety of that rule of law is to be judged with reference to the circumstances or with reference to the data which formulates the grounds and reasons for framing that law. Now, in the present Code, as I have already submitted, section 160 of Indian Penal Code has also been incorporated; and what is the punishment? The punishment, you will be glad to see, is one month or fine. Now a man is punished to undergo one month's imprisonment or sentenced to pay a fine of Rs. 5; but when he gets released from jail then he may be bound over for three years. Is there any propriety in this? The fine is five or ten rupees, or the imprisonment is for one month; but after his release from jail he may be bound over for three years. (*Cries of “Why?”*) It is quite true the words are “may be”; of course I cannot ignore the words “may be.” But the first class Magistrate can pass that order; there is no law that prevents him from passing that order. He has got the competency to do that. If he is competent to pass that order, there will be no clog in his way to do so. I do not mean to say that the Magistrate shall; he may; therefore, there is yet no propriety, and I think the Government Benches will be well advised if they will accept this amendment. The second point which I wish to urge is, that in most cases severity of sentence produces a great amount of sympathy for the man who has been punished. So if this provision, relating to the period of three years, is incorporated in the present Criminal Procedure Code it is sure to invite criticism in

[Dr. Nand Lal.]

some quarters and there will be great sympathy with the man who has been bound over for three years and that sympathy will go against the proposed provision of this section, under discussion, namely, 106, Criminal Procedure Code. Therefore on that score also I appeal to the Government Benches that they will very kindly accede to this contention which has been raised by the Honourable Mover of the amendment, that the period may be reduced to one year.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, I am afraid I cannot agree with the proposal that the period of three years be reduced to one year. As a Magistrate of some experience, more especially in the outlying parts of Sind and the Upper Sind frontier district, where there are almost perpetual feuds between some sections of the community which begin with very small beginnings but go on for a number of years, sometimes even up to 20 years, I have found that revenge has been taken not only by the sons of the people originally involved, but even by their grandsons; and disputes lead to very serious results in the course of time, even to murders and bloodshed. In such cases it is necessary that such breaches of the peace should be nipped in the bud by binding down people for a much longer period than one year if the peace of the country is to be maintained. At the same time I admit that the period of three years looks rather a long period, more especially as I believe this order is not appealable—I am speaking subject to correction—but at this present moment I do not remember that this order is appealable. . . .

The Honourable Sir Malcolm Hailey: Yes.

Mr. W. M. Hussanally: I think it can only be revised but not appealed against. . . .

Mr. H. Tonkinson: Subject to the provisions of sections 411 to 418 of the Code any person convicted has a right of appeal.

Mr. W. M. Hussanally: Not against the order of being bound down. On that point I am not sure at the present moment, but my impression still is that the conviction can be appealed against but not the order binding him over for a particular period. But whatever that may be, I think it will be a fair compromise if the period of two years is put down. If that is approved by the Government as well as by my friends on the other side, and if I am allowed to move that amendment I shall do so with pleasure.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I trust the House will not allow themselves to be led away by the arguments that have been used by Mr. Rangachariar and Dr. Nand Lal. Both these speakers have argued their whole case by choosing an extreme proposition and it is the more remarkable that they should have done so—at all events that Dr. Nand Lal should have done so—after the very careful exposition of the matter which the Honourable the Home Member has given. Now, do any Members of this House really seriously believe that any magistrate is likely to bind over for a period of three years a person who is convicted for the first time of a pretty assault or an affray at a railway station? Honourable Members know perfectly well that such a thing is most unlikely to happen, and that if it did happen, there are superior Courts which could certainly deal with the case. It can be dealt with on appeal or, quite apart from

the question of appeal, there are such authorities as District Magistrates and Sessions Judges who would call for the papers in such cases and upset an absurd order of that character; and in the last resort there is the High Court. Those Honourable Members who ask us to amend the clause in order to provide against an absurdity of this sort really ask us to alter the Code so that the magistrate should not have the power to bind over for three years, even though in serious cases they do require it. We have heard from the last speaker from his own experience that small beginnings may develop into very serious matters that may call for a long period of restraint by means of a bond; and if the House is going to yield to these arguments it means that the magistracy will be deprived of a power which they now possess of maintaining the public peace. There is one further point which was referred to by the Honourable the Home Member which I should like further to emphasise. And that is, the fact that the provisions of this section empower a Magistrate to give a small substantive sentence because he knows that he can keep the peace for a further period merely by the imposition of a bond. I have no doubt that many Honourable Members have studied the recent Report of the Committee which was appointed to investigate Prison Administration, and one of the points which they have dealt with at great length is the necessity for some provision in the law which will make it possible to keep offenders under supervision without condemning them to undergo actual detention. This is one of the sections in our existing law which makes that possible and I have no doubt that every Member of this House, who is also a Magistrate, must on several occasions have had an opportunity of making use of this section to enable him to inflict a smaller substantive sentence.

Finally, there is just one point which I should like to refer to in Mr. Rangachariar's speech. He inquired, where was the logic for giving a First Class Magistrate power to bind over a man to keep the peace for three years when he can only impose a substantive sentence of two. Well, I confess this is a mathematical argument which I find it rather hard to follow. If it is going to be carried to its logical conclusion, we ought to give a Sessions Judge power to bind over a man for 7 or 10 years or 20 years or even for life. I do not really think that it is an argument on which any stress can be laid. I would again appeal to Members of this House to realise that if simply on account of the bad cases, the imaginary bad cases, that have been put up before them, they are going to alter the law, they will be causing a serious defect in the Code and I would add that if it had been the intention of Honourable Members who support this amendment really to do away with the possibility of Magistrates requiring a bond for a long period in petty cases such as an affray, the proper means to adopt would have been to move a separate amendment bringing cases of that kind under a separate regulation, and not to impair the power which the law gives to Magistrates to deal properly with really grave cases.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban). I move, Sir, that the question be now put.

Sir Montagu Webb (Bombay: European): I move, Sir, that the question be now put.

Mr. B. N. Misra (Orissa Division: Non-Muhammadian): Sir, I have also given notice of the same. I think if the fate of this amendment is decided I shall not have a chance of speaking. . . .

Mr. Deputy President: I shall give the Honourable Member an opportunity to move his amendment at the proper time if he likes.

Mr. B. N. Misra: Sir, the amendment is the same.

Mr. Deputy President: Order, order. The question is that the question be now put.

The motion was adopted.

Mr. Deputy President: The amendment moved is:

"That at the end of sub-clause (i) of clause 16, add the following:
'for the words 'three years' the words 'one year' shall be substituted'."

The motion was negatived.

Mr. Deputy President (to Mr. B. N. Misra): Does the Honourable Member wish to move his amendment?

Mr. B. N. Misra: That is why I was appealing to you to give me an opportunity to speak on my amendment.

Mr. Deputy President: I am told it drops out. It cannot be moved.

Mr. K. B. L. Agnihotri: Sir, I do not wish to press my second amendment* contained in item No. 36.

Mr. Deputy President: The question is that clause 16, as amended, stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: I beg to move:

"Renumber clause 17 as 17 (iii) and before sub-clause (iii) insert the following sub-clause:

'(i) in sub-section (1) of section 107 of the said Code for the word 'informed' the words 'satisfied on information and on taking such evidence if any, as is adduced' shall be substituted and the words 'by wrongful act' shall be inserted after the word "person".'

Mr. Deputy President: May I draw the Honourable Member's attention that he might deal with the first part only?

Mr. K. B. L. Agnihotri: Yes, Sir. I wish to take the first part only. Here I think I am on surer grounds according to the Honourable the Home Member because the word 'informed' has been found to be very contentious and there have been many rulings by High Courts as to what the word 'informed' should mean. It is desirable therefore that the meaning of this word be made more clear when we are now amending section 107. I therefore propose, Sir, that for the word 'informed' the words 'satisfied on information and on taking such evidence if any, as is adduced' be substituted. Under the law as it stands, the Magistrate has no other alternative but to proceed against any person under section 107 the moment he receives an information as to the likelihood of his committing a breach of the peace. Of course, the High Courts have been vested with large powers to give proper interpretation to the words used, but the law as laid down in that section is not clear. It is therefore with a view to avoid the difficulties that have been felt by Magistrates that

* "In clause 16 omit sub-clause (ii)."

the meaning of this word be made clear. In certain provinces circulars have been issued asking the police officers not to put up such cases until the District Superintendent of Police permits them to do so. All these difficulties could be overcome if we were to put in, in clear language the exact meaning of this word in the way I have suggested. It is also necessary that the Magistrates should not proceed on the mere information of a police officer but they should require some evidence to support the allegations on the report of the police officer. It is just possible that in emergent cases it may not be convenient to produce witnesses before the Magistrate to support the police report, but in practice we find that the police officers generally put up cases where they have received a number of complaints to that effect. At the same time, during the period necessary for referring the matter to higher officers and for obtaining permission the necessary evidence could be secured for production before the Magistrates. I therefore submit, Sir, that it is necessary in the interest of justice and to safeguard the interests of the people that the courts should be satisfied on any information and on taking such evidence as is adduced, before they issue any such process as provided in section 107. With these words, Sir, I commend my amendment for the acceptance of this House.

Mr. Deputy President: The amendment proposed is:

"Renumber clause 17 as 17 (iii) and before sub-clause (iii) insert the following sub-clause:

"(i) in sub-section (1) of section 107 of the said Code for the word 'informed' the words 'satisfied on information and on taking such evidence if any, as is adduced' shall be substituted and the words 'by his wrong act' shall be inserted after the word 'person'."

Mr. K. B. L. Agnihotri: I have dealt only with the first portion of the amendment, Sir.

Rao Bahadur T. Rangachariar: Sir, may I be permitted to move a small amendment to this amendment of Mr. Agnihotri's? I am sure my Honourable friend will also accept it. I would move:

"That the words 'or evidence' be substituted for the words 'and on taking such evidence, if any, as is adduced.'"

I may explain, Sir, what I mean by it. Having regard to the nature of the case the Magistrate has to take action in order to prevent a breach of the peace. He either acts on information or on evidence. The information will be in the shape of police reports, I take it. It is clear, as the section now runs, he is merely informed. I want him to take some responsibility before he takes action. I am quite prepared to trust the magistracy of this country, as the Honourable Mr. Haigh would ask us to do, but there are Magistrates and Magistrates. I know a Magistrate who, if Rangachariar travelled from Howrah to Madras and the Magistrate on the way at Waltair receives information that Rangachariar is going to deliver a speech at Madras, he takes action at Waltair station under section 107. When I am in the train I am arrested, taking action on some information from the Howrah police or some telegram or other, and I am detained at Waltair to prevent me from giving a speech at Madras. Will the Honourable Mr. Haigh believe that such things happen? They do happen. They have happened. There are Magistrates and Magistrates. Would the Honourable Member believe that 107 is used for all sorts of purposes? If I go and stop outside a toddy shop and preach to

[Rao Bahadur T. Rangachariar.]

my friends "don't drink," the contractor says. "Rangachariar is going to commit a breach of the peace by preaching 'don't drink.'" The contractor, of course, gives information, the Magistrate is satisfied. His revenue suffers, Ministers suffer for want of money to carry on their development programme and the Government suffer for want of revenue. Now, here comes the Magistrate and says "use 107." Would any Magistrate in England dream of taking such a step? Here we have had Magistrates who have done it. It is on the mere colour of information of this sort that action has been taken under section 107 in various matters when, if public opinion were really strong, if the Honourable Sir Montagu Webb and others would join hands with us in such matters, Magistrates would be taught a better sense of their duty. And what action has been taken when this matter was brought to the notice time and again of the Government authorities? This matter of the arrest at Waltair by abuse of this section was brought to the notice of the Home Member in this House by me twice or thrice. Well, what action has been taken against the Magistrate? Did the Legislature ever contemplate the use of this section in such a way that a man travelling between Howrah and Madras, not being a resident of Waltair, should be detained at Waltair and bound over? Was this section ever contemplated to be used in that manner? What do the Government authorities do to deal with the Magistrate? If at least those who control the action of the magistracy take steps to punish such cases, then we can have full confidence in them. But on the other hand, they get M. B. E.'s and O. B. E.'s and promotion. Sir, it is because of this—not that we want to distrust Magistrates, not that we want the public peace broken, but, Sir, we have had bitter, sad experience of the way in which this section has been used, abused, misused. That is why we want to put in some safeguards so that the magistracy cannot take action like this. A Magistrate is informed by telegram. What is the responsibility he takes? Is he satisfied? Should he not be satisfied on the information? Therefore, I ask that the Legislature should throw some responsibility on the Magistrate by the language of the section itself. Therefore, he should be satisfied "on information or evidence." That would make him pause and hesitate and that action would be open to revision by the higher authorities; but mere information—he will simply take shelter under this section and say "I was informed. I did not care to investigate whether it was credible information or not." He is not even told that it must be credible information, as we have in the case of the police when they have to arrest. If he is informed merely, he can take action under section 107. I think, Sir, that it ought not be left like that. At the same time, I cannot agree with my Honourable friend, Mr. Agnihotri, that you should make it compulsory on the Magistrate to take evidence in all cases. That is why I make it "or." I should very much like to make it "and" but I think it would be putting fetters on the Magistrate, because he may take action on police reports. Then you have some inquiry afterwards. As my Honourable friend knows, the first thing is that a notice is issued under section 112, then evidence is taken, in the presence of both parties. It is far better too that evidence is not taken before because you will be tying down witnesses beforehand. If you compel a Magistrate to take evidence beforehand, namely, in the absence of the parties, you run the risk of getting the witnesses committed beforehand, even before the accused has had an opportunity of cross-examining those witnesses. Therefore, there is that risk if you compel evidence to be taken beforehand. So

that you will be reduplicating work by insisting on evidence being taken beforehand and you will be throwing additional risk in the way of the accused. But at the same time I ask that the Magistrate should be held responsible for action taken under 107, and I therefore hope that my friend, Mr. Agnihotri, will accept it and I hope the House will also accept my amendment. If Honourable Members will turn to section 96 of the Code. Section 96 or 87, where action somewhat similar has to be taken by Magistrates, section 87, which deals with a "proclamation for the appearance of a person against whom a warrant has been issued," also says "if the Court has reason to believe (whether after taking evidence or not)" So also in section 96 "Where any Court has reason to believe, etc."

It will be more satisfactory than the present state of things, and therefore I commend my amendment to the House.

Mr. Deputy President: Further amendment moved:

"That the words 'or evidence' be substituted for the words 'and on taking such evidence, if any, as is adduced.'"

Sir Henry Moncrieff Smith (Secretary: Legislative Department): Sir, my Honourable and learned friend, Mr. Rangachariar, has in his concluding remarks very ably disposed of the substance of that portion of Mr. Agnihotri's amendment by which he would require evidence to be taken in every case. Mr. Agnihotri indeed based his argument for the amendment on the ground that High Courts had found great difficulties with regard to section 107 which necessitated an immediate amendment of this word "informed." I have looked at the rulings. I know there are numerous rulings on the subject of section 107. But as far as I can see, the difficulties have not arisen from the use of the word "informed" merely. At all events numerous difficulties have not arisen with regard to that word. Mr. Rangachariar has moved an amendment to Mr. Agnihotri's amendment which would have the effect of substituting for the word "informed" the words "satisfied on information or evidence". He has given us his own experience in Madras. (*An Honourable Member*: "Not his own.") Mr. Rangachariar deceived me, because I understood him to say that the Magistrate fearing that Mr. Rangachariar was going to deliver a speech at Madras had him arrested at Waltair. (*An Honourable Member*: "Not he, but his friend.") Mr. Rangachariar's friend had an unfortunate experience, and I am sure every Member of this House sympathises with him. But the amendment which Mr. Rangachariar proposes would make no difference whatever in the case of his friend. Mr. Rangachariar has overlooked the fact that the Magistrate who took his friend out of the train at Waltair and arrested him was not acting under section 107, sub-section (1) which we are now considering, but was acting under section 107, sub-section (3). Now, under sub-section (3), on this particular point at all events, we have no amendment before us. The wording of section 107 (3) is different. It is "When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace, etc." Here we have "has reason to believe". It is not merely information, but "has reason to believe." It is perhaps a little less strong than "satisfied", but nevertheless it was not merely information that the Magistrate in Madras could have acted on. He must have had reason to believe. Otherwise his order was not justified. Therefore, this pitiable picture which Mr. Rangachariar has drawn should, I think, be dismissed by Members of this House from their minds at once.

[Sir Henry Moncrieff Smith.]

because it is entirely irrelevant to the matter which is now before us. Let us confine ourselves to section 107 (1), that is, a Magistrate on the spot who is taking action against the man on the spot, not a Magistrate sending a telegram to some one in another District to take action. All the arguments that have been used in favour of this amendment have for some unknown reason—I do not know what it is—assumed that action under section 107 is always taken by a Magistrate at the request of the police—on a police report. Well, my experience is—I have been a Magistrate for a considerable number of years myself and there are many others in this House who have been Magistrates too for long periods—that action under section 107 generally follows an application made to the Magistrate, and in that case, there is nothing whatever to prevent the Magistrate calling for additional evidence. Therefore, from that point of view, the addition of the words “or evidence” does not carry us any further. Mr. Rangachariar leaves it still to the discretion of the Magistrate as to whether he will call for additional evidence or not. The Magistrate always has that discretion. We do not want to provide for the taking of evidence in this case because there is always the power to call for evidence if the Magistrate wishes to get further information.

Now, we are left with the difference between “is informed” as we have it in the Bill and “is satisfied on information” as the movers of these two amendments would have it. I think perhaps that Mr. Rangachariar has been a little inclined to overlook what section 107, sub-section (1), is and to what it is leading. The Magistrate is informed that a person is likely to commit a breach of the peace. He just issues a summons for the man to appear and show cause why an order should not be made against him to keep the peace. Under 107 (1) the Magistrate does not issue an order to the man at once to give security. It is merely a summons to come before him and show cause why an order should not be made. That is a very different thing indeed. They are two very different propositions. If the Magistrate was going to issue an order under the first sub-section to any person at once to find security to keep the peace, well then I quite agree that the words “is informed” are nothing like strong enough. But what happens? Let us take the case of an ordinary complaint to a Magistrate that an offence is actually being committed. In 95 cases out of 100 what does the Magistrate do when such a complaint is made before him? He examines the complainant. He has got to do that. But he does no more. He makes no further inquiry. Out goes the summons and the accused has got to appear before him. That being the case, is there any reason why, in this which is the preliminary corresponding step to the presentation of a complaint of an offence before a Magistrate, the Magistrate should require anything more than information where he has indeed the power to call for evidence if he wants to? I do not think, Sir, there is really very much more to be said on this matter. The case has been misrepresented by Mr. Rangachariar. The difficult case which he placed before us arose, not under sub-section (1) which we are now dealing with, but under sub-section (3). The Magistrate has power to issue a summons on a mere complaint in writing. Why should he not have equal power when information is given to him to issue a summons requiring a man to appear and show cause? That is what happens in every criminal case based on complaint of information.

Rai Dohi Charan Barua Bahadur (Assam Valley: Non-Muhammadan):
In my humble opinion, the Honourable Mover of this amendment has

rightly hit upon the flaw in the law as it stands at present. We are chiefly concerned with the source from which the information has emanated. Now, as the law stands at present, the Magistrate is simply concerned with the information and is not concerned with the source from which it has emanated. The source may be a man of immature understanding, or even a lunatic. The present law does not make any difference whatsoever whether the information comes from a person who is a deliberate liar or a person who is of immature understanding or a lunatic. So, it is quite necessary that, before action is taken, before the machinery of criminal law is moved, the Magistrate should be satisfied. Without his satisfaction no steps should be taken in the matter. A man should not be disturbed, he may have many callings to attend to, and in the midst of those callings he should not be disturbed. The man moved against may have many enemies. Those enemies very often find it convenient to move the Courts from time to time against him. So, to make a safeguard against all these things it is very proper that the Magistrate should not only be informed but he should be satisfied by some sort of inquiry, whether private or public, or by taking any evidence whether *in camera* or in the open Court. It makes no difference, but he ought to be satisfied. There ought to be some person who should be responsible for the issuing of the summons or warrant, and he should also be responsible for the inconvenience suffered by the man to be brought before the Court. So, considering these circumstances, it is quite proper that the amendment should be made. With these words I beg to support the amendment.

Mr. B. Venkatapatiraju (Gunjam cum Vizagapatam: Non-Muhamadan Rural): I expected that Government would accept the reasonable amendment proposed by the Honourable Mr. Rangachariar, and I am sorry to say that Mr. Rangachariar had to condemn a Magistrate of Vizagapatam, from which district I come. But I can assure Mr. Rangachariar that the Magistrate, though he was obliged to utilise this section, was not at all responsible for it, when we know the true circumstances which necessitated the arrest of Mr. Muhamamad Ali at Vizagapatam. The warrant issued against him in order to prosecute him at Karachi by the Bombay Government had not been received in time, but the Magistrate was ordered to detain him. He did not know under what section he could detain him, and therefore he thought that section 107 was the only possible section that he could apply before he received the warrant. Therefore he detained him there and showed him every respect and every consideration. He treated him very well awaiting the receipt of warrant. As soon as the warrant was received from the Bombay Government he was released and was arrested on the warrant. Therefore I say that the Magistrate was compelled to do that under the system under which he was working and was not at all responsible for the thing he did. Now, in these days we must protect ourselves against a very possible abuse of power, whether intentional or unintentional. In this case what my Honourable friend, Mr. Rangachariar, has suggested was actually in the old Code. It was somehow or other removed and the word "informed" was put later on. Under the old Code of 1872, in the corresponding section of 491 the words used here in place of the word "informed", the words "any report or other information which appears credible and which the Magistrate believes". Why on earth this clear phraseology was removed and that ambiguous word "informed" was substituted I cannot say, but we find a certain difficulty in interpreting that word because in order to

[Mr. B. Venkatapatiraju.]

take a Magistrate to task we must say that he is acting on his own discretion, when he is satisfied on information or evidence. It may be the Magistrate may say even on the information of the police, "I am satisfied". But the point is that he must be satisfied and not merely be informed. But as the section stands at present, if you say "informed", you cannot blame him because he has acted on the information received, because he is not doing anything illegal, though he is not satisfied, if he proceeds under it. Therefore the old language and the present suggestion of Mr. Rangachariar are quite in consonance with each other and will achieve the object which the Government has at heart. I therefore appeal to Government that they will agree to a clear and unambiguous language being used in the Act in order to avoid misconception and abuse of power.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, in order to form a correct opinion upon the merits of the amendment now before the House, it is, I venture to submit, necessary to refer to certain other sections of the Criminal Procedure Code. As it has been pointed out by the Honourable Sir Henry Monierieff Smith, all that section 107 warrants a Magistrate to do is to issue a notice to the person informed against to show cause why security should not be taken from him to keep the peace. After the notice has been issued, or rather when the Magistrate has made up his mind to issue such notice what is he by law required to do? If Honourable Members will turn to section 112 of the Criminal Procedure Code, they will find that according to that section:

"When a Magistrate acting under section 107 (that is, the section with which we are at present concerned) deems it necessary to require any person to show cause under such section, he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if any) required."

Now, even a cursory perusal of this section will make it quite clear to Honourable Members that the Magistrate is required by the provisions of this section, in addition to certain matters, to inform the person against whom the order to show cause is issued, of the substance of the information which the Magistrate has received. (Mr. T. V. Seshagiri Ayyar: "Why".) Then, section 113 proceeds to say:

"If the person in respect of whom such order is made is present in Court, it shall be read over to him, or if he so desires, the substance thereof shall be explained to him."

Then, according to section 115:

"every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same."

So it will be seen by Honourable Members that before the date of his appearance before the Magistrate to show cause the person against whom the proceedings are being taken is furnished fully with all the information that is necessary, even with a copy of the order which the Magistrate has recorded before the issue of the process, in order to enable him to meet the case on his appearance in Court. But this is not enough. You will see what certain other sections require in addition. Section 116 says:

"The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered" and so on.

Mr. T. V. Seshagiri Ayyar: The question now is about the first stage. There are subsequent stages. We are now concerned with the earlier stage.

The Honourable Dr. Mian Sir Muhammad Shaif: But is there any ground whatever either, in equity or in law for requiring anything further than what is mentioned in section 107? I am trying to substantiate the position that there is none. I am trying to show that the Code of Criminal Procedure provides for every possible safeguard in so far as the interests of the person against whom the order to show cause is issued are concerned. And now if you will turn to section 117 it enacts:

"When an order under section 112 has been read or explained under section 113 to a person present in Court or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence as may appear necessary."

It will be clear therefore from a perusal of these sections that under section 107 a Magistrate acts upon the information which has been received by him that a certain person is likely to commit a breach of the peace, he sends the substance of that information to the person concerned and on the appearance of the person concerned before him, he proceeds to inquire into the truth of the information which has been given to him and upon which information process has been issued against the accused. The word 'accused' is really a misnomer in cases of this kind. The person proceeded against has the fullest opportunity of showing cause and testing the veracity of the information received. He, as a matter of fact, can, under the law, require the police or whoever is really acting in the matter to produce evidence to prove and it will be on the prosecution to prove that there is any intention on the part of such person to commit a breach of the peace. In the absence of such evidence of course no Court will be warranted to require him to furnish security.

The Honourable Sir Henry Moncrieff Smith pointed out to the House that even in more serious cases of commission of offence all that is needed is either complaint or information and in that connection I would invite the attention of the House to section 190 of the Criminal Procedure Code. This is what the section says:

"Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate and any other Magistrate specially empowered in this behalf may take cognizance of any offence (and here I refer to (c) as we are not concerned with (a) and (b) in connection with the point which is now before the House) upon information received from any person other than certain persons named that such offence has been committed."

So you will see that the Legislature in section 107 has practically adopted the same phraseology with reference to action upon information as they have adopted in section 190 in ordinary prosecutions for an offence. Where is there any reason therefore to justify any change of phraseology in section 107 when even as regards the commission of offences exactly the same phraseology has been adopted by the Legislature in section 190 of the Criminal Procedure Code. I submit that the nervousness which is displayed in certain quarters in connection with the language used in section 107 is really not justified. There is another section in the Code of Criminal Procedure to which in this connection I ask leave to refer and that is section 204. It says:

"If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be one in which according to the fourth column of the Second Schedule a summons should issue in the first instance he shall issue his summons for the attendance of the accused."

[Dr. Mian Sir Muhammad Shafi.]

Now Honourable Members will see that the procedure laid down in this section 204 is practically identical with the procedure laid down in section 107. So far as Government is concerned they would not mind changing the phraseology so that the words in section 107 should be the same as the words in section 204. That really does not touch the substance, but the substance so far as the question is concerned is this: These three sections really stand on identical footing and there is no reason whatever to introduce in section 107 anything further in substance than what is contained either in section 204 or section 109.

Rao Bahadur T. Rangachariar: If the Honourable the Law Member will accept the words "If in the opinion of the Magistrate there is sufficient ground for proceeding", etc., we have no objection to that.

The Honourable Sir Malcolm Hailey: The exact words will be "The Magistrate may, if in his opinion there is sufficient ground for proceeding," etc. The procedure is exactly the same as in 204.

Rao Bahadur T. Rangachariar: Will you kindly move it in that way?

Mr. Deputy President: The question is:

"Renumber clause 17 as 17 (ii) and before sub-clause (ii) as renumbered insert the following sub-clause:

'(i). That in sub-section (i) of section 107 of the said Code after the words 'The Magistrate may' the words 'if in his opinion there are sufficient grounds for proceeding' shall be inserted."

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, the second amendment to this clause which I have notified to move is that the words 'by his wrongful act' shall be inserted after the word 'person.' The relevant portion of the present section as it stands is that any person is likely to commit a breach of the peace, or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity. As the words 'to do any wrongful act' does not govern the former portion of the clause, I fear that any person is likely to be summoned under section 107 and be bound over for keeping the peace even though the likelihood of a disturbance of the public tranquillity be by his rightful act. The clause is ambiguous, it is not clear and may make a man liable to be bound over, even for his rightful act. I, therefore, wish to substitute that only such person be bound over to keep the peace for a disturbance of the public tranquillity whose action be wrongful, and should not be liable if his action be rightful. Sir, sometimes it may happen that a person may be engaged in doing an act or saying something which he may have a right to do and say and it is likely that his speeches and actions might indirectly result in or provoke a disturbance of the public tranquillity and the Magistrate will under the clause as it stands be justified in binding over such persons. I submit that this should not be the case. "The person who is not justified and has not got the right to say what he says or to do what he does, should then certainly be bound over but not otherwise. Therefore, Sir, I put my amendment before the House for its consideration.

Mr. Deputy President: The amendment moved is:

"That the words 'by his wrongful act' shall be inserted after the word 'person' in sub-section (1) of section 107."

Sir Henry Moncrieff Smith: Sir, I am afraid I have not entirely followed the argument of the Honourable Mover of this amendment. He seems to have a fear that a person, by a rightful act, an act which he is entitled to commit, is likely to cause a breach of the peace or a public disturbance. I cannot follow that at all, because a breach of the peace or a disturbance of the public peace is a wrongful act in itself, and therefore all that Mr. Agnihotri's amendment would lead to would be, information to a Magistrate that a person by his wrongful act is likely to commit a wrongful act. It does not carry us any further at all. The wrongful act is provided for in the next few words of the section—a wrongful act which will probably occasion a breach of the peace. Therefore I would suggest that Mr. Agnihotri's amendment is not an improvement on the Code.

Mr. Deputy President: The question is:

"That the words 'by his wrongful act' shall be inserted after the word 'person' in sub-section (1) of section 107."

The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): Sir, the amendment that stands against my name runs as follows:

"In clause 17 insert the following sub-clause (1) and renumber the existing sub-clause accordingly:

"(1) In section 107, sub-section (3), after the words 'that may occasion a breach of the peace or disturb the public tranquillity' the words 'and there is an immediate danger of such breach of the public peace or disturbance of the public tranquillity' be inserted."

Sub-section (3) of section 107 relates to a Magistrate who is not empowered to take action under sub-section (1) and runs thus:

"When a Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons."

Mr. K. B. L. Agnihotri: On a point of order, Sir, I think my amendment No. 2 will precede Bhai Man Singh's amendment. This amendment concerns sub-section (3), while my amendment precedes sub-section (3).

Mr. Deputy President: I think, as has just been pointed out to me, it would be to the convenience of the House if Mr. Agnihotri were allowed to move his amendment first.

Mr. K. B. L. Agnihotri: Sir, my amendment is to the effect that after sub-section (2) of the same section, that is section 107, the following sub-section shall be inserted, namely:

"(2-A) Proceedings under this section shall not be taken against a person for delivering political speeches or doing political propaganda work which he be lawfully entitled to do."

Sir, when I moved my first amendment for the insertion of the words 'by his wrongful act' the Honourable the Secretary of the Legislative Department was pleased to say that he could not follow me or my argument for the insertion of those words. He said how would it be possible that a man by committing a rightful act could be bound over under section 107

[Mr. K. B. L. Agnihotri.]

for disturbing the public tranquillity. I may submit, Sir, that it often happens that persons engaged in political propaganda work or in delivering political speeches create excitement among the people; there is thus a likelihood of disturbance of the public tranquillity in the place; it may be said that it is doubtful also as to who will be liable for such a disturbance. Sometimes a Magistrate has held that the person guilty of delivering speeches or creating such an agitation is liable for it; sometimes, Courts held, that the persons who made such speeches or delivered such lectures simply provoked the disturbance but is not an actual wrong-doer as could be bound over under this section. In such cases the person delivering the speeches may have a right to deliver such speeches and still he may sometimes be bound over. In order to clear away that wrong impression I proposed my previous amendment. That point would be still clearer by the insertion of the sub-clause which I now propose. It must be in the experience of Honourable Members that during the latter part of the year 1921 and the early part of 1922, when there was much political excitement in the country, many speakers were hauled up under this section and bound over to keep the peace. The authorities may probably have thought it likely that further speeches and unwarranted agitation might excite people in the districts and thereby cause disturbance of public tranquillity. I wish by this amendment to put a stop to such actions on the part of District Magistrates and others. It has been pointed out only a short time ago by the Honourable Mr. Rangachariar that a case of the same type occurred when the arrest of Mr. Muhammad Ali took place at Waltair. Apart from that, Sir, there have been many cases in almost all the provinces in which persons engaged in enlisting volunteers, or in realising subscriptions for the Congress funds, or in delivering speeches, or exhorting or calling upon the people to observe the principles of temperance and to boycott liquor shops, or doing other temperance or political propaganda work were bound over. This amendment will put a stop to such practices on the part of the authorities. I submit, therefore, Sir, that my amendment deserves the consideration of the House, and I move that the amendment be made.

Bhai Man Singh: Sir, I rise to support the amendment put forward by my friend, Mr. Agnihotri. Coming from the Punjab I am all the more in a position to say that this section 107 has been much more rather the most abused in the Punjab in connection with the Akalis than perhaps in any other province. Hundreds of them were put into jail for refusing to give bail when action under section 107 was taken against them. But in point of fact, not a single breach of the peace was caused by them in the sense in which the section means. All of them were arrested with a view to crush or stop a certain movement and for quite ulterior motives. I fail

1 P.M. to see why a section which was meant to punish offenders who really broke the public peace should be used for the ulterior object of putting down a political or religious movement simply because a certain Local Government has taken it into its head to put it down. With these remarks, Sir, I support the amendment.

Mr. Deputy President: The question is:

"That the following sub-section shall be inserted after sub-section (2) of section 107 of the said Code, namely:

"(2-A) Proceedings under this section shall not be taken against a person for delivering political speeches or doing political propaganda which he is lawfully entitled to do."

The Assembly then divided as follows:

AYES—19.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Sethagiri.
Bagle, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.
Lakshmi Narayan Lal, Mr.

Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Singh, Babu B. P.
Srinivasa Rao, Mr. P. V.
Venkatapattiraju, Mr. B.

NOES—42.

Abdul Majid, Sheikh.
Ahmed Baksh, Mr.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Ginwala, Mr. P. P.
Haigh, Mr. P. H.
Hailey, the Honourable Sir Malcolm.
Hudley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.

Innes, the Honourable Mr. C. A.
Jafri, Mr. S. H. K.
Jannadas Dwarakadas, Mr.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Sen, Mr. N. K.
Singh, Mr. S. N.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Yamin Khan, Mr. M.

The motion was negatived.

Bhai Man Singh: Sir, the amendment that stands in my name runs as follows:

"In clause 17 insert the following sub-clause (1) and renumber the existing sub-clause accordingly:

"(1) In section 107, sub-section (1), after the words 'that may occasion a breach of the peace or disturbs the public tranquillity' the words 'and there is an immediate danger of such breach of the public peace or disturbance of the public tranquillity' shall be inserted."

Sub-section (3) of section 107 runs thus:

"When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons."

This sub-section, as Honourable Members may have seen, refers to the case of a Magistrate who is not empowered to take action under sub-section (1). He is not empowered to call upon a man to furnish security; he is not empowered to proceed against him. But this sub-section is, in a sense, more stiff than the first sub-section. Under sub-section (1) only a notice has to be issued to the person concerned and he is called upon to show cause, but under sub-section (3) a Magistrate who has not got the

[Bhai Man Singh.]

power to proceed with the case has got the power only to arrest the person and send him on to the other Magistrate having power to proceed under sub-section (1). Of course, the framers of the law, as it stands, saw that they had to provide some safeguards in this sub-section. Therefore, they have used the words "*has reason to believe* that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that *such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, etc.*" These two safeguards are there. A junior Magistrate may see that he cannot stop a breach of the peace without arresting the person, but the breach of the peace is to come say ten days afterwards. What I want is that a special provision should be made in such a case that such Magistrate should not have the authority to arrest that person if the breach of the peace is to come later on and he has got time simply to refer the matter to the District Magistrate or to some other Magistrate empowered to deal with the case. I want that the junior Magistrate should not have the authority to arrest a man at once and send him on to the other Magistrate concerned if there is time to do so. Really speaking, no action can be taken under sub-section (1) also if the breach of the peace is not imminent. That being the case, Sir, my position becomes stronger that such a provision should be definitely laid down in this sub-section (3).

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, with your permission I shall move the amendment which stands in my name which is No. 39 on the Agenda. It runs as follows:

"In clause 17 after the word 'substituted' where it first occurs insert the following:

'after the word 'may' the words 'after recording his reasons' shall be inserted'."

This amendment relates to sub-section 4 of section 107.

In the first place, Sir, there is a mistake in that sub-clause which I have overlooked and also the Government have overlooked and which we may be permitted now to correct:

"A Magistrate before whom a person is sent under this section may in his discretion etc. etc."

That relates only to sub-clause (3). He is not sent under this section but under sub-clause (3).

Some Honourable Members: That has been corrected by the Government.

Rao Bahadur T. Rangachariar: I beg your pardon then, it was a slip of mine.

Now take the case of a person—one Magistrate thinks he is likely to disturb the public tranquillity, and that his detention is necessary. He sends him on to the Magistrate having jurisdiction. The latter will initiate the proceedings. He will do so, as has been pointed out by the Honourable the Law Member this morning by issuing the summons containing the substance of the information, etc. Here this Magistrate before whom a person is sent under this section may at his discretion detain such person in custody. I only wish to make it obligatory on him to record his reasons for detaining the person in custody, so that he (the

Magistrate) may pause and think and come to the conclusion that really the detention of this person is necessary in the interests of public peace. As the clause runs now he may detain him "at his discretion." That discretion really contemplates that he should bring his mind to bear upon the question whether the man's detention is necessary or not. If he is to bring his judicial mind to bear upon the question, why should he not record the reasons which impel him to take the extraordinary course of detaining a man when only an inquiry is contemplated. He has to initiate the inquiry by issuing a summons; then to record evidence and then bind him over if he finds that security is needed. Therefore this being an extraordinary step, that of restraining a person and detaining him in custody, it ought to be taken with care and caution, and that is why I want to provide that he should record his reasons therefor. I move the amendment which stands in my name, namely:

"In clause 17 after the word 'substituted' where it first occurs, insert the following: 'after the word 'may' the words 'after recording his reasons' shall be inserted.'"

Mr. H. Tonkinson: Sir, I venture to suggest to my Honourable friend that the amendment which he has moved is quite unnecessary. Let us take the cases which are governed by sub-section (4) of section 107. There are the cases in which a Magistrate not empowered to take action under sub-section (1) has proceeded under sub-section (3). Before that Magistrate can take the action that he is allowed to take under sub-section (3) of detaining the person in custody, he must record his reasons in writing—that is to say, it has already been decided by a Magistrate that it is necessary and that no other action will probably prevent a breach of the peace; and this Magistrate has already recorded his reasons in writing.

Rao Bahadur T. Rangachariar: If that is so, why the discretion?

Mr. H. Tonkinson: Why should the Magistrate before whom this man has to appear record his reasons again? Let us go a little further into the provisions of the Code. Under section 112 when a Magistrate acting under section 107 deems it necessary to require any person to show cause he must make an order in writing setting forth the substance of the information received. Then Sir, the action under section 117 immediately follows, and if Honourable Members will refer to sub-section (3) of section 117 as it will stand after the Code has been amended as is proposed in this Bill, it will be seen that this Magistrate himself must also record his reasons in writing. It means, Sir, that one Magistrate after another must continually be recording reasons; and I suggest, Sir, that it is quite unnecessary to record reasons in this intermediate stage.

The motion was negatived.

Rai Sahib Lakshmi Narayan Lal (Bihar and Orissa: Nominated Non-Official): Sir, Mr. Agarwala has authorised me in writing to move his amendment if you kindly permit me to do so. Sir, the amendment that I am going to move runs as follows:

"In clause 17, before the words 'pending further action' insert the words 'or enlarge him on bail'."

Sir, clause (4) of section 107 supports this amendment to a great extent. It says that a Magistrate before whom a person is sent under sub-section (8) may at his discretion detain such person in custody pending further action. The wording of this clause clearly gives discretion to the Magistrate to detain the person in custody, and therefore it is discretionary with

[Rai Sahib Lakshmi Narayan Lal.]

the Magistrate to enlarge him on bail. No doubt as I read the wordings of clause (8) of section 107 I find some difficulty inasmuch as clause (8) says that a Magistrate not empowered to act under sub-section (1) shall issue a warrant for the arrest and detain the person arrested in custody when he has reason to believe that a breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody. But as the wording of clause (4) makes it clear, that the matter is at the discretion of the Magistrate to whom the man has been sent, I think it is better to have this amendment, so that it may be made perfectly clear that the Magistrate may either enlarge him on bail or detain him in custody as he thinks proper. With these remarks I move the amendment.

The motion was negatived.

Rai Sahib Lakshmi Narayan Lal: Sir, the amendment that I am going to move runs as follows:

"To clause 17, add the following 'and after the said sub-section (4) the following proviso shall be inserted, namely:

'Provided that a proceeding under this section shall not be taken when there is a *bona fide* dispute which can be properly dealt with under Chapter XII of the Code."

Sir, it is a settled principle of law established by judicial authorities that there shall be no proceeding under section 107 of the Criminal Procedure Code when there is a *bona fide* dispute which could be properly dealt with under Chapter XII of the Code. But the addition of sub-section (9) to section 145, makes the matter a little ambiguous and the object of my amendment is to remove that ambiguity. Sub-section (9) to section 145 says: "Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107." Now, if it is necessary to have this provision in section 145, it is also necessary to have the proviso suggested by my amendment, because law and medical books should be always entirely free from any possible ambiguity. With these remarks I move this amendment.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, the amendment which I am moving is No. 42, and runs as follows:

"After clause 17 insert the following clause:

'17A. After sub-section (4) of section 107 of the said Code the following sub-section shall be inserted, namely:

'(5) In all cases where action is taken under this section to prevent a person or persons from holding or addressing meetings, a report shall forthwith be made to the Sessions Judge who may call for and examine the record of any proceeding for the purpose of satisfying himself as to the correctness, legality or propriety of the same and pass such orders as he thinks fit."

Sir, I did not speak on amendment No. 38 (ii), where my Honourable friend, Mr. Agnihotri, tried to prevent the application of section 107 for delivering political speeches. I did not do so because there may be occasions when action under section 107 may be necessary to be taken in the interests of public peace; because the wording of the section is "do any wrongful act which may probably occasion a breach of the peace or disturb the public tranquillity"; that wrongful act may include an inflammatory speech—it may be a political speech—where people are asked actually 'o

rise in arms. It is a political speech all the same and therefore to prevent the application of section 107 altogether to such cases was not considered by me right. But at the same time, Sir, you would have noticed strong feeling in the country against the abuse of section 107 during the last two years with reference to the holding of meetings and the addressing of meetings by individuals. There are cases where even committee meetings have been prohibited; there are cases where persons who preached against drink have been proceeded against under section 107 merely because some man, some toddy shop contractor complained that by a speech against drink a breach of the peace was likely to be committed; most likely the contractor and his men are those who break the peace. A man comes and preaches to the people "Do not drink." There are of course some who go beyond mere preaching and resort to acts of violence and restrain people from going to the toddy shop—I can understand that. Still even in cases of mere preaching many meetings have been prohibited under this section. How? It is always difficult to apply section 107. We have to trust to the good sense of the Magistrates in applying this section when they prohibit meetings or prohibit people from addressing meetings. How are you to know beforehand that a speech which is going to be delivered is such that action should be taken under this section? The speech is still unuttered and is not a written or printed speech which is available to the Magistrate which he can read beforehand; these are words unuttered which he tries to prevent by taking action under that section. That action contemplates cases of persons perhaps who by their previous speeches or by their previous conduct have indicated what they are going to say, and if so, there may be cases where they would have been convicted for such speeches if they had really made inflammatory speeches, and other sections are also available for preventing such people from speaking like that. Those are hardly cases where section 107 can be safely used—I would only put it at that—can be safely or soundly used. But it has been largely used, it has been used like this in all the provinces, not in one province, but in every province; after the abolition of the repressive laws they have found repressive laws in these two sections, 107 and 144. An ingenious legal element in the Government of India and in the Local Governments has found a remedy for the repeal of the repressive laws; repressive laws went with one hand and up came these two sections ready in their other hand, sections 107 and 144, handy, very efficient. I wonder why they took all the trouble of passing the Rowlatt Act and the Criminal Law Amendment Act and incurred all this unrest and odium and created this non-co-operation movement and the Satyagraha movement and the passive resistance movement by enacting these laws when 107 and 144 were so handy all these years. They forgot all about it until some ingenious lawyer advised them saying "Here are two handy sections, two hand-maidens; take hold of them and resort to repression in this way," and curiously enough circumstances lent themselves to their very free use of these sections. If really the matter had gone to Court, I am sure in many cases the High Courts would have set right the use of these sections. But these non-co-operators do not believe in anything; they do not believe in Courts; they do not believe even in the High Court, in which I have strong faith, and they would not go to the High Courts and therefore Magistrates were encouraged to use these sections in all sorts of ways. Therefore, Sir, I provide an automatic corrective. There are Magistrates and Magistrates. I know of a case where a Magistrate who was going on horse-back saw a boy spitting on the floor and thought that he spat at him when he was on horse back. The Magistrate then and there on the spot tried him for insult and

[Rao Bahadur T. Rangachariar.]

whipped him. Well, Sir, he was the person aggrieved; he was the complainant; he was the Magistrate, and he tried him on the spot, and most effectively he did it. There are Magistrates of course who conceive that it is within their power to do all these things in certain tracts where still these legal or judicial ideas have not permeated and lawyers have not invaded. Of course, these things no doubt do occur, and therefore, Sir, there must be a corrective, there must be an automatic corrective, to the misapplication of this section. After all, the remedy that I have provided is one which already exists in the law in certain cases. I have chosen a revising authority, an authority which is recognised by the Code. Honourable Members will see in the same Chapter that when security is demanded for more than a year and if the person does not comply with the demand, such proceedings have to go to the Sessions Judge for confirmation. The order is liable to be revised and set aside by the Sessions Judge. Will some lawyer here remind me of that section? (A Voice: 'Section 123.') Thank you. Well, as Honourable Members will see, this section reads thus: "If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given, commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it. When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court." "Such Court," that is the Sessions Court, "after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit." So that the Sessions Judge whom I have chosen as the revising authority is the authority recognised already as a proper authority to revise such proceedings. I only say that where action is taken under this section to prevent the holding of meetings or of addressing meetings, then it should be forthwith reported to the Sessions Judge. He on examining the records will have to satisfy himself as to the legality, propriety or correctness of such report and he can pass such order as he thinks fit. Therefore the remedy I have chosen is purely a corrective one. Sessions Judges are trusted both by the Government and the people in most cases, and therefore they can be safely relied upon to do the corrective in cases where they are grossly abused. Therefore, Sir, I have suggested my amendment which, I hope, will commend itself to the Government for their good name, because they must also see that their Magistrates do not misbehave. After all, who suffers? No doubt, the individual suffers for the time being, but by such action really the reputation of the Government suffers. I mean the people think, when Magistrates take such hasty action, that the Government do not set them right with the result that the Government becomes unpopular and it adds to the irritation among the people. After all, where is the harm in entrusting this remedy in the hands of the Sessions Judge? Is the Sessions Judge going to the rescue of the sedition monger? Certainly not. Therefore, there will be really no danger whatever in providing this remedy. On the other

hand, abuse and misuse and misapplication will be stopped. The very fact that there is a corrective in the Sessions Judge will make the Magistrates pause and hesitate and they will only take action which they should legitimately take. That fact itself will act as a deterrent against hasty action on the part of Magistrates. Therefore, looked at from any point of view, it is a necessary amendment; it is a wholesome amendment and I hope the Government will see their way to accept it.

The Assembly then adjourned for Lunch till Half Past Two of the Clock

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. Deputy President was in the Chair.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, it will be convenient if I draw the Honourable Members' attention to the Greaves' Committee's Report in this connection. My idea is that, instead of amending the sections piecemeal, we should adopt the recommendations of that Committee. They took evidence, they consulted all the magistrates, the sessions judges, the divisional commissioners, public bodies and lawyers. Of course, the magistrates were reluctant to part with their power but the sessions judges approved of it and the divisional commissioners also were in favour of it. I am not going to read the summary of evidence but I am only going to read the recommendations of the Greaves' Committee in this behalf. They say:

"After considering the evidence, we recommend that the powers of the district officer and those under him under the preventive sections shall be modified in the following manner:

Firstly, in ordinary cases under sections 107, 108, 109, and 110, when the district officer requires a person to show cause, the proceedings shall be sent for trial before a judicial officer, but in cases of emergency which arise under these sections and when immediate action is necessary, it shall be open to the district officer and those empowered to act under these sections, but, where they make such orders, they shall state their reasons in writing and an appeal against the order shall lie to the District and Sessions Judge. The Committee agree that all cases under section 110 should be tried locally as at present and opportunity for obtaining legal assistance should be freely given."

I would leave the drafting to the Legislative Department, and I think we might accept the Greaves' Committee's recommendations as a preliminary to the separation of judicial and executive functions. It need not wait till the scheme is given effect to. As a preliminary, it may be convenient if we introduce a clause after section 110, in which provision is made that ordinarily in all such cases where a person has been called upon to show cause under either section 107, 108, or 109, 110, he may apply to the District and Sessions Judge that the matter should be heard by him. In such cases, the District Magistrate is to send the records to him and the matter may be judicially inquired into by the District and Sessions Judge. There is no reason why we should not entrust the District and Sessions Judges with powers to inquire in these matters. That would not increase his work very much because these cases are not very common. They come once in a way. Now, that would not create any mischief either because the Committee recommends that in emergency cases the district Magistrate may pass orders. But when he has passed an order, we may give the party the right of appeal or the record and the proceedings may be sent, as Mr. Rangachariar recommends, to the District and Sessions

[Mr. J. Chaudhuri.]

Judge, and he may look into the records and pass such orders as he thinks fit. Now, that is with regard to mofussil towns. We know that in the presidency towns the presidency magistrates may act in the same manner. There also, when he has called upon any person to show cause, the person may apply to the High Court that the matter may be heard by that court and the court may pass such orders as it may think fit. So, my suggestion is that, instead of amending these sections piecemeal, as suggested by Mr. Rangachariar, we should insert a clause after 110 or in some appropriate place in this chapter to provide that, where a person has been called upon to show cause, he may apply to the District and Sessions Judge that the matter may be judicially inquired into by him and then it will be for the Magistrate to send up the records and the Judge may look into the matter. Of course, I am not putting this forward as a final amendment but I suggest that Mr. Rangachariar's amendment may then be altered as follows:

"(5) In all cases where a person has been required to show cause under section 107, 108, 109 or 110, he may, outside any Presidency town, apply to the District and Sessions Judge, and, in a Presidency town, to the High Court that the matter may be heard by the Sessions Judge or the High Court, as the case may be, and such Court may then send for the records and, after giving him a hearing, pass such orders as the Court thinks fit."

Mr. Deputy President: Are you moving this as an amendment to clause 17?

Mr. J. Chaudhuri: I suggest it as a general provision to go after 110. Of course, I leave it to the Honourable the Home Member and the Honourable Sir Henry Moncrieff Smith to make any verbal alterations they like and to prepare a proper draft. This is not my own suggestion but it has been recommended by the Greaves' Committee and I think that the whole House will accept it.

The Honourable Sir Malcolm Hailey: I recognise that the proposal put forward by Mr. Rangachariar is in much less extreme a form than that tabled by Mr. Agnihotri, and which the House decided not to discuss. There are unfortunately certain topics which seem to give Mr. Agnihotri a crisis of nerves; when he realizes that the law gives a certain amount of power to a police officer he has a shock; when he is told that it is necessary to give preventive powers to a Magistrate the shock is renewed and his continual efforts in this Assembly have been to reduce entirely, if not to remove, the powers given to police officers and to Magistrates. He would nullify, if he could, the power to protect society which is vested in these authorities, yet such a power is an essential adjunct to good and peaceable administration. But to confine myself to Mr. Rangachariar's amendment; we have here a proposal to reduce in a somewhat milder form the operation of section 107, and I would ask the House to consider the grounds on which it has been put forward by the Mover. He commenced with a general attack (repeating to some extent what he had already said in speaking on an earlier amendment), on the way in which we have during the last two years utilised the preventive sections. 107 and 144 alike have been, he says, widely used and widely misapplied. Nay, he permitted himself to suggest that we, being at one stage unwilling to use strictly repressive laws, and at a later stage being obliged to cancel them, we, at the suggestion of some ingenious legal mind, decided to substitute the use of these preventive sections. This is the first occasion on which I have had to complain that Mr. Rangachariar has betrayed a lack of that due

modesty which is one of the requirements of a great mind. For what do I find on looking up the debates on the Repressive Laws discussion? Who was it that urged us to use the ordinary law? Who told us that the ordinary law, if it were applied consistently, was sufficient for all our purposes? Who told us specifically that 144 had always been on the Statute Book and that we ought to use it? Why, Mr. Rangachariar and no one else. If we have used those laws, we need now no excuse; for we have consistently been advised since the year 1911 onwards (when the amendment of the Seditious Meetings Act came under discussion) and the process terminated with the renewed advice given us by Mr. Rangachariar when we discussed the case of our Repressive Laws generally last year. But have we misapplied them? Well, those against whom they were applied had their own ordinary remedy in the courts and in how many cases did they seek that remedy? Mr. Rangachariar says the class of men against whom we have applied these laws would not seek their remedy in the courts; they have no belief in a High Court. Equally, if we apply these laws again, that class of men would again refuse to utilise the agency of our appellate courts, and would fail to receive the benefits of the amendment which Mr. Rangachariar has put forward. But that is by the way; and is not really the substance of my argument against Mr. Rangachariar.

Rao Bahadur T. Rangachariar: Mine is automatic.

The Honourable Sir Malcolm Hailey: He proposes under this section that in all cases where action is taken to prevent persons from holding or addressing meetings (whatever that means; I do not deal now with drafting), a report shall go forthwith to the Sessions Judge who shall thereupon, after examining the records, pass orders as he thinks fit in regard to the correctness, the legality or propriety of the decision. He tells us that the Sessions Judge is already recognised in the law as a proper revisionary authority in regard to these sections, and quotes the provisions of section 123, sub-section (2). Well, that does not certainly apply to section 107, for under section 107, the period of an order is limited to twelve months; while under section 123 only orders referring to a period in excess of one year go to the Sessions Judge. Therefore the Sessions Judge is not recognised as a revisionary authority under section 107. What Mr. Rangachariar seeks to do in effect is to make a revisionary authority of a new type. Hitherto revisional orders have been passed by a High Court. He would have now revisional orders proper passed by a Sessions Judge. What is the necessity for this?

Rao Bahadur T. Rangachariar: Under sections 436 and 437 the Sessions Judge passes revisional orders.

The Honourable Sir Malcolm Hailey: He recommends to the High Court. He does not pass final orders himself; he reports to the High Court for this purpose.

Dr. Nand Lal: Section 435^a (which says) "The Sessions Judge may, etc."

Rao Bahadur T. Rangachariar: Section 435 is comprehensive.

Sir Deva Prasad Sarvadhikary: That is an alternative.

The Honourable Sir Malcolm Hailey: If the Honourable Member will read sections 435 and 436 he will see that they do not bear out what he says.

Rao Bahadur T. Rangachariar: I said he has revisional authority in certain cases. He can order retrial, he can order further inquiry, and he can call for the records under section 435. Therefore he exercises powers of revision.

The Honourable Sir Malcolm Halley: But what Mr. Rangachariar proposes now is that the Sessions Judge should have power to pass such orders as he thinks fit regarding the propriety of the sentence. That is a different matter. As I say, he proposes in effect, at all events with regard to the preventive sections, and in them only in regard to a certain restricted class of case, to create a new revisionary authority. I maintain that no such orders are required. The persons affected by these orders, if they have cause of complaint, have the ordinary procedure of the law open to them. He gives no special reasons why the special interference of the Sessions Judge is required in this behalf in this particular class of case. He says,

I do not wish the Sessions Judge called in everywhere to pass revisional orders in regard to the preventive sections. I only wish him to be called in in regard to meetings." Where do meetings differ from other classes of action to such an extent that it is necessary to create this special form of revision? What again does he mean by "meetings"? Mr. Agnihotri tried to get the Assembly to agree to exclude altogether from the preventive sections, action taken against persons "delivering political speeches or doing political propaganda work." If we had argued the case (which we found it unnecessary to do) he would have found an insuperable difficulty in defining political speeches or political propaganda work. Mr. Rangachariar, doubtless recognizing this difficulty has contented himself with the expression "holding or addressing meetings." But, as I say, what are meetings? We know the term assembly, and we have a definition of lawful assembly. But meetings are not as he would seem to suggest confined to political meetings; they may be of any other kind. They may be for the purpose of organising riot or for the purpose of promoting violence of any class. If they fall into this category, would it be necessary on that account to adopt a special revisionary procedure? The scope of his amendment goes infinitely further than he himself, I think, recognises. I maintain, that in regard to these preventive sections, and particularly in regard to section 107 it is quite unnecessary to invent or adopt a new form of procedure, especially when, in doing so, you are obliged, owing to the difficulty of definition or drafting, whatever it may be, to give to your new modification of the law an infinitely wider scope than any prudent or reasonable man would care to contemplate.

Dr. Nand Lal: I may point out to this Honourable House that the character of amendment No. 42 is not universal. It is of a very limited nature. It simply says, "In all cases where action is taken under this section (that is, section 107), to prevent a person or persons from holding or addressing meetings." The recommendation embodied in this amendment is that only in all cases of this nature a report forthwith shall be submitted to the Sessions Judge, and then when we come to the latter part of this amendment it says he may call for and examine. It rests on the discretion of the Sessions Judge that on the receipt of that report he may go into it and if he finds that some sort of illegality has crept in or some irregularity has been committed, then he may take action. Not in all cases, but only when he finds that the order is wrong, the proceedings are illegal, irregular and improper and then he may take action and set that order aside or may refuse to set that order aside. This is the recommendation which has been made through the medium of this amendment.

The grounds, on which this amendment has been moved, to my mind, seem to be acceptable:—that there is in some parts of this country a great complaint that law is twisted, that some Magistrates are pliable, that they are not independent, and that they use this section 107 in place of repressive laws and rules which are not obtaining in that part of the country. That is the complaint. In order to meet that complaint it will be very wise to allow this amendment. Now, the grounds which have been set forth in answer to this recommendation are, that if we allow this amendment to be passed, then it amounts to this that the law of revision which is already embodied in the Criminal Procedure Code under sections 435, 436, 437, 438 and 439 will, to all intents and purposes, be nugatory, that it will be a new departure and, therefore, it is not proper that this amendment should be accepted. This is one of the grounds which has been set forth by the Honourable the Home Member. The other is, in how many cases this has been done. The third ground which has been advanced is this, that this law will practically deprive the magistracy of that very wise preventive power with which they have been equipped.

These grounds can be met. So far as the first ground goes, I may submit that the law of revision will not be interfered with at all, because this amendment deals with a special sort of cases. We have got special acts, special laws. Therefore, this amendment refers to a peculiar kind of orders which will be passed. It will not cover all the orders passed by the District Magistrate or any first class Magistrate, but special cases relating to meetings and relating to the speeches made in those meetings, and not in ordinary cases. So, the fear of the Honourable the Home Member seems to be very exaggerated; I may submit, with due deference to his way of thinking, I may point out to the Honourable the Home Member that any order passed under section 107, Criminal Procedure Code, is not appealable, I think he will accede to that contention. It is revisable, and who revises? The District Magistrate. An application for revision is lodged in the Court of the District Magistrate and he revises. If a District Magistrate himself passed the order, then the application for revision will be instituted in the High Court. There is no other provision which may confront me with the view that I am wrong. If the Sessions Judge finds that the order, under debate now, is altogether illegal—suppose section 107 is not applicable. Suppose a speech is made and that speech is innocent, and a constitutional one. Every man may be of this opinion that there is nothing wrong in it, but, by an oversight or by a mistake, the speaker has been hauled up and he has been called upon to show cause.—a very respectable man, one of the orators of this country. That order is illegal. Does the Honourable the Home Member seriously mean that there should be no remedy for it, that he should undergo the whole ordeal, he should try to engage a counsel, or he may not engage a counsel, he may see what will be done or what orders will be passed under section 112 or under section 114 or under section 118 of the Criminal Procedure Code? Should he wait? Should he wait for three months, for two months, or even for one month? Why should he? If the order is illegal *prima facie*, on the face of it, why should an innocent man be asked to appear before a Magistrate? The Honourable Mr. Rangachariar's amendment meets all these emergent and urgent cases and I compliment him on putting forward this amendment.

I quite see that there is a little flaw in the motion, but, the Honourable the Home Member could not see it on account of the pressure of work. Perhaps another Member of the Government may

3 P.M.

[Dr. Nand Lal.]

think of it. If this amendment would have been placed under that class of amendments which relates to section 108, then there would have been greater propriety in it. This criticism could be launched. However, that criticism could be answered in a simple way. That is this. Since 1922, either in the former or the latter part of that year, this section 107 was wrongly applied, therefore, the Honourable Mr. Rangachariar, the author of this amendment, has thought it proper to put this amendment under that very section. That is the answer which will be given to that criticism. With these submissions, I appeal to the Government Benches that they will be advised if they will accept this amendment. There is a great grievance in the country. That grievance will be set at naught. They shall have to admit, saying "Look at the fairness of the Government. They have incorporated a special provision for cases where there is any non-co-operator who is not willing to come to the Court to make an application under section 435 or under section 439. Look at the kindness of the Government. They have incorporated a special provision to see that no injustice may be done to anybody because the object of the law is that justice should be done." If any injured man or if any man against whom a written order is made does not volunteer himself to come to the Court, whether rightly or wrongly, according to his way of thinking, here is the Government quite prepared to see that justice may be meted out to him, and with that view alone this special provision has been incorporated to help those men who do not come to the Court to defend themselves. The Government *suo motu*, and on its own accord, is always very anxious to see that none of the subjects of His Majesty may be subjected to an order which is illegal. With that view this special provision may be incorporated and the Government will be thanked for it and therefore I repeat my submission that this amendment, which commends itself, may be accepted unanimously.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I do not propose to discuss the Honourable Mr. Rangachariar's observations about non-co-operators; except one remark which he made, and which, I am rather surprised to find, was repeated by my Honourable friend, Dr. Nand Lal. The statement was that, if the non-co-operators had applied to the High Court, the High Court would have set the matter right. That is to say, the law is all right, but, simply because the non-co-operators will not apply to the High Court, it is necessary for us to make a special provision, in order that they may be saved from acting under the ordinary provisions of the law. That is a rather peculiar proposition to adopt, that we should change our law because certain people are not willing to abide by that law.

Dr. Nand Lal: Because our object is to see that justice is done.

Mr. P. E. Percival: That is a very strange proposition that the law should be altered for the benefit of people who are not willing to apply to the High Court. Then there is the other question, and that is whether the appeal or revision should be to the Sessions Judge or to the District Magistrate. It has always been the case up to now that the revision lies to the District Magistrate, not to the Sessions Judge. By referring these particular cases to the Sessions Judge we shall have two co-ordinate authorities dealing with the same subject. Section 125 runs:

"The Chief Presidency Magistrate or District Magistrate may at any time for sufficient reasons to be recorded in writing cancel any bond for keeping the peace or

and so on;

and it has been ruled by the High Courts, and especially the Madras High Court, that the District Magistrate can cancel any order for keeping the peace. So that it is the District Magistrate who deals with the matter, not the Sessions Judge. As under section 125, so also . . .

Dr. Nand Lal: Supposing the District Magistrate has passed an order under section 107, then what is the remedy?

Mr. P. E. Percival: Then the man can go to the High Court. I think the Honourable Member himself said that. An application for revision can be made to the High Court. If anybody is dissatisfied with the order of the District Magistrate, why not apply to the High Court. So that the position is that there is a regular procedure laid down in the Criminal Procedure Code, by which the case goes to the District Magistrate first, and from the District Magistrate to the High Court. The Sessions Judge is not brought in in these matters of taking security for breach of the peace. The suggestion is that one particular set of cases, namely, preventing persons from holding or addressing meetings, the case should go to the Sessions Judge, and that in other cases it should go to the District Magistrate. I submit that this is not a satisfactory way of legislating in connection with this subject. There is one other remark that I wish to make, namely, that I suggest with due deference that the drafting is not very satisfactory. It says "in all cases where action is taken under this section to prevent a person from holding a meeting". Now the action is taken to prevent a breach of the peace; it is not taken to prevent a person from attending the meeting. So I suggest in any case that the drafting is not entirely satisfactory. I thank the Honourable Mr. Rangachariar for making friendly remarks about Sessions Judges. I hope he will also adopt the same attitude when he is considering the question of the powers of Sessions Judges in other parts of the Code. In this particular case, the matter is one which goes to the District Magistrate and not to the Sessions Judge; and I suggest that there is no reason why the general law on the subject should be changed, and why any one who is not satisfied should not go to the District Magistrate under section 125, or, if the order is passed by the District Magistrate, why he should not go to the High Court for revision. The Honourable Member said that the Sessions Judge is already a revisional authority. Under section 435 he is a revisional authority to the extent that he can call for the papers and refer the matter to the High Court. But the Honourable Member wishes to make him a revisional authority to deal with the matter himself. So that, from this point of view also, I suggest that no change should be made, but that the ordinary procedure should be followed, namely, application to the District Magistrate and revision to the High Court.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadian Rural): Not being very familiar with the Criminal Procedure Code, either as a criminal or as a criminal lawyer, it is with some diffidence that I venture to speak on this subject, and if I venture at all to do so I speak purely as "a man in the street", a man who has to respect the law and who is likely on certain occasions to suffer from the vagaries of the law or of some Magistrates. The whole point whether the amendment moved by my friend, Mr. Rangachariar, is a healthy amendment or not depends on this: whether if it is carried it will solve a problem of constant friction both for Government and for society at large. Yesterday the Honourable Sir Malcolm

[Mr. B. S. Kamat.]

Hailey enunciated a very sound doctrine when he told the House that even from the point of view of Government the smaller the occasions for causing irritation by the action of the police, the better for Government. If that healthy doctrine were to be adopted to-day, I believe Government should offer no opposition to the amendment which has been moved by Mr. Rangachariar. To my mind, it is a very modest and a very salutary amendment. It is modest for one or two reasons. In the first place it shows confidence in Sessions Judges. In the second place, all that it wants to do is to give them the option and a discretionary power not to call for each and every proceeding of the magistrate but only in certain cases to call for records and proceedings of Magistrates, if they choose to do so. So that it means a certain amount of latitude to the Sessions Judges without throwing an extra amount of burden upon their work. Now what are the objections of Government to the acceptance of such a modest amendment as that? Sir Malcolm Hailey started by saying that if the non-co-operators are not prepared to go to the High Court, how is it possible that they will go to the Sessions Judges? Now that assumes as if Mr. Rangachariar had brought forward this amendment purely in the interests of the non-co-operators and nobody else. (*An Honourable Member:* "Primarily in their interests.") My reply to that argument of Sir Malcolm Hailey is this: as I said in the beginning, I take up my attitude purely as 'a man in the street'. I look to my own safety. I am not so much concerned about the safety or the protection of the non-co-operators, but Sir, I have no doubt to any citizen, howsoever humble he might be, I believe Mr. Rangachariar's amendment would be a safeguard and a protection in respect of his elementary rights. Sir Malcolm Hailey said that this is likely to reduce the power of the Magistracy. Certainly it is intended to do that on the healthy principle that while, on the one hand, the Magistracy is intended to prevent any breach of the peace, it is also, on the other hand, intended to safeguard the interests of honest citizens, and if there is a pitfall into which Magistrates are likely to fall by an excessive zeal or by their political bias or by the atmosphere of the country for the time being, well, there should be a safeguard provided by the law. I believe the amendment of my friend, Mr. Rangachariar, provides a very convenient and a very workable safeguard, both in the interests of Government and in the interests of the Magistracy and in the interests of citizens like myself, the man in the street. I expected, Sir, that Sir Malcolm Hailey would accept this amendment instead of shielding himself behind certain technicalities. If this is a healthy and a salutary amendment both in the interests of the citizen and of Government, as I contend it is, there should have been an alacrity on the part of Government to accept it, but the tendency on the part of Sir Malcolm Hailey was to shield himself behind definitions and behind technicalities. The first technicality which he trotted out was the revisionary powers of the Sessions Judges. Now if this is an acceptable amendment, purely on its merits, in the interests of community and in the interests of Government, a way could be found out so far as the revisionary powers of the Sessions Judges are concerned. Under sections 435 and 436 it is pointed out they have such powers; now the question of giving these additional powers or throwing this burden on them is purely a matter of administrative convenience and public interests. If it is necessary in the interests of society to throw additional burdens on the Sessions Judges, by all means let Government come forward and say

that such a burden should be thrown on them, instead of simply saying technically that such and such a power already vests in them and it is not desirable to throw additional burdens on them. It is purely a matter of technicality to raise this objection. I believe the attitude taken up by the Government as displayed by Sir Malcolm Hailey was purely what one would call an offspring of political expediency. Sir Malcolm Hailey further went on to say, or to pretend to think that it was not possible to define even the word "meeting". It caused a great deal of astonishment to me that those who are able to frame so complicated and so comprehensive a Code as the Criminal Procedure Code are unable to find out a definition of the word "meeting", and, then, that their Magistrates who can understand what an unlawful assembly is and who can differentiate between a lawful and an unlawful assembly would not understand what a meeting was, an ordinary meeting held for any ordinary purpose in the country. Sir, I do think that this is a tendency to shirk responsibility, to accept the principle of the amendment. I for one think, both in the interests of Government and in the interests of community, it is desirable to provide in the Code a safeguard for honest citizens who want to take part in meetings either political or otherwise, and I think Government would do well to accept this amendment either in this form or, if the drafting is considered defective, to accept it in some other form, and not give a go-by to this amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, while fully sympathising with the underlying principle of my friend, Mr. Rangachariar's amendment, I have certain difficulties which I propose to place before this Honourable Assembly.

I quite see that in cases where a person is prohibited from holding a meeting or taking part in a meeting some corrective may be necessary in respect of the action of the Magistrate prohibiting the meeting, especially in these days of political conflict. But at the same time I also see that it is extremely difficult to put this amendment forward as an amendment of section 107 of the Criminal Procedure Code. My reasons are these. My friend, Mr. Rangachariar, says: "In all cases where action is taken under this section to prevent a person or persons from holding or addressing meetings, a report shall, etc., etc." Now, in such cases the action taken must be by an order, and the order contemplated is not an order binding down any particular person against any contemplated breach of the peace, but an order prohibiting him from holding a meeting. That is an order, it seems to me, which comes under section 144 of the Code and can be appropriately considered only within the four corners of that section, *vis.*, section 144. At the same time we have this further difficulty that section 435 which is the section about revision, lays down in so many words that "orders made under sections 143, 144, etc., are not proceedings within the meaning of this section." Therefore if the amendment is put to the House in the shape in which it has been put forward, to my mind considerable legal difficulties arise, and being in sympathy with my Honourable friend, my present desire is to seek some means whereby the difficulty may be solved. But if the matter be put to the Assembly as an amendment to section 107, I feel, Sir, that I shall have great difficulty in voting in favour of the amendment, as I do not wish to introduce confusion into the Criminal Procedure Code.

Rao Bahadur T. Rangachariar: It really means, 'when action is taken under this section for the purpose of preventing a person, etc.'

Mr. J. N. Mukherjee: Of course, all orders under section 144 are orders directing a person to abstain from doing a certain thing or to take certain orders in connection with property in his possession or management; they are not orders directed against the land itself, an inanimate thing, but against a person and they cannot mean police action. And therefore I submit that the scope of section 107 is something totally different from what is contemplated by the proposed amendment. That is my view. My Honourable friend, Mr. Kamat, seems also to think that if there are drafting difficulties those difficulties could be smoothed over and the underlying principle considered in its appropriate place. That is also my difficulty, and if the House accepts the principle of the amendment, I hope it will also consider that point, and I put it to my Honourable friend, the Mover of the amendment, that he will also consider it before putting it to the vote of the Assembly.

Rao Bahadur T. Rangachariar: I shall gladly do so if I can understand what my Honourable friend's difficulty is. I am sorry I have not been able to trace it.

Mr. J. N. Mukherjee: I say that the amendment cannot come under section 107 because section 107 contemplates the binding down of a person; that is, a Magistrate may, under that section, only call upon a person to show cause why he should not be bound down for a certain time. That is quite distinct from an order directing that a certain thing should be done: that is to say, by such an order, personal liberty is not interfered with but a person is merely ordered not to do a certain thing. There is my difficulty. Of course, if such an order really comes under section 107, it is open to revision but unfortunately it does not. I may, however, point out that the proposal itself is a very harmless one indeed, and is not likely to interfere with executive action. I would like the Honourable the Home Member and the Members on the Government Benches to consider this point.

The House will see that the order in question is passed forbidding a meeting. The meeting does not take place. The event cannot be re-enacted afterwards. The danger, whatever it is, is tided over, and thereafter, according to the amendment proposed a report is sent to the Sessions Judge. The Sessions Judge cannot pass a contrary order, but will only consider the propriety of that order; that is all, and the thing will end there. My submission is that my Honourable friend, Mr. Rangachariar, is quite right when he says that, it will be well if there is some superior legal authority to check any error in the proceedings of the Magistrate; that will ensure, to my mind, a salutary provision of the law. Therefore, I put it to Honourable Members that the substance of the amendment itself is very harmless in its way, and therefore its principle, taken by itself, ought not to present any difficulties to the Government Benches. But, if it be put to the vote of the House, as it is, I regret, I shall not be able to vote for it.

Mr. J. Ochaudhuri: May I inquire, Sir, what would be the attitude of the Government with regard to my suggestion? If they are disposed to consider it, it may not be necessary to go into these piece-meal amendments.

The Honourable Sir Malcolm Hailey: The Honourable Member asks me what is our attitude towards his suggestion. We treated it, not as an amendment, but as a suggestion only; and, obviously, we could not discuss

it in any way in this place, for it is not cognate to this particular section, any more than, I was going to say, is Mr. Rangachariar's motion truly cognate to it, since all that a Magistrate does under section 107 itself is to order somebody to show cause. We have treated Mr. Chaudhuri's suggestion as a suggestion and nothing else, which we shall have to consider. While we are discussing changes in the existing law, it is really impossible for us to enter into a discussion of the wide change involved in carrying out a separation between executive and judicial functions.

Mr. R. Faridoonji (Central Provinces : Nominated Official) : The proposals made by Honourable Members have already been anticipated in the Central Provinces. All cases disposed of by First Class Magistrates are reported to the Sessions Judge in the form of daily calendars and he calls for the records of cases when he thinks inspection or revision of cases is necessary. It seems to me that a tremendous amount of solicitude and tenderness is shown for the criminal or the person from whom a breach of the peace is apprehended, while I have not heard one word of consideration for the public who apprehend a breach of the peace, or who apprehend broken bones or broken heads.

Colonel Sir Henry Stanyon : Sir, after hearing some of the speeches on the question now before us, I am more than ever anxious to endeavour to approach the consideration of it with the complacency of a cold-blooded legislator. I will examine the proposed amendment. If I feel it to be a reform, I shall unhesitatingly support it whatever may be the view of Government. The lunch interval has given me an opportunity of considering it. As it stands, it seems to me, in a special class of cases, to alter the existing law in two respects only. Firstly, it requires that a report of the proceedings should be made apparently—though there is nothing in the amendment to show who or what is the person or authority responsible to make the report,—by the Magistrate who takes action under section 107. That is the first point. As the law now stands, a report to the Sessions Judge of proceedings under section 107 would be made ordinarily by the person against whom those proceedings were taken.

The other point upon which this amendment would alter the law is that the Sessions Judge, instead of reporting to the High Court a case in which he thought some interference by higher authority was desirable, will himself be empowered to pass the final order. Now how far will that be any advantage to the general public? My own humble opinion is that, while it will delay and retard preventive action by the Magistrate on the spot, it will invite the Sessions Judge to take upon himself a responsibility which, from what I know of Sessions Judges, he will very seldom be inclined to accept. However, that is only a matter of procedure. But it seems to me that the amendment as it stands—we must take it as it stands—is open to the objection urged against it by the last speaker, namely, that of producing a certain amount of confusion. It reads :

"In all cases where action is taken under this section to prevent a person or persons from holding or addressing meetings."

That is hardly language in which one can properly describe action under section 107. It suggests that the section is likely to be used in an indirect way, not to prevent breaches of the peace but to prevent meetings which some person or some body of people consider undesirable. If the section is used to prevent a person from taking action which is likely to cause a breach of the peace, then why should one particular form of that action be made the subject of special legislative treatment? (Res)

[Colonel Sir Henry Stanyon.]

Bahadur T. Rangachariar: "The elementary right of citizenship.") Then we are not told that these meetings are to be political meetings or even public meetings. For all that appears in the amendment to the contrary this special treatment would have to be applied to meetings held by intending dacoits, to meetings held by intending rioters, to meetings held by religious fanatics, to meetings held by factions concerned in a dispute over land. The Honourable the Home Member has rightly said that it is an extremely difficult thing to say what is a meeting having regard to the ordinary significance of that word. Two persons can have a meeting. But I think there are two other rather serious objections to this proposed amendment. A general legislation of provisions for revision by the higher Courts cannot be taken objection to by anybody; but the moment you introduce a special clause of this kind for special cases, you make your motive clear. It has been made clear in this case. Underlying the proposal is the distrust of our Magistrates. Sir, we have heard that there are Magistrates of all kinds. Certainly there are. I have met them of all kinds, from A to Z. But, because a tool is fragile or bad, you do not cut off the hand that works it; you improve the tool. If our Magistrates are given to weaknesses, to illegalities, to too much police and too little judge, public opinion is the remedy for improving that state of things. We cannot possibly expect our Magistracy, as a body, to be encouraged to act with impartiality and in a trustworthy way if by our laws we point out to them that the public whom we represent have no trust in them. We must give them that trust and let them feel it a burden upon them to act up to it and to deserve it. That is the only way; that is how trustworthiness has been secured in England for centuries, and that is the only way in which it will be secured in India. Then I submit that it is indeed a strong objection to this amendment that it would create an exception in procedure, an invidious distinction, in respect of one particular class of action which a Magistrate believes is likely to create a disturbance or cause a breach of the peace. We have to-day caused to be accepted or carried an extremely sound principle insisted upon by my Honourable friend, Mr. Rangachariar, that action under section 107 shall depend upon an exercise of Magisterial discretion—a proper exercise of Magisterial discretion. That is undoubtedly a correct principle and a wise safeguard; but having got that and put it on the Statute Book, are we nevertheless to suggest to the Magistrate as we should do by this amendment: "We do not believe in your exercise of judicial discretion in this particular class of case, and therefore, in this particular class of case only, we command that every time you exercise that discretion, you shall at once make a report to your superior authority in order that there may be a check upon you." I think the proposition made upon the basis of the Greaves' Commission Report for a general amendment of the law of revision is a proposition that will require very careful consideration by this House when it comes up; but it is impossible to introduce a general clause of that kind as a tail to section 107. Therefore, I think, and I think so after careful consideration of everything said upon both sides of the question—it is my honest opinion, though possibly a wrong one—that by introducing this amendment into the Code we shall not do any practical good to the public at large, and we may do a good deal of harm.

Sir Henry Moncrieff Smith: Sir, I have very little to add to the very clear exposition of the difficulties of this amendment which the House has just heard from Sir Henry Stanyon. But I do want to be clear in my own mind, and I think the Members of the House should be clear in their minds, as to what the effect will be of making this amendment in

our criminal law. Mr. Rangachariar proposes that when an order has been made under this section for a certain purpose—I am not concerned with the purpose, the question of the principle of the amendment has been otherwise dealt with—but when an order has been made under section 107, the Magistrate—he does not say the Magistrate but we presume it is the Magistrate—shall make a report forthwith to the Sessions Judge. Now, we have to remember what it is he is going to report. As a matter of fact, there is no order under 107. It is a requisition. You require a person to appear.

Rao Bahadur T. Rangachariar: I did not say “order”—the wording is “when action is taken.”

Sir Henry Moncrieff Smith: When action is taken. My point is just the same: action is taken. What has the Magistrate done? He has required a person to appear and show cause. The moment he has done that, he reports to the Sessions Judge. Well, what is the Magistrate then going to do? Does he go on until perhaps the Sessions Judge sends for the record or does he stay his proceedings and wait for the Sessions Judge to take action in the matter? I do not know what the poor Magistrate will do.

Rao Bahadur T. Rangachariar: I do not think there will be any difficulty. Till he gets a stay order he goes on.

Sir Henry Moncrieff Smith: Unless he gets a stay order he goes on. Very well. I should have thought it might have been better to make it clear. But let us come to the Sessions Judge. He has got the report from the Magistrate. Now, what is the report going to be? The Magistrate has reported to the Sessions Judge, “I have information that Mr. Rangachariar is likely to commit a breach of the peace. . . .”

Rao Bahadur T. Rangachariar: By attending a meeting.

Sir Henry Moncrieff Smith: “I think there is sufficient ground for proceeding against him. I have therefore issued a notice upon him to appear and show cause.” That is what the Sessions Judge gets. Now, what is he going to do. He sends for the record. When he has seen the record, he has got no further information to go upon.

Rao Bahadur T. Rangachariar: Then if that is all the material he will cancel it.

Sir Henry Moncrieff Smith: Mr. Rangachariar is reluctant to admit that there is anything wrong with his amendment. But I think in his heart of hearts he will himself realise that it is in the wrong place. That is not an amendment to section 107. He wants it to be much further on in the proceedings. At all events, I shall be very glad indeed if any Honourable supporter of this amendment will get up and remove my doubts in the matter. I cannot see how any Sessions Judge is going to pass any effective order of any sort. I think a sensible Sessions Judge, receiving the report of the Magistrate, will say “what is the good of this to me?” and drop it into the waste-paper basket. This will be the effect of the new procedure which Mr. Rangachariar’s ingenuity is devising for us.

Mr. Deputy President: Amendment moved:

“After clause 17 the following clause be added, namely:

‘17-A. After sub-section (4) of section 107 of the said Code the following sub-section shall be inserted, namely:

‘(5) In all cases where action is taken under this section to prevent a person or persons from holding or addressing meetings, a report shall forthwith be made to the

[Mr. Deputy President.]

Sessions Judge who may call for and examine the record of any proceeding for the purpose of satisfying himself as to the correctness, legality or propriety of the same and pass such orders as he thinks fit."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—28.

Abdul Majid, Sheikh.
Agnihotri, Mr. K. B. L.
Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Das, Babu B. S.
Faizaz Khan, Mr. M.
Ginwala, Mr. P. P.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.

Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Singh, Babu B. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—43.

Abdulla, Mr. S. M.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Ikramullah Khan, Raja Mohd.

Innes, the Honourable Mr. C. A.
Joshi, Mr. N. M.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadli, Mr. S. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Sen, Mr. N. K.
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Sinha, Babu Ambica Prasad.
Sircar, Mr. N. C.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was negatived.

Rao Bahadur T. Rangachariar: The next amendment which I move, Sir, is this:

"After clause 17 insert the following clause:

'17A. After sub-section (4) of section 107 of the said Code the following sub-section shall be inserted, namely:

'If any person who is detained in custody under sub-section (4) or is brought under arrest as provided in section 114, is prepared at any time or at any stage of the proceedings before such Court to execute a bond required of him by the order passed under section 112 to be in force until the completion of the enquiry herein-after prescribed, he shall be released.'

The whole object of the initiation of these proceedings is to require a person to execute a bond to keep the peace for a certain period, but pending the enquiry the Magistrate considers that his detention is necessary and therefore orders him to be brought up—detention in order to compel him to give the security after the proceedings are fully completed. But

if he is prepared to give that security during the pendency of the inquiry there is no reason why he should be kept in custody when he is prepared to do it in order to go on with the inquiry, it being always remembered that this is a purely preventive chapter and not a punishing chapter. If the man is prepared to do that which he is called upon finally to do, when he is prepared to do it in the first instance pending the inquiry, there is no object in keeping him in custody. Therefore, I provide that instead of his being enlarged on bail which may not be enough—bail is merely for appearance—if he executes the bond which he is required in the preliminary order under section 112 which was read to us this morning by the Honourable the Law Member, namely, giving the period and the amount which he would eventually be required to give—if he is prepared to do that pending the inquiry, then he should no longer be detained in custody. That is the object of this amendment and I hope it will be acceptable to the House.

Mr. Deputy President: Amendment moved:

" In clause 17 add the following sub-section, namely :

" After sub-section (4) of the same section the following sub-section shall be inserted, namely :

" (5) If any person who is detained in custody under sub-section (4) or is brought under arrest as provided in section 114, is prepared at any time or at any stage of the proceedings before such Court to execute a bond required of him by the order passed under section 112 to be in force until the completion of the inquiry hereinafter prescribed, he shall be released."

Mr. H. Tonkinson: Sir, I have two objections to the amendment which has been moved by the Honourable Mr. Rangachariar. In the first place the proposed sub-section to section 107 is in an entirely wrong place. In the second place it is quite unnecessary. As regards the suggestion that it is in the wrong place, I would merely remark that section 107 deals with persons who have been required to show cause why they should not execute a bond to keep the peace. Now in this sub-section the Honourable Mr. Rangachariar refers to persons brought under arrest under section 114. This section applies to all people who come under the provisions of section 112. That is, it covers the cases of persons who are called upon to show cause why they should not give a bond for good behaviour as well as of persons who are called upon to show cause why they should not give a bond to keep the peace. That objection, Sir, might be met by placing the amendment in another place, but in view of the fact that we are providing in clause 20 for the addition of a sub-section (3) to existing section 117, I suggest that this amendment is quite unnecessary. Under the proposal of the Honourable Member the bond which would be executed would be a bond required of him by the order passed under section 112. Under section 117, on the other hand, it has been definitely provided that the bond shall not be either in degree or in nature more stringent than the bond which the man is required to execute by the order passed under section 112. What then, Sir, is the use of this additional provision. It might be suggested, perhaps, that this will apply to an earlier stage of the proceedings than the stage of section 117. But, Sir, that is entirely incorrect because a man under the proposed sub-section (6) must have been brought before the Court. The order under section 112 must have been read and then, Sir, immediately the provisions of section 117 apply and I submit that the amendment is therefore quite unnecessary. In the interests of the subject, much more has been provided for in the Bill already than in the amendment proposed by my Honourable friend.

Mr. Deputy President: The question is:

"That in clause 17, add the following sub-section, namely:

'After sub-section (4) of the same section the following sub-section shall be inserted, namely:

'5. If any person who is detained in custody under sub-section (4) or is brought under arrest as provided in section 114, is prepared at any time or at any stage of the proceedings before such Court to execute a bond required of him by the order passed under section 112 to be in force until the completion of the inquiry hereinafter prescribed, he shall be released.'

The motion was negatived.

Mr. Deputy President: The question is, that clause 17, as amended,
4 P.M. stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, the amendment of which I gave notice has already been discussed in connection with clause No. 17. I may be permitted to move an amendment adopting the same wordings as have been adopted in clause 17, that is 'in his opinion if there is sufficient ground for proceeding, or believing, or whatever word may be suitable,—I would leave that to the Legislative Department.

Sir Henry Moncrieff Smith: Sir, we are quite prepared on our part to accept the same amendment that we had in section 107. It will simplify matters if I move it myself, having it now in proper form. I move, Sir,

"That in clause 18 after the word 'substituted' the following be inserted:

'After the words 'such Magistrate' the words 'if in his opinion there is sufficient ground for proceeding' shall be inserted'."

Mr. Deputy President: The question is that the amendment be made.

The motion was adopted.

Mr. T. V. Seshagiri Ayyar: I move, Sir, on behalf of Dr. Gour, his amendment.* I must say at once that, speaking for myself, I should like not to move it, but unfortunately I have power and am authorised to move and not to withdraw. But I can conceive cases, in moving the amendment, cases, probably Government knows, of an effigy being carried which would have the effect of disseminating sedition; or, a caricature, a photograph: there are other ways of disseminating sedition, that is other than orally or in writing. However, Sir, I have got to move it, and I move it.

Mr. Deputy President: The amendment moved is:

"In clause 18 omit the following:

'After the words 'in writing' the words 'or in any other manner' shall be inserted'."

The Honourable Sir Malcolm Hailey: Mr. Seshagiri Ayyar has already anticipated the objection we should have brought forward against his amendment. The added words would, of course, apply to effigies, photographs, cinema shows, dumb shows and the like.

Mr. Deputy President: The question is that that amendment be made

The motion was negatived.

* In clause 18 omit the following:

'After the words 'in writing' the words 'or in any other manner' shall be inserted'."

Rao Bahadur T. Rangachariar: Sir, I move the following amendment:

"In clause 18 after the word 'manner' insert the word 'knowingly'."

My amendment relates to the same clause but is not to the same effect. The language of the clause is:

"has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing, seminate or in any manner disseminates or attempts to disseminate . . ."

I introduce the word "knowingly" before the word "disseminates," so that innocent agents may not be proceeded against; for instance, boys who handle newspapers without knowing the contents and such other persons who are merely ignorant tools in the hands of other persons, should not be proceeded against. "Knowingly disseminates"—that is the object of this amendment. I hope it will commend itself to the House. and I do not think many words are needed, unless Government opposes, in which case, of course, there are other Honourable Members who will take care of it.

Sir Henry Moncrieff Smith: Sir, I would suggest that this amendment is really not necessary. Mr. Rangachariar cited the case of the newspaper boy. Well, a newspaper boy does certainly hand on newspapers which contain possibly objectionable matter to purchasers. But I do not think it can be said that the newspaper boy is disseminating the matter.

The word used here is 'disseminating,' 'spreading broadcast,' and Mr. Rangachariar no doubt knows the Latin derivation of the word: it means the same thing as 'scattering seed.' Now, the person who scatters seed orally or in writing is not the newspaper boy. I do not think there is any doubt about that. Nor do I think there is any risk whatever of a newspaper boy being prosecuted under this section. The word "knowingly" is not a word we are accustomed to in our law; we have the words 'voluntarily' 'intentionally,' and so forth. "Knowingly" is somewhat new to us and I do not think we shall be improving the Code by introducing it.

Mr. K. B. L. Agnihotri: Sir Henry Moncrieff Smith has said that no person who sells newspapers can be bound over under this section. I should like to give him some instances which have been brought to my notice. Honourable Members may be aware that in Partabgarh during 1921, about a dozen young men were prosecuted under this section and bound over for distributing certain leaflets about the Kisan movement and put in prison for their refusal to give security. In another place also, very recently, a boy was punished with imprisonment for seven years under section for distributing *Fatra* leaflets. It is just possible that the Magistrates may bind over even boys who sell newspapers in the streets. There will therefore be no harm if the word "knowingly," or any similar word such as "intentionally," is inserted in this sub-clause. It is on the other hand extremely desirable to insert such a word and provide a necessary safeguard.

The Honourable Sir Malcolm Hailey: Sir, the Honourable Member has by implication at all events brought so grave a charge against our Magistracy, namely, of sending to prison for seven years boys who unknowingly disseminated information, that I am impelled to ask him whether he can assure the House that persons so convicted did not know the nature of the leaflets they were distributing. Perhaps he cannot give that assurance?

Mr. K. B. L. Agnihotri: Not under this section. No one can be punished for seven years under this section.

The Honourable Sir Malcolm Hailey: Then his objection does not apply to this section.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muham-madan Urban): Sir, with your permission and the permission of the House, I move that the word "intentionally" be substituted for the word "knowingly".

Rao Bahadur T. Rangachariar: Sir, I accept that.

The Honourable Sir Malcolm Hailey: We are prepared to accept that.

Mr. Deputy President: The question is:

"That in clause 18, after the word 'manner' insert the word 'intentionally'."

The motion was adopted.

Mr. Agnihotri's Amendment No. 46, namely:

"That in clause 18:

Between the word 'matter' and the word 'contained', insert the words 'not true to the knowledge of such person and'."

was withdrawn.

Mr. Deputy President. The question is:

"That clause 18, as amended, stand part of the Bill."

The motion was adopted.

Mr. W. M. Hussanally: Sir, before Mr. Agarwala is called upon to move his amendment, there is an amendment standing in my name on the supplementary list which has been placed on the table to-day. I propose that in section 110 after the words 'receives information', the words 'on oath or solemn affirmation' be inserted.

The Honourable Sir Malcolm Hailey: I am afraid, Sir, I must ask for your ruling whether you admit this amendment. You will perceive, that it was received on the 15th January shortly after one o'clock.

Mr. W. M. Hussanally: I handed it in to the Notice Office at 11 o'clock.

The Honourable Sir Malcolm Hailey: Nevertheless, Sir, it was on the 15th of January, and, as I read the rule, it says that notice of amendments must be given in two clear days before the Bill is to be considered. The rule does not provide two days before any portion or section of the Bill is taken into consideration.

Mr. Harchandrai Vishindas: "Considered" is the word.

Mr. Deputy President: My ruling on the application of Standing Order 46 to the case of amendments received two clear days before the clause of the Bill to which they relate comes up for consideration is as follows:

Sub-order (1) of Standing Order 46 clearly requires notice to be given two clear days before the first day on which the Bill is considered. Therefore, all amendments of which notice was given on or after the 18th of January may be objected to under the Standing Order. As regards the

power of the Chair to overrule the objection, I propose, ordinarily, not to suspend the Standing Order in favour of such amendments, firstly, because Honourable Members have had ample time in which to consider the Bill and to formulate their amendments, and, secondly, because in a long and complicated Bill of this kind there is a distinct danger that the passing of an amendment, of which the notice prescribed by the Standing Order has not been received, may result in the overlooking of necessary consequential alterations in the Bill or of the effect of the amendment on other provisions of the Code.

I therefore rule Mr. Hussanally's amendment out of order.

Rai Sahib Lakshmi Narayan Lal: Sir, with your permission, I will move the amendment standing in the name of Mr. Agarwala.

Mr. Deputy President: Has the Honourable Member received his permission in writing?

Rai Sahib Lakshmi Narayan Lal: Yes, Sir.

The amendment that I am going to move is:

"That in clause 19 omit sub-clause (1)."

Sub-clause (1) of clause 19 is as follows:

"In class (a), the word 'or,' where it first occurs, shall be omitted and after the word 'thief' the words 'or forger' shall be inserted."

The effect of this amendment will be that a "forger" will not be included under the purview of section 110 of the Criminal Procedure Code. I would have liked to include a "habitual forger" under the purview of this section of the Code, but there is a difficulty which stands in my way, but for which I would not have moved this amendment, and it is this. Section 110 says that whenever a Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or a Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction is by habit a robber, housebreaker, or thief, etc., such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding 3 years as the Magistrate thinks fit. Honourable Members will find that the Code requires that the bond shall be executed with sureties, and a reference to clause 21 (c) of the Bill will show that such sureties can be rejected on the ground that they are not capable of controlling the movements of the person. I ask the Honourable Members to consider whether it is possible for the sureties of a "forger" to control his movements. The sureties of a habitual robber or thief or housebreaker can control his movements, because to commit his offence he has to move from place to place, he will be going from one place to another. But "forger" can forge while sitting in his house: how can a surety control his movements? It will be simply impossible for a "forger" to find a surety. A forger cannot get a surety, and when he cannot get a surety he will have to rot in jail. No surety can possibly control the movements of a "forger" unless he remains with him day and night, and therefore I say "forger" should not be included in his section.

The motion was negatived.

Mr. J. Ramayya Pantulu (Godavari cum Kistna: Non-Muhammadan Rural): Sir, my amendment is that:

"In clause 19, sub-clause (ii), omit the words 'or abets the commission of'."

Mr. K. Ahmed: Sir, there is an amendment to omit clause 19 standing in my name.

Mr. Deputy President: We have just disposed of that.

Mr. K. Ahmed: I wish to move amendment No. 48*

Mr. Deputy President: That *has* been disposed of.

Mr. K. Ahmed: No, Sir. There has probably been a clerical mistake and I am the sufferer for it. Sir, before I had sent the manuscript written by myself possibly there has been some mistake. The word 'forgery' Sir, you will see in section 110 . . .

Mr. Deputy President: Before the Honourable Member proceeds further I would like to know what amendment on the agenda paper it is that he is moving.

Mr. K. Ahmed: The word 'forgery,' Sir,—I have got the word here . . .

Mr. Deputy President: That has been disposed of.

Mr. J. Ramayya Pantulu: I propose, Sir, that in clause 19, sub-clause (ii), the words "or abets the commission of" be omitted.

This amendment relates to clause (d) of section 110. The present clause runs thus:

"Whoever habitually commits mischief, extortion or cheating or counterfeiting coin, currency notes or stamps, or attempts so to do . . ."

The amendment proposed by Government is this:

"Habitually commits, or attempts to commit, or abets the commission of, etc."

Abetment is now added newly to the section. According to the section as it stands now it is only the commission of an offence or an attempt to commit the offence that renders a man liable to be bound over. But now for the first time it is proposed also to bind over a man for habitually abetting the commission of an offence. My objection is this, that abetment may be by doing an overt act or simply by an illegal omission; and it seems to me that a man might be bound over for abetting by means of an overt act but not for abetting by an illegal omission. I am prepared to amend my amendment like this: "habitually commits or attempts to commit or abets by an overt act the commission of an offence . . ." So I will put it like that and I hope that it will commend itself to Government. My point is this, when you bind over a man . . .

Mr. Deputy President: May I ask the Honourable Member to repeat what he has said? The House would like to know what the alteration is.

Mr. J. Ramayya Pantulu: I would add after the word "abets" the words "by an overt act." My point is that we should not bind over a man simply because he has been omitting to do a certain thing which he ought to have done. We can do it with regard to a man who has done an overt act. That is my point, Sir.

Dr. Nand Lal: With your permission, Sir, may I inform the author of the present amendment . . .

* In clause 19, omit sub-clause (i),

Mr. Deputy President: Order, order. The amendment is "In clause 19, sub-clause (ii) after the word 'abets' insert the words 'by an overt act'."

Rai N. K. Sen Bahadur (Bhagalpur, Purnea and the Sonthal Pargannas: Non-Muhammadan): May I inquire if this new amendment has been accepted by this House?

Sir Henry Moncrieff Smith: No, Sir, by no means.

Mr. Deputy President: If an objection is taken, I would rule it out of order.

Sir Henry Moncrieff Smith: I merely said that the amendment has not been accepted by the House.

Mr. Deputy President: But the question is before the House.

Sir Henry Moncrieff Smith: The amendment has not yet been accepted by the House.

Mr. Deputy President: The amendment is before the House.

Sir Henry Moncrieff Smith: Sir, Mr. Pantulu desires to put in the words 'by an overt act,' because he is afraid that somebody might be prosecuted under section 110 for habitually abetting serious offences by illegal omissions. It is a little difficult to conceive how this might arise. But in any case there is no abetment without intention. If my friend will look at the Penal Code for the definition of abetment, he will find that there is no abetment in regard to an omission unless the omission is an illegal omission and unless also the person intentionally aids, by that illegal omission, the doing of a thing. I think, Sir, the House will agree that if a person habitually and intentionally aids by illegal omissions the commission of all these offences to which reference has been made, he should come within the purview of the law.

The motion was negatived.

Mr. K. Ahmed: Sir, I move that in clause 19, in sub-clause (ii), omit the word 'kidnapping.'

As a general principle, Sir, when there is an offence and it is sufficiently provided for as punishable in the Indian Penal Code, I do not think it is at all necessary that this word should be included in section 110 for bad livelihood. The scope of this section is after all a preventive one and not a punitive one. Kidnapping as a profession, Sir, is very rare in many parts of India; while on the other hand, we have got some experience in our criminal court practice that young minor wives and minor members of families who are without help are kidnapped. Sometimes the relations of the minors go to the police and try by giving illegal gratification to kidnap, with the result that the engine of oppression is being put in against the interest of these persons who are infants after all. That being so, Sir, and since we see the word 'kidnapping' has been put in for the first time after so many years and is probably a good attempt, but certainly, Sir, when we come across so many difficulties, so much oppression being exercised, I submit that this word "kidnapping" should be omitted.

I therefore move, Sir:

"In clause 19, in sub-clause (ii), omit the word 'kidnapping'."

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"In clause 19 (ii), insert the word 'abduction' between the words 'kidnapping' and 'extortion'."

I think, Sir, while moving this amendment I am on safer ground. Here I do not wish to curtail the powers and the authority that have been vested in the Magistrates or the police and I have no fear of getting any rebuke from the Leader of the House on this amendment. I take it as my ill-luck to have received these rebukes from the Leader of the House, for the fault of having the misfortune to differ from him on certain points. My reason for moving this amendment is that, of late there has been a regular profession with certain people to take women and girls from different provinces of India to the Punjab—so much so that hundreds of females are taken from some of the provinces to the Punjab every year and sold there. So far as the Central Provinces is concerned, the Central Provinces Government deputed special officers to find out and make inquiries in that connection and certain persons are on trial and the cases are pending in the Courts of law. It generally happens that the agents or the female-catchers as they may be called, have their agencies at various places where they employ women of that district or of places in the neighbourhood in their service and after a course of time by deceitful inducements and persuasion take them to the Punjab and sell them. If any of my Honourable friends have any doubt on that matter I would refer them to the various law reports and the law journals: wherein they will find many cases of kidnapping and abduction of this nature reported. Therefore, I submit that there is no reason why when we include kidnapping we should not include abduction also in this section. Therefore, I commend my amendment for the consideration of the House.

The Honourable Sir Malcolm Hailey: Sir, I am very sorry Mr. Agnihotri should think that I have directed rebukes against him. It was far from my mind; I have indeed attempted to convince him by argument every now and then and I am glad to say have frequently received the aid of the House in doing so. On this occasion he may be quite free from any such apprehension. So far from contesting his proposal, for my part I think it is an excellent one. It was originally in the Bill as put forward in 1913, and it was perhaps in an excess of caution that it was omitted by the Lowndes Committee. I quite agree, from my knowledge of the infamous trade that is carried on in certain parts of India, that this addition should be made to Bill; it is an added pleasure to me on this occasion to find a new Saul among the prophets.

Mr. J. Chaudhuri: But the Law Member ought to repudiate the charge against the Punjab.

Bhai Man Singh: Sir, while supporting the amendment, I must strongly repudiate the charge that is brought against my province. I am sure the Honourable the Law Member will bear me out on this point.

Mr. Deputy President: Amendment moved:

"In clause 19 (ii), insert the word 'abduction' between the words 'kidnapping' and 'extortion'."

The question is that that amendment be made.

The motion was adopted.

Munshi Iswar Saran: Sir, I beg to move the amendment which stands in my name, and which runs as follows:

"To clause 19 add the following clause:

"(iii) clause (f) shall be omitted."

I am afraid I shall be considered to be a very nervous person like so many other Honourable colleagues of mine in the House who object to the enlargement of the power of the Magistracy and the police. I know that in moving this amendment I am courting very severe attacks from various quarters. Some friends of mine, mostly Executive Officers of Government, have come to me and, though not in so many words, but by their gestures and by the way in which they have spoken have implied "Either you are a dangerous lunatic or you are a dangerous character yourself. How dare you move this amendment?" When I am opposed by so many distinguished gentlemen, I feel that I must be wrong and they must be right. But, unfortunately, Sir, I have not been convinced that I am wrong and I need hardly assure either the Honourable Sir Malcolm Hailey or the other Members of this House that I am in no sympathy with the dangerous people who are mentioned in section 110, and I am not at all keen on gaining the distinction which a prosecution under this section confers upon you.

But, Sir, the whole point is this. Is it really necessary to have this clause (f) in section 110? The House will notice that its scope has been very much extended by the amendments that have been carried to-day. Almost every kind of imaginable offence to which the provisions of this section could be made applicable has been included in sub-clauses (a), (b), (c), (d) and (e). I have been trying to think—I must confess without success—of a case to which clause (f) would apply but which would not be covered by the previous clauses. (*An Honourable Member:* "Goondas.") Yes. My Honourable friend says "Goondas." I was going to refer to Goondas. Perhaps my words will not carry the same weight with the House as the words of a very distinguished Judge of the Allahabad High Court, whom every lawyer not only in the United Provinces but all over India considers an authority on criminal law. I mean the late Sir Douglas Straight. Listen to what he says. There was a case exactly of a Goonda before him and this is what he said. I will give the facts from the report itself.

Sir Henry Moncrieff Smith: May we have the reference, please.

Munshi Iswar Saran: Indian Law Reports, Allahabad Series, Volume VI, page 132. I must at once inform Sir Henry Moncrieff Smith that I tried to find out whether this case was over-ruled but I could not get hold of the index of cases in this library. If it is over-ruled, I shall be very glad if he will tell me so. This is what the report says:

"On reading over the record and hearing Babua's pleader, Babu Lal Moha, I consider there is sufficient evidence on the record to establish that Babua is a notorious *badmash*, an extortioner, a concoctor of false cases as a means of extorting money, and altogether a terror to the town of Mirzapur. I have heard of the *badmashes* of Mirzapur (who, indeed, are notorious), and I have taken the opportunity of consulting a few of the residents of Mirzapur about this Babua, and the account they give of him is very black indeed."

That was the sort of man who went up in revision before his Lordship, Mr. Justice Straight. This is what his Lordship says:

"I am well aware that in Mirzapur, particularly, the task of the Magistrate in preserving order is an extremely difficult and anxious one; but neither he nor the

[Munshi Iswar Saran.]

Judge nor this Court is empowered by law to put a man in prison simply because he has an evil reputation. If respectable persons, who can prove facts which would constitute the credible information legally necessary to justify issue of process and requirement of security, have not the courage to come forward and assist the Magistrate in the prevention of breaches of peace or of crimes by giving evidence in Court, it is unfortunate to say the least of it, but the Magistrate is not therefore entitled to act upon inadequate proof obtained *aliunde*, which he himself describes 'as not so strong as it ought to be'. If in the interest of public order or security to property the attendance in Court of such persons was necessary, the Magistrate had the power, if he chose to exercise it, of compelling their appearance."

I have invited the attention of the House to this particular passage in the judgment of Mr. Justice Straight to show that it was a very bad case where the District Magistrate and the Sessions Judge were clearly of opinion that the man was a regular *badmash*, goonda or hooligan, call him what you will. The District Magistrate and the Sessions Judge thought that he should be bound over under section 110. But his Lordship Mr. Justice Straight sitting in revision held that the provisions of this section did not apply, and he refers,—I may tell Sir Henry Moncrieff Smith—to an earlier case reported in I. L. R., 2, All., 835, where he has laid down the principle which should guide Courts in applying section 110. Now, I submit that if the House is satisfied that there are cases which are not covered by the previous clauses together with the amendments made—apart from the question of any authority in my favour—then surely, this clause should be retained and I shall be happy to withdraw my amendment. But I fail to see why you should introduce a clause so general, and I might say, so vague that it is difficult to define it. Moreover I submit that in times of panic or of excitement it is possible that this clause may be misapplied, as indeed some clauses are being misapplied. Take the case of a goonda who either goes about beating people, trying, say, to extort money. If he is a man who goes about beating people, you can certainly have him under clause (c) which lays down that a person who "habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace", should be bound over under this section. Or to take another instance, if you have a man who goes about threatening people, then you can again have him under this very clause. I submit that these clauses are wide enough to cover all these cases and it is not wise to have a clause which can on account of its vagueness and indefiniteness be misapplied. I therefore move the following amendment:

"To clause 19 add the following sub-clause:

'(iii) clause (f) shall be omitted'."

The Assembly then adjourned till Eleven of the Clock on Saturday, the 20th January, 1923.

LEGISLATIVE ASSEMBLY.

Saturday, 20th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting

Mr Deputy President then took the Chair.

QUESTIONS AND ANSWERS

APPOINTMENTS TO COUNCIL OF INDIA

195. ***Mr. K. C. Neogy:** (a) With reference to the observation of the Joint Select Committee on the Government of India Bill, 1919, while recommending the reduction of the period of service for Members of the Council of India to five years that it would "ensure a continuous flow of fresh experience" from India, will Government be pleased to obtain from the Secretary of State a statement as to whether this consideration has been kept in mind in making appointments to the Council of India?

(b) What are the respective dates of retirement from service in India of the Members of the said Council who are retired officials from India?

(c) In the case of members re-appointed to the Council of India after their first term, will Government be pleased to obtain from the Secretary of State, and publish a copy of the minute setting forth the reasons for the re-appointment, which the Secretary of State is required to lay before the Parliament in such cases under clause (5) of section 3 of the Government of India Act, 1919?

The Honourable Sir Malcolm Hailey: Appointments to the Council of India are made entirely at the discretion of the Secretary of State. The Government of India will however forward the question to the Secretary of State

Mr. T. V. Seshagiri Aiyar: May I ask a question of the Honourable Member? Are the Government of India ever consulted upon these appointments and as to the qualifications of the person to be appointed?

The Honourable Sir Malcolm Hailey: The Government of India are not consulted on these points.

Mr. K. Ahmed: Will the Government of India be pleased to recommend the appointment of more members?

UNION OF ORIYA-SPEAKING TRACTS.

196. ***Mr. B. N. Mishra:** (1) With reference to the assurance given by the Honourable the Home Member on the Resolution dated 20th February

1920 brought by the Honourable S. Sinha and with reference to the reply given to my question last year will the Government be pleased to state if the reports of the several Local Governments have been received by them regarding the union of all the Oriya-speaking areas now under the Provincial Governments of Madras, Central Provinces, Bengal and Bihar and Orissa?

(2) If so will the Government be pleased to state the steps taken by them to effect the union of the said areas under one administration?

(3) If no steps have already been taken do the Government propose to take early steps for the said purpose?

(4) Is the Government aware of the Resolution of the Council of Bihar and Orissa recommending the union of the Oriya-speaking areas under one Administration?

The Honourable Sir Malcolm Hailey: (1), (2) and (3). Government have received the replies from local Governments referred to by the Honourable Member and the question is under consideration.

(4) Government have seen the resolution passed by the Bihar and Orissa Legislative Council referred to by the Honourable Member.

RESOLUTIONS PASSED BY THE NATIONAL LIBERAL FEDERATION.

197. ***Dr. H. S. Gour:** (a) Has the attention of Government been drawn to the Resolution of the National Liberal Federation passed at its last annual Conference at Nagpur?

(b) If so, is it aware that the Conference of that body have advised Government to accelerate the pace for the attainment of complete Self-Government by the immediate introduction of full responsible Government in the Provinces, and responsibility in the Central Government in all departments except the Military, Political and Foreign?

The Honourable Sir Malcolm Hailey: (a) and (b). Yes.

RECOMMENDATIONS OF THE MILITARY REQUIREMENTS COMMITTEE.

198. ***Dr. H. S. Gour:** Is the Government aware that the National Liberal Federation demand the Indianization of the Army and the introduction of other improvements and economies recommended by the Military Requirements Committee?

Mr. E. Burdon: The Honourable Member is presumably referring to the resolution reported as having been moved by Mr. B. S. Kinnat, M.L.A., at a meeting of the National Liberal Federation held on the 28th December. This, the Government of India have seen.

OPPOSITION OF NATIONAL LIBERAL FEDERATION TO ROYAL COMMISSION ON THE PUBLIC SERVICES.

199. ***Dr. H. S. Gour:** (a) Is the Government aware that the National Liberal Federation have passed a Resolution strongly opposing the proposal to appoint a Commission to inquire into the alleged financial and other grievances of the Imperial services and to make further enhancements of their pay and allowances?

(b) If so, what action does Government propose to take thereon?

(c) Is it a fact as announced by Reuter in his wire from London on the 8th instant that Lord Peel had already decided to appoint a Royal

Commission; and was consulting the Government of India respecting its details?

(d) Was this Commission appointed after previous consultation with and with the previous concurrence of the Government of India?

(e) Will the Government be pleased to lay on the table for information of the Honourable Members all the correspondence between the Secretary of State and the Government of India on the subject?

(f) What are the terms of Reference to this Commission. What is its personnel?

The Honourable Sir Malcolm Hailey: The Honourable Member has no doubt seen the official communiqué which appeared in regard to the press announcements on the subject. For the present, Government is not prepared to make any further statement.

O'DONNELL CIRCULAR.

200. ***Dr. H. S. Gour:** (a) Has the Government received the replies of the Local Governments on the O'Donnell Circular?

(b) If so, will it lay them on the table for the information of members?

(c) Is it a fact that His Excellency the Viceroy is reported to have assured the European Association in Calcutta, that there was no truth in the rumour that his Government was opposed to restricted recruitment of Europeans in England for public services in India?

The Honourable Sir Malcolm Hailey: (a) All replies have not yet been received.

(b) Government do not at present intend to lay the correspondence on the table.

(c) None of the reports of His Excellency the Viceroy's speech which have come to the notice of the Government of India are to this effect. His Excellency's remarks merely contradicted, in general terms, the alleged opposition of the Government of India to recruitment in England for the Civil Service in India.

LOCOMOTIVES FOR INDIAN RAILWAYS.

201. ***Dr. H. S. Gour:** (a) Is it a fact that orders for 181 locomotives for use of the Railways in India have been placed in Great Britain?

(b) What is their aggregate value? Is it £750,000 at £7,000 apiece as stated in the *Financial News*?

(c) Were the requirements advertised, and tenders called for from all countries including Germany, Belgium, France and America?

(d) If so, will the Government please quote the lowest rate and the rate finally accepted?

Mr. C. D. M. Hindley: In the absence of particulars as to the period covered in paragraph (a) of the question it is regretted that the information asked for cannot be furnished.

APPOINTMENT OF 80 NEW I. M. S. OFFICERS.

202. ***Mr. J. N. Basu:** (a) Will the Government be pleased to state the total cost of the travelling expenses and their pay of the 80 new Indian Medical Service Officers appointed by the Secretary of State?

(b) Whether the amounts will be borne by the Indian or British Exchequer?

(c) Whether the Secretary of State consulted the Government of India beforehand and did the Government of India consent to such appointment?

(d) Whether equally qualified medical men were not obtainable in India?

(e) If not, what were their exceptional qualifications?

(f) In what provinces and how many of such officers will be stationed?

Mr. E. Burdon: (a) to (c) The attention of the Honourable Member is invited to the reply recently given to starred question No. 81 asked in this Assembly by Rai Bahadur Bakshi Sohan Lal.

(f) All the officers in question will in the first instance be employed on the military side.

MILITARY AND AMBULANCE CARS ON THE GREAT INDIAN PENINSULA RAILWAY.

203. ***Mr. N. M. Joshi:** (a) What is the number of military or ambulance cars on the Great Indian Peninsula Railway built or converted from other coaching stock?

(b) Is it a fact that these are reserved entirely for military traffic and are not used for ordinary traffic even when they are lying idle?

(c) If so, what charge is made to the Military Department when the stock is not in actual use?

Mr. E. Burdon: (a) During the cold weather 40 military cars are held at the disposal of the military authorities by the Great Indian Peninsula Railway. This number is reduced to 19 during the hot weather.

The number of ambulance cars provided by the Great Indian Peninsula Railway is 9.

Government are unable to say whether these cars have been built specially or have been converted from other coaching stock.

(b) According to the agreement, the cars are reserved entirely for military traffic when they are held at the disposal of the military authorities.

(c) In the case of military cars, Rs. 12 per day is paid for each car whether it is in use or not. The charge for the hire of the ambulance cars is still under consideration.

SALE OF UNCLAIMED COAL.

204. ***Mr. N. M. Joshi:** Is it a fact that about 20 wagon loads of unclaimed coal was recently sold by auction at Kalyan and if so:

(a) What was the freight charge leviable but unrecovered on the consignment?

(b) What was the amount actually realised by auction?

(c) Was the coal not fit to be retained for railway purposes?

Mr. C. D. M. Hindley: Government have no knowledge of the facts referred to. They think that the Agent can be trusted to have adopted the most suitable course in a matter of this kind.

FIRST, SECOND AND THIRD CLASS CARRIAGES ON RAILWAYS.

205. ***Mr. N. M. Joshi:** With reference to columns 66 and 67 of Appendix 13 to the Railway Administration Report for 1919-20, is it a fact that the stock of 1st and 2nd class carriages is unduly in excess of the requirements of the traffic carried or offering, whether relatively to the 3rd class carriages or absolutely, and if so, do Government propose to transfer the provision in the quinquennial programme for 1st and 2nd class carriages to that for 3rd class carriages.

Mr. O. D. M. Hindley: The items in the Administration Report for 1919-20 referred to have been omitted from subsequent reports because it was found that they were valueless as a practical guide to the facts of the position. As an illustration the Honourable Member will notice that the average load of 3rd class stock is considerably below the full capacity from which it might be argued that no overcrowding exists. Such figures cannot, therefore, be taken as a reliable guide in respect to provision necessary. Requirements in respect to stock on each railway are in fact governed by the actual necessities of the train services which are arranged to suit public convenience as far as possible. The requirements cannot be gauged from a study of general averages. Reports received from railway administrations do not support the idea that the supply of 1st and 2nd class carriages is in excess of requirements. The relative necessity for provision of stock of the various classes in the programme is being given very careful consideration and Government do not consider that the provision made for the first two classes is in excess of what the circumstances of traffic require.

Mr. N. M. Joshi: Will Government be pleased to put in somewhere in the report what are the actual requirements of the first and second class carriages and what are the third. If the figures given in the Report do not show the actual requirements I think it is due to the public that they should show what the actual requirements are.

Mr. O. D. M. Hindley: The figures referred to in this question are averages and not, as the Honourable Member seems to indicate, requirements at all. They are average figures and they are statistics. In regard to the request made that the requirements should be shown I think it is extremely difficult to make any promise with regard to that because the matter is a very complicated one depending on the time tables of all the different railways all over India and it is very difficult to lump the whole thing together and say that so many carriages are required. However the suggestion will be considered.

CAPITAL GRANT SPENT IN ENGLAND.

206. ***Mr. N. M. Joshi:** With reference to the answer given on 6th September 1922 to starred question No. 20, will Government kindly state why loss by exchange cannot properly be taken as expenditure in England?

The Honourable Sir Basil Blackett: The so-called losses by exchange represent the additional rupees required to meet the sterling expenditure of the Government of India as compared with the number of rupees which would be required at the standard rate of 2 shillings adopted in the accounts. They involve not an additional amount of sterling expenditure but the finding of a larger number of rupees to meet a given outgoing in sterling.

and are therefore correctly classed as rupee expenditure. Indeed they could not be brought to account in sterling at all.

PRINTING PRESSES ON RAILWAYS.

207. ***Mr. N. M. Joshi:** Will Government kindly state whether the Eastern Bengal, the East Indian the Bengal Nagpur, the Great Indian Peninsula and the Bombay, Baroda and Central India Railways have each a separate printing press where they get their printing done, or there are two combined presses, one at Calcutta for the Calcutta railways, and one at Bombay for the Bombay railways?

Mr. C. D. M. Hindley: The Eastern Bengal Railway, the East Indian Railway and the Great Indian Peninsula Railway each have their own Press. The Bengal Nagpur Railway and the Bombay, Baroda and Central India Railway get their printing done by private firms.

DEPRECIATION FUND ON THE GREAT INDIAN PENINSULA RAILWAY.

208. ***Mr. N. M. Joshi:** Will Government kindly state whether the Great Indian Peninsula Railway Company, during the period of its existence as a guaranteed railway Company was under its contract or otherwise, required to, and did, maintain out of revenue a depreciation fund and if so, how were the monies in that fund utilised when the line was purchased by the State?

Mr. C. D. M. Hindley: The Great Indian Peninsula Railway Company was not under the terms of its contract required to maintain out of revenue a depreciation fund but did as a matter of fact establish a reserve fund from 1868 to 1875 when that fund was closed.

The fund had disappeared long before the line was purchased by Government.

Mr. K. Ahmed: How were those monies in the depreciation fund utilized?

Mr. C. D. M. Hindley: I am not in a position to give a detailed answer to a question like that relating to a period between 1868 and 1875.

INTEREST ON UNPRODUCTIVE CAPITAL COST OF RAILWAYS.

209. ***Mr. N. M. Joshi:** Will Government kindly state whether any credit is received on account of interest on that portion of the capital cost of the railways which was left unproductive by dismantlement?

Mr. C. D. M. Hindley: Interest on that portion of the capital cost of a railway which is left unproductive by dismantlement and which is allowed to remain in the capital account is treated in the same manner as interest on the rest of the capital outlay, i.e., in the case of company-worked railways, for instance, the interest on such capital also is generally treated as a first charge on the net earnings of the railway prior to the calculation of surplus profits.

Mr. N. M. Joshi: May I ask whether this burden was not borne by the Indian revenues whereas it ought to have fallen on the English revenues?

Mr. C. D. M. Hindley: If the Honourable Member will specify any particular case we will have the matter looked into, but I am not able to reply to a general proposition.

Mr. N. M. Joshi: There is no particular case. I am asking whether the interest on the capital lying idle on account of railways materials sent to Mesopotamia and other war areas was borne by the Indian or English revenues. The particulars of railways from which materials were taken are best known to Government.

Mr. C. D. M. Hindley: I should like to have notice of that question.

RAILWAY COMPANIES' RESPONSIBILITIES AND OBLIGATIONS.

210. ***Mr. N. M. Joshi:** (a) Has the attention of Government been drawn to the following observation which, according to a telegram appearing in the *Pioneer* of the 7th December 1922, occurs in the judgment delivered on the 5th idem by Mr Justice Coutts Trotter in the suit brought by Mr. E. Mack against the Madras and Southern Mahratta Railway Company claiming damages for personal injury sustained by him on the Nellore Railway platform on the night of the 29th August 1921 owing to his falling into an unprotected and unlighted pit:

" I think the history of the whole case discloses lamentable failure on the part of the Company to realise their responsibilities and obligations."

(b) If so, will any portion of expenditure in connection with the suit fall on Government either directly or indirectly, and if so, why?

Mr. C. D. M. Hindley: (a) Yes.

(b) The expenditure incurred in connection with the case referred to will in accordance with the terms of the contract with the Madras and Southern Mahratta Railway Company, be charged against the working expenses of the railway in which Government are directly interested.

Sir Deva Prasad Sarvadhikary: Has Government taken any steps with regard to what has been pronounced in the judgment mentioned in the question with a view to bringing the obligations and responsibilities of the Company and their officers home to them?

Mr. C. D. M. Hindley: The Government of India have asked for a report from the Madras and Southern Mahratta Railway, in regard to this matter.

Sir Deva Prasad Sarvadhikary: And when the report is received will the Government lay it on the table here?

Mr. C. D. M. Hindley: I am not prepared to make any promise with regard to that.

UNSTARRED QUESTIONS AND ANSWERS.

FURLOUGH AND LEAVE REGULATIONS ON RAILWAYS.

88. **Mr. S. C. Shahani:** (1) Are the Government aware of the differences in the furlough and leave regulations between the European and Indian officers, still in force on some of the Company Railways in India?

(2) Is it not a fact that Government owns the largest share (nearly nine-tenths) of the capital invested in the Indian Railways?

(3) Will Government be pleased to state whether these Railways in question have been addressed in the matter.

(4) If not, do the Government propose to address these Companies re the elimination of all the differences between Europeans and Indians?

(5) Will the Government be pleased to lay on the table a copy of the leave regulations in force on the different Company Railways in India?

Mr. C. D. M. Hindley: 1 and 2. The answer is in the affirmative:

3 and 4. Certain fundamental leave rules were drawn up many years ago, within the provisions of which companies may prescribe their own leave rules. A modification of the fundamental leave rules for company-worked railways is now under consideration in connection with the Government Fundamental rules recently sanctioned. As the Honourable Member is no doubt aware these Government rules do not provide for absolute equality in leave rules for European-appointed and Indian-appointed staff.

5. Each railway has its own leave rules and copies are not available.

POSTAL AND TELEGRAPH DEPARTMENTS.

89. Rai Bahadur G. C. Nag: (a) What was the object of amalgamation of the postal and telegraph departments? Was there any surplus over expenditure in these departments at the time of this amalgamation? If so, what was the surplus of receipts over expenditure in each case?

(b) Will Government kindly furnish a statement showing the strength of the Directorate with salaries in each department, (1) in the pre-amalgamation days, (2) its strength three years after the amalgamation, (3) its strength six years after it, and its strength now?

(c) Is it not a fact that the postal department used to leave a large surplus year after year, and that its surpluses have vanished since the amalgamation?

(d) Will Government kindly furnish a comparative statement showing the travelling allowance paid to the telegraphic offices of the Directorate two years before the amalgamation, and the travelling allowance paid to the same offices during the past two years?

Colonel Sir Sydney Crookshank: The necessary information is being collected and will be supplied as soon as it is available.

PAY OF POSTAL DEPARTMENT.

90. Rai Bahadur G. C. Nag: When was increase of pay, if any, granted in recent years to the officers and subordinates of the postal department on account of economic distress? Was any increase granted then to the Deputy and Assistant Post Master Generals? If not, why not?

Colonel Sir Sydney Crookshank: With very few exceptions, the revisions of the scales of pay of officers and subordinates of the Postal Branch of the Post and Telegraph Department which have recently been sanctioned in recognition of the increase in the cost of living have been given effect to from the 1st December, 1919. No actual increase of pay has been sanctioned in the case of Deputy Postmasters-General, but they have now been placed on a time-scale. There is no such class of officials as Assistant Postmasters-General. If the Honourable Member is referring to Assistant Directors General of the Post Office the preceding remarks with regard to Deputy Postmasters-General apply also in their case.

JUVENILE COURTS.

91. **Mr. J. N. Basu:** Has the Government of India asked the local Governments in India and Burma to expedite the establishment of Juvenile Courts and if so, what steps have been taken by such Governments in the matter?

The Honourable Sir Malcolm Hailey: The Government of India are about to communicate their views on Chapter XV of the report of the Jail's Committee which deals *inter alia* with the subject-matter of the Honourable Member's question. I will show the Honourable Member a copy of the letter when it has issued and if he or any other Honourable Member so desires, will place a copy on the table of the House.

RATES AND FARES ON E. I. RAILWAY.

92. **Mr. N. M. Joshi:** Will Government kindly state whether it was ever suggested during the pre-war period either by Government or by the Company, that in view of the very low ratio of working expenses to gross earnings which obtained on the East Indian Railway during that period, the rates and fares on that Railway should be reduced, and if so, what were the reasons for the suggestion not being adopted?

Mr. C. D. M. Hindley: Yes. The question was raised in 1912, by the Bengal Chamber of Commerce, but the Government of India decided that they would not depart from the policy which had obtained in the past, *viz.*, that uniform minimum mileage rates should be applicable to all important Indian Railways.

WORK AND COST OF COMMITTEES.

93. **Mr. N. M. Joshi:** With reference to page 39 of the Legislative Assembly Debates, Volume III, will Government lay on the table a copy of the final report of the Staff Selection Board Committee?

The Honourable Sir Malcolm Hailey: The report in question has not yet been submitted to Government.

AHMADPUR-KATWA RAILWAY.

94. **Mr. N. M. Joshi:** Will Government kindly state the circumstances which led to a reduction in the working expenses of the Ahmadpur-Katwa Railway from Rs. 1,17,799 in 1918-1919 to Rs. 75,726 in 1919-1920?

Mr. C. D. M. Hindley: The reduction was due chiefly to the transfer of interest charges on temporary loans from "working expenses" to "Net Revenue Account," and to a small extent to less expenditure on maintenance and on working expenses.

PRICES OF COAL.

95. **Mr. N. M. Joshi:** With reference to appendix 15 of the Railway Administration Report for 1920-21, will Government kindly state on what principle a differentiation is made in pricing coal as between the East Indian Railway on the one hand and the Great Indian Peninsula and the North Western Railways on the other and in what part of the railway budget the transactions of State Collieries are shown?

Mr. C. D. M. Hindley: The output of collieries on the North-Western Railway is priced at rate based on the calorific value of Bengal coal delivered in Quetta District, and the net results of working the collieries, whether profit or loss, are adjusted annually against the working expenses of the railway. Similarly the Great Indian Peninsula Railway charge actual working expenses and credit the output at estimated rate based on the value of the coal. The differences are charged against the working expenses of the railway. There is therefore no difference in principle as between the method employed on these lines and the East Indian Railway.

The transactions of State collieries are included in the figures for stores transactions given in the budget of individual railways.

DEPARTURES FROM RAILWAY RATES AND FARES.

96. **Mr. N. M. Joshi:** Will Government kindly lay on the table a statement showing sanctioned departures from the railway rates and fares shown in public tariffs?

Mr. C. D. M. Hindley: A statement showing the information so far as Government are aware, is being sent to the Honourable Member.

RETIREMENTS ON RAILWAYS.

97. **Mr. N. M. Joshi:** Will Government kindly lay on the table a statement showing by railways the number of officers in the superior grades of the different departments due to retire under the age rule or otherwise on or before 31st December 1923?

Mr. C. D. M. Hindley: A statement is placed on the table giving the information desired by the Honourable Member so far as State Railways are concerned.

Railway Companies do not adopt uniform age rules for the retirement of their officers and Government have no information regarding impending retirements of Companies' staff.

Statement showing the number of officers in the superior grades of the different departments on State Railways due to retire under the age rule or otherwise on or before 31st December 1923.

Railway.	Engineering.	Stores.	Other Departments.
North Western Railway	1	Nil.	Nil.
Eastern Bengal Railway	1	2	Nil.
Oudh and Rohilkhand Railway	1	Nil.	Nil.
Unattached officers	5	Nil.	Nil.

CARRIAGE OF COAL.

98. **Mr. N. M. Joshi:** With reference to the answer given on 6th September 1922 to starred question No. 25, will Government kindly lay on

the table a comparative statement showing the rates charged for the carriage of public coal and railway coal; and state:

- (a) Whether any actual calculations have been made to show that the net effect of adopting tariff rates for railway coal will not bring in an increased share of surplus profit to the State?
- (b) Whether the favourable rate applies only to State-owned railways, or also to railways owned by Indian States, Private Companies, District Boards, etc.?

Mr. C. D. M. Hindley: The Honourable Member is referred to the East Indian Railway Coal Tariff in which the schedule of rates for public and railway coal on that railway will be found and also full information about the rates charged on other principal railways.

- (a) Such calculations would be extremely complicated owing to the varying proportions in which the surplus profits are divided between Government and the Companies under their contracts and Government do not consider that the results of such calculations would be a conclusive guide to policy in this matter in view of the reasons given in the answer to the Honourable Member's question on 6th September.
- (b) The Honourable Member is referred to the first portion of the reply.

MEANS OF COMMUNICATION ON RAILWAYS.

99. **Mr. N. M. Joshi:** (a) With reference to appendix 19 of the Railway Administration Report for 1920-21, will Government kindly state whether they have relaxed the limit of two years fixed in paragraph 5 of appendix 42 to the Railway Administration Report, 1906, for the provision of all carriages with means of communication between passengers and railway servants, and if so, lay a copy of the orders on the table?

(b) Is the cost of this provision paid out of revenue or out of capital funds and in the former case what steps, if any, are proposed to be taken with reference to the adjustment of arrears on the East Indian and the Great Indian Peninsula Railways whose contracts expire during the next few years?

Mr. C. D. M. Hindley: (a) Yes. The procedure suggested by the Honourable Member involves printing the orders in the Council proceedings and with a view to avoid extra printing charges I am arranging to furnish him with a copy of the orders.

(b) The provision of intercommunication apparatus is a charge to Capital funds.

ANNUITIES IN PURCHASE.

100. **Mr. N. M. Joshi:** With reference to page 146 of the Government of India Finance and Revenue Accounts for 1919-20, will Government kindly state what the item "contribution towards management, etc.", under Annuities in Purchase exactly represents?

Mr. C. D. M. Hindley: Government having purchased a portion of the annuities of some railways, is liable to contribute rateably with other annuitants towards the management, etc., of the annuity fund. The item referred to by the Honourable Member represents the expenditure relating to this liability.

HAULAGE OF POSTAL VANS.

101. **Mr. N. M. Joshi:** With reference to page 20 of the Railway Administration Report for 1913-14, will Government kindly state what increase, if any, has since been made in the haulage charge of postal vans?

Mr. C. D. M. Hindley: No increase has since been made but a proposal for an increase is under consideration.

COMPENSATION FOR INCOME-TAX ON E. I. RAILWAY.

102. **Mr. N. M. Joshi:** Will Government state the circumstances which led to compensation for income-tax being paid to deferred annuitants in the East Indian Railway and the basis of the division of surplus profits being altered with effect from 1st January 1920?

Mr. C. D. M. Hindley: Provision was made for payment of compensation to the Deferred Annuitants on account of income-tax in certain eventualities with a view to protecting them from loss which they might sustain during the currency of the revised contract owing to non-receipt of the abatement of income-tax which is allowed to Ordinary Annuitants on portion of their annuity representing instalment in repayment of capital.

The alteration in the basis of the division of surplus profits was made in order to secure more favourable terms to the Secretary of State than under the old contract, in view of the renewal of the contract for a further period of 5 years with effect from 1st January 1920.

SUPERIOR POSTS ON RAILWAYS.

103. **Mr. N. M. Joshi:** Will Government kindly lay on the table a statement showing the names of the non-Indians appointed on railways to vacancies or to new posts in the superior service since 1st April 1922, and which of the appointments were made by public advertisement?

Mr. C. D. M. Hindley: A statement is laid on the table. The information regarding Companies' Lines is not available.

Names.	Appointment.	REMARKS.
R. J. Earle	Assistant Executive Engineer.	Appointed by Secretary of State.
J. D. Michael	Ditto	Ditto.
T. G. Creighton	Assistant Locomotive Superintendent.	Ditto.
G. W. Browne	Ditto	Ditto.
O. R. Tucker	Ditto	Ditto.
T. H. B. Jones	Ditto	Ditto.
W. Leach	Works Manager, Carriage and Wagon Shop.	Ditto.
C. E. Dickens	Assistant Signal Engineer	Ditto.
C. H. Griffiths	Ditto	Ditto.
H. B. Adams	Assistant Electrical Engineer.	Appointed by Railway Board in India
A. F. Hewlett	Assistant Locomotive Superintendent.	Promoted from the Subordinate to Establishment.
H. A. Tuck	Assistant Signal Engineer	Ditto.

Note.—Appointments by the Secretary of State are made on the advice of a Selection Committee or of the Consulting Engineers to the Secretary of State, who consider applications called for by advertisement ordinarily.

SURPLUS PROFITS ON RAILWAYS.

104. **Mr. N. M. Joshi:** With reference to column 2 of the statement of surplus profits paid to railway companies accompanying the Budget for 1922-23, will Government kindly state why the "actuals for 1920-21" do not appear against that year in the "History of Indian Railways"?

Mr. C. D. M. Hindley: The matter can best be explained by an illustration. In 1919-20 the Bengal Nagpur Railway Company's share of the surplus profits of that year was Rs. 14,63,387 and the Company showed that amount in its accounts. This amount therefore was quite correctly shown as the Company's share of surplus profits in the year 1919-20. But the Company's share was actually paid in 1920-21 and the payment therefore was shown in the budget against that year.

PURCHASE OF G. I. P. RAILWAY BY STATE.

105. **Mr. N. M. Joshi:** With reference to the answer given on 8th September 1922 to unstarred question No. 150:

- (a) Is it a fact that the purchase of the Great Indian Peninsula Railway was fixed exclusively on the basis of the market value of the Great Indian Peninsula Railway Company's capital stock and that the cost of land was not a factor which had any influence in determining the price;
- (b) What were the names of the old guaranteed Companies who were provided with lands free of cost;
- (c) Was not a separate account of the cost of lands maintained such as is now done in connection with lands provided for Branch line Companies?

Mr. C. D. M. Hindley: (a) The answer is in the affirmative. The cost of land was not therefore a factor affecting the price.

(b) The old Guaranteed Railway Companies provided with land free of cost were as follows:

- (1) East Indian Railway.
- (2) Eastern Bengal Railway.
- (3) Scindhe Punjab and Delhi Railway.
- (4) Oudh and Rohilkhand Railway.
- (5) South Indian Railway.
- (6) Great Indian Peninsula Railway.
- (7) Bombay, Baroda and Central India Railway.
- (8) Madras Railway.

(c) Separate subsidiary accounts of the cost of lands made over to each Guaranteed Railway Company free of cost were maintained during the existence of these railways as such. With the purchase of each Guaranteed Railway, however, the maintenance of the subsidiary accounts was discontinued.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: The House will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act of 1870, as passed by the Council of State.

The amendment moved is:

"To clause 19, add the following clause:

"(ii) Clause (f) shall be omitted."

The Honourable Sir Malcolm Hailey (Home Member): Munshi Iswar Saran proposes to exclude from our Code the provision which lays down that if a man is so desperate and dangerous as to render his being at large without security a hazard to the community, then he may be placed upon security. The House will remember that in arguing his case he placed considerable reliance upon the judgment of Mr. Justice Straight. Now, I may tell the House at once that that judgment was not applicable at all to the Code as it now stands. This particular provision of law, namely, section 110 (f) was originally in our Code in 1872. It did not appear in our Code of 1882, but its absence was felt to be so disastrous that it was re-included in 1898. Mr. Justice Straight's judgment refers to the Code of 1882, in which this particular section did not then find a place. The only provision of the Code at that time was as follows.

"Whenever a Presidency Magistrate, a District Magistrate or Sub-divisional Magistrate or Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to be stolen, or habitually commits extortion or, in order to commit extortion, puts or attempts to put anybody in fear of injury,"

then security could be taken from him.

The Honourable Member quoted the remarks of the District Magistrate and the facts do not seem to have been seriously in dispute, that Babua was a notorious *badmash*, an extortionist, a concocter of false cases as a means of extorting money and altogether a terror to the town of Mirzapur. Well, if those remarks prove anything at all, they prove, as I have said, that it was very unfortunate that a provision corresponding to 110 (f) did not find a place in the Code of 1882. If it had stood in the Code at the time then Babua could have been held to security; and everyone will admit that the whole tenour of the judgment which Mr. Iswar Saran read out to us proves that it was highly desirable that Babua should have been held to security. If therefore the judgment that Mr. Iswar Saran read out to us proves anything, it proves that the case he put before the Assembly for the exclusion of this section is an exceedingly bad one. I do not go into the further technical grounds argued in that judgment, because, as I have said before, it is quite inapplicable to our present Code.

Now, as to the question of substance Mr. Iswar Saran says that we have extended the scope of section 110. How far have we done so? We have included the forger; we have included the abettor, though there were certain Members of the Assembly who thought that the abettor should be protected; we have included the abductor, whose presence in the Code now we owe to the kindly offices of Mr. Agnihotri; and we have included the kidnapper, in spite of the tender solicitude of Mr. Kabir-ud-Din Ahmed. That is the extent to which we have extended the section, and I defy Mr. Iswar Saran to argue with any show of truth that by this restricted

extension of the section we have made it possible for a Magistrate to place on security a man who is dangerous and hazardous to the community, without some specific provision and law to this effect. In any case I claim that the limited extension that we have now given to the section is not a matter so important that it should be used to our prejudice and quoted as an argument for the exclusion of this particular kind of character from the provisions of section 110. For what is the kind of man of which the Code is thinking? He is known to consort with robbers and dacoits. And yet you cannot prove under sub-section (a) that he is himself by habit a house-breaker. He is well known to have desperate associates, men engaged in crimes against life and property, and yet you cannot prove under sub-section (b) that he is himself a habitual receiver of stolen property or that he habitually harbours thieves. But every respectable person in the village is in perpetual terror lest he should bring his associates down upon them. He is a man who seduces women or corrupts the morality of children, yet that does not make him either a kidnapper or abettor within the terms of our law, and you cannot bring him within the provisions of clause (d). A violent character of this type, well known as such in the neighbourhood, and a standing terror to his neighbours, he can trespass on their lands, he can raise forced loans, damage their crops, and yet nobody can complain against him, for they are afraid to do so, and you cannot therefore prove under clause (e) that he habitually commits or abets the commission of offences involving a breach of the peace. That is not a fancy picture. Everybody knows the man who is the terror of the village or his quarter, the man whom you would prosecute if you could under a particular charge, whom the whole community would be glad to see away from the place, and yet whom you cannot hold under any particular provision of the law because people are afraid to bring cases against him. They will not do so themselves, but are only too glad when we step in to aid them with the preventive sections; but if we are to do so, it is difficult to put the information against him under any clause other than clause (f) of section 110. When Mr. Iswar Saran was arguing his case, I heard somebody behind him whisper the word "Goonda". A happy thought for the legislation that has recently been put forward in Bengal and accepted gladly by public opinion in Calcutta proves conclusively that you have to provide by special means for people of this class. He animadverted on the fact that the definition of 110 (f) was a wide one; I maintain that it gets as near as any definition can to the real and essential facts. What has Bengal had to do in the way of definition? Bengal had to deal with cases of this kind, and provide for men who are a terror to the community. The class of persons they were thinking of was the type of character that is referred to in numerous examples that were quoted to us by the Bengal Government. Here are some. I will give the House only bare details, and will suppress the illustrious names of those who are mentioned in this catalogue of notabilities:

"He is a terror to the locality and has great influence over low class people. His men have committed assaults on police officers but the cases failed for want of evidence. He associates with persons who commit serious crimes such as robbery, dacoity and murder, and it is believed that he bears the cost of defence in cases in which they are concerned."

Take another:

"He has a cocaine den. Three prosecutions have, however, failed against him. He adopted the same ingenious device of electrifying his staircase, thereby preventing access to it on the part of the police."

[Sir Malcolm Hailey.]

Here is another:

"He formerly belonged to a wellknown gang of thieves. He has five mistresses with whom he lives in . . . street. He is a notorious gambler and has numbers of bad characters under his control."

Now, those are the classes of persons for whom Bengal had to make provision. They put forward a special Act, and I ask the House to note how they propose to define these persons. I commend the definition particularly to Mr. Iswar Saran. They call it Goondas Bill, and the definition they use is: "Goonda includes hooligan or other ruffian." Is that more restricted or more precise than our 110 (f)? Could all their legal ingenuity devise any more suitable terms than we have hitherto used for providing against the class of men whom Mr. Iswar Saran would now exclude from the purview of section 110? But enough; I am sure that the House really realizes the necessity of providing against this class of persons, that it will have every sympathy for the villagers who are terrified and with townspeople who are continually held in apprehension of their lives and property by hired bravos and miscellaneous ruffians; and that it will not agree with Mr. Iswar Saran.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammādan Urban): Sir, I quite understand, though I do not fully appreciate Munshi Iswar Saran's desire to exclude this sturdy and amiable body of citizens from the purview of section 110. If we had not 158 clauses of the Bill still to dispose of, and if great economy of time was not imperative, mild excitements like what my friend from time to time provides might have been acceptable. As it is, it is hardly possible to take him seriously with regard to his contention that a desperate and dangerous character should not be even called upon to show cause as to why he should not execute security and promise to be of good behaviour. As has been pointed out by Sir Malcolm Hailey, the judgment that Munshi Iswar Saran referred to has reference to a state of things with which we have nothing to do at the present moment. Furthermore, Sir, that judgment laid considerable and very correct stress upon the fact that the Magistrate in dealing with the case had imported into it considerations within his own knowledge and what he had found out by private inquiry—an extremely improper thing for any Magistrate to have done—and the judgment was rightly set aside. However, that state of things does not exist. As has been pointed out, the omission from an earlier Code was found to be intolerable and had to be re-introduced. Mr. Mukherjee, I believe a fellow-sufferer in Calcutta, reminded the House about the Calcutta Goonda, and Sir Malcolm Hailey has given us some illustrations of the sort of things that Calcutta is suffering from, and Calcutta suffers although section 110 is there. Calcutta Magistrates and the Calcutta Police found that all the supposed arbitrary power provided in section 110 (f) is powerless against the Goonda. I am glad to see from the papers, the Select Committee's report, that those who are opposing the Goonda Bill have been able to evolve a *modus operandi* by which all objections will be met and Calcutta will have a Goonda Act of its own. The result will be that some of the Mirzapore amiables will have to come back home and give occupation to Munshi Iswar Saran in his province. Whether he will want this to be relaxed or more tightened will be a matter for him and the United Provinces Government to decide. (*A Voice*: "They will suffer".) It does not appear that the United Provinces with its sturdy optimism and muscle powers is in the same trouble as the Bengalee who

wants a special Goonda Act. Even section 110 (f) and the Goonda Act will by themselves not solve the problem and public co-operation is needed there. The ingenuity, the resources, and the masterful activity of this class of people is beyond imagination, and great care is needed to stamp out Hooliganism. I do not think the position of the Government and the Police and of society should be weakened by taking away what has been found imperatively necessary to be brought back.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): Sir, I think this amendment should not be accepted. It serves a distinct purpose and applies to cases of persons who have lost all regard for the safety, well-being and decency of their fellow creatures living in their neighbourhood. A person of desperate and dangerous character means a person who has a reckless disregard of the safety of the person or property of his neighbours. It cannot be maintained that such persons do not exist in our society. There are men in some localities whose business it is to create trouble for some of their neighbours by habitually provoking false or frivolous investigations, or who are desperate in their efforts to poison cattle by various devices such as by mixing something poisonous with their food, or who habitually or out of sheer mischief try to render injurious the water of wells here and there, or who habitually try to render unconscious for a little while persons with a view to take some mean advantage of them such as robbing them, or who habitually try to intimidate or terrorise people by threats or indecent speeches or songs, or by invoking the aid of religious, superstitious or social customs, or by simply preying on the ignorance of the people in various ways, or who even try to spoil the morals of some young men and women in some places. Well, Sir, it goes without saying that there should be some legal provision for bringing such persons to book. It is to meet such cases, Sir, that clause (f) exists and should exist. There seems to be nothing in the preceding clauses to meet such cases.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I move, Sir, that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is:

"That to clause 19 add the following sub-clause:

(iii) The word 'or' at the end of clause (e) and the whole of clause (f) shall be omitted."

The motion was negatived.

Mr. Deputy President: Mr. K. Ahmed.

The Honourable Sir Malcolm Hailey: Might I rise to a point of order before this amendment* is moved? I merely wish to bring to your notice that it refers to section 112. Section 112 does not form part of the Bill.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Rural): May I be permitted to address you on that point because I have also got a similar amendment? The objection taken, Sir, is that this clause does

* "After clause 19 insert the following clause:

'19-A. In section 112 of the said Code for the words 'setting forth the substance of the information received' the words 'expressly specifying the particulars of the information received under section 107, section 108, section 109 or section 110' shall be substituted'."

[Rao Bahadur T. Rangachariar.]

not relate to any of the clauses in the Bill. That is quite true, but, Sir, the rule by which we are to be guided is a rule relating to amendments which says, they must be relevant to the scope of the Bill. I will find out the exact rule I have in mind; in the meantime I will refer to May's "Parliamentary Practice."

On page 364 it says:

"To explain the principles that govern the proposal of instructions to committees of the whole house, it must be borne in mind that, under the parliamentary usage in force in former times, an amendment might be wholly irrelevant to the motion or bill to which it was proposed, and that consequently clauses might be added to a bill during its progress through the house relating to any matters however various and unconnected, whether with one another or with the bill originally drawn. A reaction from such laxity of procedure led to the establishment of rules and practice which imposed on the House of Commons an inconvenient rigidity in dealing with a bill. No amendment could be moved which was not strictly within the scope of the prefatory paragraph, known as the title, which is prefixed to every bill and describes its object and scope. To obviate the difficulty thus created, the house, in 1854, by standing order No. 34, gave a general instruction to all committees of the whole house to which bills were committed, which empowered them to make such amendments therein as they should think fit, provided that the amendments were relevant to the subject matter of the bill; and, if such amendments were not within the title of the bill, the title was to be amended and reported specially to the house."

The Honourable Sir Malcolm Halley: Will you kindly read the Standing Order No. 34, on page 815, of the book?

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Will the Honourable Member read further on the few lines at the bottom of the next paragraph?

Rao Bahadur T. Rangachariar: I will come to that; it says:

"An instruction is necessary to enable a committee to divide a bill into two or more bills, to consolidate two bills into one bill, or to give priority to the consideration of a portion of a bill, with power to report the same separately to the house."

"Instructions have been given to committees of the whole house, on the presentation of a petition, empowering the committee to hear counsel and examine witnesses."

The Honourable Sir Malcolm Halley: The Standing Order is on page 815; it will make the matter quite clear. Standing Order No. 34.

Mr. N. M. Samarth: And the last paragraph on page 365.

Rao Bahadur T. Rangachariar (Reading Standing Order):

"It shall be an instruction to all committees of the whole house to which bills may be committed, that they have power to make such amendments therein as they shall think fit, provided they be relevant to the subject-matter of the bill."

And what is meant by the subject-matter of the Bill? We have to come back to page 364, where it is stated:

"No amendment could be moved which was not strictly within the scope of the prefatory paragraph, known as the title, which is prefixed to every bill and describes its object and scope."

That is what I rely upon. Now the object and scope of this Bill has to be gathered from its history. This is a Bill further to amend the Code of Criminal Procedure, not certain sections thereof. This is a Bill further to amend the Code of Criminal Procedure, and it will be seen, Sir, that almost every Chapter in the Code, including the Schedules, have come under revision in this Bill. If you will also look into the history of it, you

will see that a very influential Committee was appointed to go through the whole Code, and I may refer to the Statement of Objects and Reasons to which is annexed the report of this Committee, which is known as the Lowndes Committee. The Government of India, by a Resolution dated 18th September 1916, had under consideration for some time past the question of the general revision of the Code. The amending Bill was introduced in the Imperial Legislative Council on the 21st March, 1914, and was thereafter referred to Local Governments and Administrations. Meanwhile, the Governor General in Council decided to remit the Bill and the various opinions received in connection with it to a small Committee on which the legal profession was strongly represented.

I say they appointed that Committee to go through the whole Code and to go through all the suggestions received from the various Local Governments as regards the amendments noted in that Chapter. They took up Chapter after Chapter and suggestion after suggestion. They considered what would be necessary to be introduced and what would not be necessary to be introduced. Therefore, they paid attention to all the sections of the Code and came to the conclusion that these amendments were needed. Therefore, this Bill comes before us as a result of the labours of that Committee, and its object and scope is certainly to revise the Code, to see what portions may remain as they are and what portions should be amended. The Committee left certain sections as they are because they thought that no amendments were needed, but this House is certainly competent, when the object is to revise the Code, to consider whether their decision, namely, that certain sections should remain as they are, is correct or not. Therefore, Sir, I think that, having regard to the title of the Bill and having regard to the scope of this revision which we have now undertaken, it should be competent for this House to deal with other sections of the Code, because they are part of the Code. It may be mentioned, perhaps, that, on a former occasion, when an attempt was made to introduce a new clause in connection with the Land Acquisition Bill, the Honourable the President suggested—he did not exactly rule—that it was outside the scope of the Bill and advised me not to press my motion. That is quite true.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): May I correct the Honourable Member, Sir. The President distinctly ruled the amendment out of order on the ground of practice.

Rao Bahadur T. Rangachariar: The Honourable Member will remember that I raised the point against myself, because I knew that the scope of that Bill was not as its preamble indicated. I was quite convinced that the preamble was incorrectly worded in connection with that Bill and I raised the point myself. Now, this is quite a different case from the Land Acquisition Bill. That Bill was merely to amend a particular provision in the Land Acquisition Act and there was no such revision undertaken as in this case. The Bill was not the result of the deliberations of a Committee which set to revise the whole Code. Sir Henry Moncrieff Smith will remember also that the President gave a warning to the Government that in cases where they wanted to restrict the scope of a Bill they should take care to see that the title was properly worded. He gave that warning, Sir, because he said the title is the guiding principle. He added "if you put your title so generally, I will be obliged to admit amendments." That is what the President said, at least that is my recollection of it. Therefore, the Government have not taken that warning in this case. The Bill, here, is to

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amend the Code. The Code consists of all its sections and Schedules, and, therefore, I ask you, Sir, to rule the amendment in order.

The Honourable Sir Malcolm Hailey: I should have been content to avoid a discussion on this point and to leave it with the brief remark which I addressed to the Chair, in the full confidence that you, Sir, would have been in a position from your own study of the Home procedure to give a decision without further argument. But, further argument has been indulged in, and I must meet one aspect of it in particular, for I think that, unwittingly no doubt, Mr. Rangachariar has misled the House. At my request he read Standing Order 34 of the House of Commons. I will repeat it:

"It shall be an instruction to all Committees of the whole House to which Bills may be committed that they have power to make such amendments there as they shall think fit, provided they be relevant to the subject matter of the Bill."

Mr. Rangachariar proceeded to interpret for us the words "subject matter of the Bill." He said that the subject matter of a Bill was—and I will use his actual words—"decided by the title," and he quoted to us these words from May:

"No amendment could be moved which was not strictly within the scope of the prefatory paragraph, known as the title, prefixed to every Bill, to describe its object and scope."

But I ask the House to realize that the words which he quoted from May refer specifically to the previous state of things which existed before Standing Order 34 was passed? It was precisely that state of things which Standing Order 34 was passed to rectify. I say that, unwittingly, he has misled the House in that respect. In other words the House of Commons decided itself that the title was not decisive and that no amendments should be introduced which did not come strictly within the prescription that they were relevant to the subject matter of the Bill. Mr. Rangachariar has argued from the title of our Bill, and has quoted to us, the manner in which the whole of this legislation came to be initiated. He points to the fact that various Committees sat in order to amend the Code of Criminal Procedure at large. That might be, Sir, but the legislation that has been placed before the House refers to particular chapters and sections of the Code. We have not set out here actually to amend the whole of the Code. He himself referred, at the beginning of our discussion, to the fact that there are many points, such as the Racial Distinctions sections and the like, which have still to be amended. Mr. Chaudhuri again referred to the fact that, when the separation of executive and judicial functions takes place, other amendments of the Code will be necessary. Obviously and clearly the case as placed before the Legislature refers to the particular sections of the Code which find a place in the Bill, and we have not placed before the House the whole Code for the purposes of amendment or modification.

I must once more refer to the discussions in regard to the Land Acquisition Bill. Mr. Rangachariar, doing himself full justice, as I admit, says that he himself pointed out to the President the difficulty arising from the title of the Bill, and expressed doubts whether an amendment then proposed was actually in order, in spite of the wide title of the Land Acquisition Amendment Bill. It is as well that I should read to the House the ruling

of the President in order that it may be under no misapprehension. The President said :

"The amendment moved by the Honourable Member on my left is undoubtedly within the title of the Bill as drawn, and yet it is equally undoubtedly outside the scope of the substance of the Bill, which provides for an appeal to the Privy Council. Therefore, on the ground of practice, I think I am bound to rule it out of order. At the same time I suggest to the Government that it will be wise to protect themselves by seeing that the title of a Bill is not wider than its substance."

That is the suggestion made to us, and it was obviously made only in order so to regulate our titles as to prevent amendments such as those now put forward by Mr. Ahmed and supported by Mr. Rangachariar from being put before the House. It is a suggestion and no more.

Rao Bahadur T. Rangachariar: Suggestion for what purpose?

The Honourable Sir Malcolm Halley: A suggestion, in order that Honourable Members should not be misled by the title into thinking that this necessarily was conclusion as to the subject matter of the Bill. I would remind the Honourable Member that that suggestion was put before us by the President in March 1921, and at that time the title of our Criminal Procedure Amendment Bill had already been settled and published. If that suggestion had been before us at the time, we should then no doubt have been warned and amended the title of the Bill. But the title, Sir, is not the decisive factor, as the Standing Order of the House of Commons shows.

Mr. Deputy President: With regard to this question as to whether the whole Code of Criminal Amendment is open to amendment during the consideration of this Bill, my ruling is that it is not. No amendment is permissible in the course of the consideration of the present Bill which is irrelevant or foreign to or outside the scope of the subject-matter of this Bill. In the case of the present amendment, although it proposes to amend a section of the Code which is not touched by the Bill, I think it might be held not to be inadmissible under the ruling which I have just given, as it is intimately connected with other sections which are being amended. In this particular case, therefore, I allow the amendment to be moved.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, I beg to move:

"That after clause 19, insert the following clause:

'19-A. In section 112 of the said Code for the words 'setting forth the substance of the information received' the words 'expressly specifying the particulars of the information received under section 107, section 108, section 109 or section 110' shall be substituted'."

Sir, Magistrates very frequently violate the provisions of these sections by merely stating the words of the section instead of specifying the substance of it. The information received is one thing, and specifying something is different. But if it is specifically set out what is the substance of the information, then the Magistrate is not entitled or not in a position to receive any additional information with regard to any number of particulars which the Sub-Inspector of Police, specially in the mofussil, often seeks to do.

As to the majority of big cases, if statistics are being taken over the whole of India, I am positive that in prosecutions under section 110, from 500 to 700 witnesses are examined and still the poor man against whom the prosecution is launched suffers. The police ask anybody and everybody to

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say that this man is bad or that man is bad, and the Government very often repents because the Sub-Inspector of Police, who is supposed to be second to God, is not able to make out a good case. So he says 'In the first charge sheet that I submitted, I left out these particulars, and I want to try this man in any way I like. I will call him desperate, I will call him a liar, and at the same time I will call him a black-guard.' Witness after witness is brought in, no end of them,—you get any number of witnesses—with the result that the poor man cannot get out of the trap that has been placed for him.

We therefore want this part of the law should be specifically dealt with; once you file a plaint in the Civil Court, before a Munsiff, Sub-Judge, or the Original Side of the High Court, you cannot go back upon it; you cannot change the substance of the written statement you have made, or put in any additional points. I am sorry to say that at present the Police is Almighty and many Honorary Magistrates present in this Assembly are very fond of giving indulgence to the Sub-Inspector of Police to the extent of allowing any number of witnesses and any amount of searches to be made. That being so, I think it necessary to move this amendment in order to remedy this defect so that the Sub-Inspector must expressly specify the charge, expressly particularise the charge he wishes to submit.

In this respect I cannot do better than quote the authority of my friend who is sitting in front of me—a learned Judge of the Madras High Court. My Honourable friend is here and I will take his learned ruling from I L. R. 48, at-page 450. My learned friend when he was on the Bench in 1919, only 3½ years ago, said,—the Honourable Mr. Justice Seshagiri Ayyar said:

"I am not sure that I understand this judgment. Section 110, clauses (a) to (e), speak of a man being a habitual robber, a habitual receiver of stolen property and a habitual harbourer of thieves, a habitual extortioner, or a habitual committer of breach of the peace. In my opinion, the evidence on which the Magistrate has to base his conclusion must relate to particular instances which have come to the knowledge of the deponent and so must be specific. Evidence relating to mere beliefs and opinions, without reference to acts or instances which have induced the witnesses to form the opinion, can hardly be regarded as established by the repetition of beliefs and opinions. At any rate, Courts ought to discard such evidence as much as possible."

That, Sir, comes from the mouth of a learned Judge of the Madras High Court Bench who had the opportunity of criticising the judgment of the Magistrate and criticising the manner in which the prosecution was conducted and in that the Almighty Sub-Inspector or the Court Inspector introduced evidence against this particular accused by bringing in additional points.

Now my Honourable friend, the Home Member, has been putting me out of order, at least he tried to do so—though he did not succeed—by a reference to the practice of the House of Commons. But fortunately the Deputy President has allowed me to move this amendment. As I have shown, learned Judges found out long ago that this sort of scope or latitude ought not to be given to the Sub-Inspector or the Court Inspector. Here, Sir, I want to quote the authority of a member of the Indian Civil Service who sat along with my Honourable friend, Mr. Seshagiri Ayyar, in the case to which I have already referred. I mean Mr. Justice Moore. This is what his Lordship said:

"I am unable to agree with the District Magistrate that there is a large body of evidence regarding the petitioner's bad life, his habit of engineering crimes and his

general desperate character.' The evidence on record does not warrant any such conclusion. The District Magistrate also says that there is evidence of witnesses who speak to 'definite acts of criminality on the part of the petitioner'. But I cannot find any definite evidence of any specific acts of violence committed by the petitioner. In my opinion the order requiring the petitioner to furnish security to be of good behaviour cannot be supported and should be set aside."

In the light of what I have said, and the opinions I have quoted from Mr. Justice Seshagiri Ayyar and Mr. Justice Moore, I hope that this Honourable House, consisting as it does of Members who represent the people of this country, will accept my amendment; and my Honourable friend who is piloting the Bill on behalf of Government will also accept it without any hesitation. I move the amendment which stands in my name.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I

12 Noon. am very grateful to the Honourable Member for reading to us the instructive judgment of my Honourable and learned friend, Mr. Seshagiri Ayyar, in the case in question, but I venture, Sir, to suggest that there is no reason whatsoever in the judgment which he read out to justify the change which he proposes in section 112 of the Code. The judgment, in fact, does not indicate that it is necessary that section 112 should be amended so as to require that in the preliminary order which is made under section 112 full particulars of the information which is received should be specified. It is clear, Sir, that the judgment in the case must be based upon evidence which is on the lines of the order framed under section 112. But how can we expect the Magistrate in framing this order to specify full particulars of the information in it? Sir, that is quite impossible. The object of section 112 is to give the accused notice of the accusation which has been made against him. It may be compared perhaps with other provisions in the Code such as sections 221, 222 dealing with warrant cases, and section 242 dealing with summons cases. Section 242 reads thus: "When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted." Section 222 says that "the charge shall state the offence with which the accused is charged and it must contain such particulars as to the time and place of the alleged offence and the person (if any) against whom or the thing (if any) in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged". Now, Sir, how does section 112 read at present? It reads thus: "When a Magistrate acting under section 107, section 108, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties (if any) required". I suggest, Sir, that this is amply sufficient to give the person proceeded against notice of the information which has been received and which he has to produce evidence against.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammads). Sir, I rise to support the amendment moved by the Honourable Mr. Kabir-ud-Din Ahmed. The object of section 112 is to call upon a person against whom the information has been received to show cause as to why he should not be bound over, and to give him the information of the materials of the report on which he is required to show cause. That is the object of section 112. Now as provided in section 112, it is

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that the substance of the information should be given to the person concerned, i.e., the person who is required to show cause. The "substance" of the information is by itself not quite sufficient and gives a wide scope to the Magistrates. He may give only a précis of the information that has been received by him or he may give the full details of the information that he has received or he may give only a summary of the information,—which he has received. Sometimes it happens in the mufassail courts that the Magistrates generally put down that 'you are required to show cause as to why you should not be bound over for keeping the peace or for good behaviour'. This by itself is not sufficient to enlighten the person concerned as to the particulars of the complaints in which he is required to show cause and the matters on which he is required to adduce evidence to rebut the prosecution or the police allegations. Therefore, in the interests of justice it is material and extremely important that the full particulars of the information before the Magistrate be given to the accused or the person who is required to show cause, so that on the date when he appears for showing cause he may be in a position to defend himself against the allegations made by the other side. Therefore, Sir, I submit that the amendment moved by my Honourable friend, Mr. Kabir-ud-Din Ahmed, is of a wholesome nature and should be allowed.

The motion was negatived.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, while we are on section 112 I wish to mention that I gave notice of an amendment for carrying out the suggestions of the Greaves' Committee, but I had a talk with Sir Malcolm Hailey with regard to the matter and he has promised to give me hearing in private and to discuss the matter with me and I quite appreciate the difficulty that the Home Member is in now. He has got 393 amendments to consider, so I do not wish to rush him and I accept his suggestion that I should have a talk with him in private and that, if he can accommodate me, I shall be at liberty to bring up this amendment later on. So you will kindly leave that open for the present.

Clause 19, as amended, was added to the Bill.

Mr. K. Ahmed: Sir, I beg leave to move the following amendment:

"Omit sub-clause (ii) of clause 20."

If the man has been brought up under arrest under section 110, it is very difficult for him especially in this cold winter, to be detained in the lock-up without having any surety of getting out of the jail and living comfortably outside. Sir, this question of furnishing sureties is a very difficult one, because if a person wants to get enlarged on surety, he will find, there will be a charge sheet against him submitted by the police. At the same time, he will have the opportunity, he will have time enough, Sir, to find sufficient funds to engage vakils, pleaders, mukhtars and barristers. That being so, Sir, it is in the interest of justice that these persons should be given a free hand in the matter of granting bail. Section 110 is a section which is called a preventive section. It is not a section that deals with the commission of an offence: it is preventive. It is aimed at ensuring that the man who has committed an offence under 110 may not in future commit any offence. A man must be very careful and if he is in the habit of committing certain offences, he must be careful at the same time

to the amount of money for which he will be bound over or bound down to give surety to keep the peace and to be reasonable with regard to his behaviour and habits. Sir, if this man is taken straight to the jail or to the lock-up without having an opportunity or hope that he will be enlarged on bail, if this man is not in a position to give surety—the man has not committed any offence in the eye of the law—the object of section 110 is that he should be a reasonable neighbour, living in the locality so that he might not commit any offence to others living in the same village. If that question is before the Magistrate, to test the character of this man without getting evidence, he may be discharged later on, but why should his defence be hampered? Why should not sufficient opportunity be given to that poor unlucky man that he should be properly defended and that certain lawyers should be instructed on his behalf? Is not this an engine of oppression against this man before he takes his trial that he should be asked to give surety? This man has not committed any offence and if he did, he should have been punished a long time ago and that being the test, I do not see any reason why this man should be hampered in his defence by being asked to give surety for a certain amount, interfering with his liberty of engaging lawyers, interfering with his freedom and liberty to ask his villagers to stand by him and give testimony in his defence, that he is a good man and not as black as he is painted by the police. The police can do anything and everything. I do not like to show any wording of the judges showing that the police have acted not successfully in many cases particularly of this kind. Speaking from experience, I can say that there has been failure on the part of the police, very often. That being so, Sir, and for considerations of a common sense point of view, I do not think you should bind down a man without giving him proper latitude in substantiating his defence; it is interfering with the liberty of the subject. You want to take him straight to the lock-up. Thereby you interfere with his defence. Supposing he has got landed property and his money is not kept in cash and he wants to sell his property and realise money out of which he wishes to engage a lawyer and that lawyer should be properly instructed. The lawyer should be given an opportunity to equip himself with all the facts considering that the police are doing so much against him (the accused). The Sub-Inspector, Head Constable and the Superintendent of Police probably do not want the lawyer to defend the accused. They want him to take his trial and go to jail straight. There are hundreds of elephants upon which the prosecution witnesses generally come. I have seen two or three miles of area being covered by the police and this poor man is completely helpless. The men in the street can shout, but this man cannot utter a single word. For the ends of justice I think that the retention of this custody will hamper his trial and I hope that this sub-clause (ii) of clause 20 will be omitted.

Mr. H. Tonkinson: Sir, so far as I understand the argument of the Honourable Member it is as follows. These provisions in the Code are preventive provisions. They are not punitive provisions. It is improper that a man should be sent straight to jail. It is improper that he should not be let out on bail. He ought to be able to consult his legal advisers and he should not be hampered in drawing up his defence. Well, Sir, that being the argument of the Honourable Member, I am exceedingly surprised that he has suggested the omission of this sub-clause. The object of this sub-clause is to do exactly what the Honourable Member wishes should be done. At the present time, Sir, under the proviso to section 114 of the Code, if there is any reason to fear the commission of a breach of the

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peace, and if such a breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest. Now, Sir, the Bill proposes, in this sub-clause to enable the Magistrate to let the accused out on bail. That being the object of this sub-clause and it being absolutely in conformity with the intentions of the Honourable Member who has moved this amendment, I do not think it is necessary to argue further against the suggestion to omit this sub-clause.

Mr. T. V. Seshagiri Ayyar (Madras : Nominated Non-Official): Where is the provision for bail? Is this the bail provision?

Mr. H. Tonkinson: It is this sub-clause.

Mr. Deputy President: The question is:

"Omit sub-clause (ii) of clause 20."

The motion was negatived.

Mr. Harchandrai Vishindas (Sind : Non-Muhammadan Rural): I think, Sir, that this is the stage at which I should move my supplementary amendment* provided the Government do not object to it under your ruling and under Standing Order 40. It is supplementary amendment No. 5. This is the stage that it should come in. I pause for an announcement from the Government Bench as to whether they object to this amendment or not.

The Honourable Sir Malcolm Hailey: If I am obliged to object to it, it is really in the interests of the House that I do so and not from any motives peculiar or particular to Government. I put it to the House that it has not had time to consider these supplementary amendments and it is inadvisable if only on that account that we should ask the President to utilise his special powers to admit them.

Mr. Deputy President: Under the ruling given by me I must rule it out of order.

Mr. T. V. Seshagiri Ayyar: I move the amendment[†] standing in Dr. Gour's name.

The Honourable Sir Malcolm Hailey: As the Honourable Member has moved it without argument, I oppose it without argument.

The motion was negatived.

Bhai Man Singh (East Punjab : Sikh): Sir, the amendment that stands in my name runs as follows:

"In clause 20, sub-clause (ii), for the proviso (a) to the proposed sub-section (3) substitute the following:

'(a) No person under this sub-section shall be required to execute a bond for maintaining good behaviour if the notice issued to him under section 112 was to keep the peace nor can he be so required to keep the peace if the said notice was to maintain good behaviour.'

* "In clause 20, add the following paragraph at the end of section 117, sub-section (2):

"Provided that all inquiries under section 108 shall be held with the aid of a jury, as nearly as may be practicable, in the manner hereinafter provided for trials in a Court of Sessions with the aid of Jury."

† "In clause 27 (ii), in proposed sub-section (3), insert the word 'forthwith' before the words 'execute a bond'."

The clause I want to amend, as proposed in the Bill, runs as follows :

"No person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behaviour."

The clause as it stands, really speaking, recognises the principle which I want to lay down more clearly and definitely. Leaving out clauses 108, 109 and 110, the only clause that remains is 107 under which a person is required to keep the public peace. The clause as it stands means that if a person has been issued a notice to show cause why he should not be bound over to keep the peace, he shall not under this sub-section be required to execute a bond for maintaining good behaviour. I see no reason, Sir, why we should take only one side of the question and not both the sides. If a notice has been issued to a man to show cause why he should not be bound over to maintain good behaviour, why should the Magistrate go beyond the scope of the notice and ask him under this sub-section to keep the peace? As a matter of fact, Sir, these proceedings are intermediate proceedings during the pendency of a case. There is no reason why any more power should be given to the Magistrate than there exists under the terms of the notice. I may also submit, Sir, that under section 118, while finally ordering a person to give a security, it is laid down :

"If, upon such inquiry, it is proved that it is necessary, for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly :

Provided :

First, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112"

Now, if under section 118 the Magistrate cannot order the accused, while deciding the case finally, to furnish a security of a different nature than he was required to do under the notice issued to him under section 112, there is no reason why in these intermediate proceedings the Magistrate should have the right to ask him to furnish security of a different nature than mentioned in the notice under section 112. I think this oversight in the drafting is due to the words of I. L. R. 25, Cal. 798, wherein the case was that the person was required to be of good behaviour and it was held that he could not be bound over to give security for keeping the peace. The case before the High Court at that time was simply one-sided, it referred to only one side of the question. So High Court had to give their ruling only on that part of the question, the other part was not before them. But the principle laid down therein was that since that man was asked to keep the peace in the notice issued under section 112, therefore he ought not to have been required to be of good behaviour in the final order. The notice under section 112 and the final order under section 118 should not clash with each other,—that is the principle of the ruling in the Calcutta case, and there is no reason why that principle should not be applied in this clause also.

Mr. B. A. Spence (Bombay: European): May I ask for information from the Honourable the Mover of this amendment? Does he object to any one who is bound over to be of good behaviour, keeping the peace while he is bound over for good behaviour, or if he is bound over to keep the peace, does he not think that he ought also to be of good behaviour?

Bhai Man Singh: In reply I have only to say, do the framers of the Code object to a man who is asked to keep the peace to be of good behaviour? There is the plain thing, we should have some guiding principle and should be guided by that principle.

Mr. H. Tonkinson: Sir, the Honourable Member proposes to substitute another proviso for proviso (a) in the Bill. His suggestion is that if the person proceeded against has been called upon to give security for keeping the peace, then the interim order to which this proviso refers should be an order for keeping the peace, and similarly, if the man is ultimately assuming that the Magistrate finds the facts to be true, to give security to be of good behaviour, then the interim bond should be one for good behaviour. That, Sir, appears to be an eminently reasonable proposition, but I would suggest that the proposition in the Bill itself is even more reasonable and more in the interests of the person proceeded against. I think that the Honourable Member has neglected to notice the provisions of section 121 of the Code of Criminal Procedure. It says:

"The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and, in the latter case, (that is to say, in the case of a bond to be of good behaviour) the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond."

That is to say, Sir, the commission of any offence whatsoever would mean a breach of a bond to be of good behaviour. As regards a bond to keep the peace, the only offences which will involve a breach of the bond are offences which involve a breach of the peace. It is true, Honourable Members may refer to the form (Form X in Schedule V), in which the bond to keep the peace is drawn up, that a bond to keep the peace may be broken where a bond to be of good behaviour would not be—I refer to the case of doing an act that may probably occasion a breach of the peace. On the whole, there is no doubt, however, that the bond to be of good behaviour is a wider bond, and embraces a considerably wider field than the bond to keep the peace, and therefore the Bill proposes that the Magistrate should be able to take an interim bond, the less stringent bond in all cases. In these circumstances, I trust that this House will not accept the amendment.

Colonel Sir Henry Stanyon (United Provinces: European): My submission is that some misconception underlies the amendment which has been proposed. The clause, as it is at present worded, makes special provision for persons against whom proceedings are taken under section 107 of the Code for keeping the peace. The persons proceeded against under that section may be persons of the highest respectability, in no sense criminals, but driven by circumstances into a position which has made it necessary to take action against them under section 107. But proceedings under the more serious sections 108, 109, and 110 involve a stigma. They are proceedings against character, not against an act of impulse or a particular set of temporary circumstances which lead to a danger of a breach of the peace, but which involve a question of character; and the clause as now put up in the Bill very rightly makes a difference in favour of the non-criminal peace-breaker. If the House were to accept the proposed amendment, what would be the result? The result would be an inconsistency, because if a man is proceeded against under section 110 and is required to execute a bond to be of good behaviour, it would be a contradiction to say that he is not thereby required to execute a bond

to keep the peace. Section 110 includes under clause (e) a person who habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace. The moment you bind a man to be of good behaviour, you necessarily bind him, *inter alia*, to keep the peace, and, therefore to legislate that a man who is bound to be of good behaviour shall not be bound to keep the peace is a contradiction and an inconsistency: I am quite sure that when this is perceived by the House, this amendment will be given the short shrift that it deserves.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Sir, the amendment which stands in my name asks that in clause 20. . . .

(Voices: "What about Dr. Gour's amendment* No. 57?")

Mr. T. V. Seshagiri Ayyar: I do not move it.

Mr. K. B. L. Agnihotri: I beg to move:

"That in clause 20, sub-clause (iii) the word 'omitted' be substituted for all words after the words 'shall be' where they first occur."

The present sub-clause (iii) is to this effect:

"Sub-section (3) shall be renumbered (4) and after the words 'habitual offender' in the said sub-section the words 'or is so desperate and dangerous as to render his being at large without security hazardous to the community' shall be inserted."

My amendment asks that the sub-section (3) shall be omitted.

The present sub-section (3) says:

"For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise."

I beg to put before the House that this clause which entitles the prosecution to prove the character of the habitual offender by the evidence of general repute or otherwise be deleted. Sir, under this section the Magistrate stamps a person with a bad character and of being a habitual offender for his whole life and this sub-clause provides that the man could be bound over on the evidence of general repute. The words "general repute" are of very wide interpretation and of confused application. The courts that have attempted to clear their meaning have introduced further confusion rather than succeeded in clearing in any way the meaning thereof. In the case of an habitual offender, the fact could be proved even by circumstances or personal knowledge. It is not necessary that the fact of the person being an habitual offender should be proved by the general reputation which a man bears in the community or among people in general in the town. It will be in the knowledge of the House that there are people in the mofussil who are not so well educated, who cannot think clearly for themselves and who are more or less guided by the opinions of others and it may happen as it generally happens that either they are carried away by their own prejudices or by the influence of the opinions of others with whom they come into contact. Therefore the fact that an habitual offender is a person who habitually offends against the laws could very well be proved by the evidence itself regarding offences which he may have committed. There may be a reply from the Government Bench that it often happens that though the courts are morally convinced that

* "And renumber clauses (e) and (d) of the proviso as clauses (d) and (e), respectively."

[Mr. K. B. L. Agnihotri.]

the man has committed an offence, still on some technical ground, the man may get off and may not get the punishment which he richly deserves for the offence which he committed. My reply would be that those very witnesses who came forward to prove that the man had committed the offence, would also come forward in this case to prove the offence and to prove that it is within their knowledge that the man has committed such and such offences; and probably that evidence will be a better evidence to prove about the habitual nature of that offender. Moreover, Sir, if we were to rely on the reputation which a man bears, it is pretty certain as has happened in the past that many cases may come before the courts in which a man may unnecessarily be bound over simply on account of the prejudices or the opinions wrongly based, of the persons who come to give evidence against him. Therefore, I submit that it is not necessary to change the law of evidence so far as the nature of proof necessary for binding over an habitual offender is concerned under this section, or to allow this clause to stand. I therefore submit that this clause should be deleted. The Government do not only want the retention of the clause in this Bill but on the other hand they also want to make it applicable to certain other classes of people within the purview of this clause, that is, to include desperate and dangerous characters. The question as to how far it was desirable to include such persons under section 110 was very well discussed in the amendment which was moved by my Honourable friend, Munshi Iswar Saran, and I need not go into details. I may simply submit that all these particulars are very difficult to be proved by general repute which is of a very wide application and therefore it is better that the whole clause should be deleted.

The Honourable Sir Malcolm Hailey: It is perhaps difficult to appreciate the full meaning of the amendment in the form in which it appears on the paper, owing to the exigencies of drafting. The Honourable Member however has explained his intention very definitely to us; he wants to do away with the whole of section 117, sub-section (3). That is to say, he would make it impossible for the courts to accept evidence of general repute in dealing with habitual offenders.

Mr. T. V. Seshagiri Ayyar: No.

The Honourable Sir Malcolm Hailey: Yes. You cannot place any other construction than that I have placed upon the proposal of the Honourable Member; and I see that I have the assent of the Honourable Member himself in my statement that I have correctly and clearly described his intention. Let me repeat; he would delete the whole of clause 117, sub-clause (3) and make it impossible for the courts to accept evidence of general repute in dealing with habitual offenders. Now it is an argument which we have had to use before, an argument which we have indeed heard used also on the other side, that if a particular provision has stood in the law for many years, we should not alter it unless very substantial reason exists for doing so. Has there been any general expression of opinion against the provision? None whatever. I would ask the House to refer to the opinions which we have placed in their hands and to tell me whether they can quote any substantial body of opinion against this provision, or indeed any expression of opinion at all. Now have the courts themselves deprecated its use. I am on strong ground when I say that they have not done so. It is true that the question as to what constitutes general repute has been discussed at length in the courts, and has formed the subject of

judicial decisions, but the courts have now laid down definite standards for applying this particular provision. I draw the conclusion then that neither the public at large nor the judicial authorities have felt that this is an unreasonable provision of law. You will find a similar provision in the Italian law, where a man's character for the purposes of preventive sections is judged *per voce publica*. You will find a similar provision in the Egyptian law. (A Voice: "What about English law?") It does not, I admit, exist in the English law, but I have quoted two instances perhaps somewhat more analogous to Indian conditions. And I believe, and honestly believe, that people in India generally consider that this provision constitutes a real safeguard. We have been told to-day, that we should not rely on evidence of general repute, and should prove by concrete instances the character of a person who is to be made the subject of a preventive order. Of course the Honourable Member will not claim that we should prove this by concrete instances of conviction. The concrete instances are only concrete instances of alleged offences. But there is no very great difference, if you think of it, between the two sets of circumstances. In one a witness comes before a Court and says, 'I and every one who knows this man knows him to be a thief;' in the other a witness says, 'this man has stolen from A or stolen from B or from C,' but the Court is not able to call upon him for proof that the man has stolen from A, or from B or C. And every one is well aware of the class of cases in which this sub-section is really needed. It is no dialectical matter; I appeal to the practical experience of every one here. There are a large number of men who so terrify their neighbours that cases are not brought against them, though it is perfectly well known by the community what class of men they are; and if the verdict of the neighbourhood is unanimous, if there is no contradictory evidence against it, one may be pretty sure in the conditions of India that that verdict is correct. I may be pardoned perhaps for referring to a case within my own knowledge, but it is an interesting one and I will give it to the Assembly for what it is worth. We were colonising a new district in the Punjab; that is to say, there was a large and unpopulated waste into which we were bringing canal irrigation. Our colonists came from the congested districts of the Punjab—many of them military pensioners, many of them from the Sikh districts, all carefully selected and respectable men. They had, of course, to bring their cattle with them to plough their new holdings and any delay would have meant a heavy loss not only to the State, but to them. Now there happened to be living on the edges of this tract men whose sole profession in life was that of cattle stealing. They had practically little other means of subsistence. So far was this acknowledged in the neighbourhood that by the law of the tribe no man could even put a turban on his head until he could prove to his family that he had stolen five cows. Was it possible to get convictions against these people? Of course not. If they stole cattle from a village and the villagers complained, the rest of their cattle disappeared next night. Yet everybody knew what was their means of livelihood; they knew by long experience that they were habitual cattle thieves. And directly the colonists appeared, some from 200 and from 300 miles away, prepared to take up new land, after incurring all the burden of raising funds for building their houses and buying their oxen and implements, their cattle were swept off by these amiable gentlemen. What remedy had the colonists and ourselves? One only. We took action against the most notorious of these men, some ten or fifteen, and we applied section 110. We proved by general repute that they were cattle thieves, they were put on security and the matter ended at once. That is exactly the kind of case to which

[Sir Malcolm Hailey.]

this sub-section of section 110 would apply, no other provision would be adequate, and I have ventured for that reason to quote the case.

We have been told by Mr. Agnihotri that if the section is allowed to stand, there is a risk that people will unnecessarily be bound over on account of prejudice. Now, the Courts have made it perfectly clear that reputation must be general reputation in the vicinity; not vague belief but reputation among people who know the person affected and reputation that is not capable of contradiction. Would it be possible, therefore, if the courts did their duty—and we have no reason to suppose that they do not do their duty in this respect—for a man to be bound over on account of unreasonable prejudice? Mr. Agnihotri has also supported his objection to the section by the statement that we have proposed to extend it. I am prepared to argue the supposed extension when we come to the amendment that Mr. Seshagiri Ayyar will shortly put before us. I would merely ask the House not to be swayed in its consideration of this very wholesome, salutary and long-standing section by the fact that we have been obliged, purely in order to clear up legal difficulties and for no other purpose, to add a few extra words to it. The sole question now is, would India at large approve of this Assembly withdrawing this necessary provision by which in the case of an habitual offender we can rely on evidence of general repute?

Mr. T. V. Seshagiri Ayyar: Sir, I cannot help characterising this clause as a very dangerous instrument which has been misused in the past and is sure to be misused in the future. The Honourable the Home Member has referred to his own experience; I may be pardoned by the House if I refer to my experiences and say that in ninety cases out of one hundred this section has been misused; and there have been no more improper convictions than the running in of a man on the ground that he is an habitual offender, and one therefore whose movements should be checked. The Honourable the Home Member was obliged to refer to the Italian and Egyptian Codes for a parallel. Certainly he could find nothing like it in the English Code, in the French law and nothing in America. He could only refer to the example of Egypt for the purpose of supporting this drastic provision in the Criminal Procedure Code. Sir, those who have judicial experience will bear me out when I say that repute evidence is nothing but evidence which the Police Inspector or Sub-Inspector of the place considers good. He goes to a number of people and asks them to say that a certain man is a dangerous man and is an habitual offender, and immediately the cry is taken up by a large number of people, and evidence comes before the Court with the result that the man's liberty is sworn away by people who do not know anything specific about him, but think that his liberty ought to be curbed in some way or the other. Take the case of men who make themselves obnoxious to people in their locality by holding peculiar religious opinions and social views. They are generally hated in the locality with the result that if the Police Inspector sets his mind to procuring a conviction against him and getting such a man out of the place, all he has to do is to go to the other people in the locality and ask them to swear that the man is dangerous and an habitual offender. There is no difficulty about this at all; you can always get people to swear that a man is an habitual offender, and if they were cross-examined they would say they were not in a position to give specific instances; they would say, all they know is that he

is a man who habitually commits offences. Sir, as the Honourable the Home Member has said he would reserve his comments as regards the amendment which I propose to make. I would not say anything about that matter. I will confine myself solely to the question of a person who is described to be a habitual offender being restrained. I submit, Sir, that Mr. Agnihotri has given very good reasons for convincing the House that if such a provision as that is allowed to stand, no man's liberty would be safe.

The Honourable Sir Malcolm Hailey: Sir, I would ask your special permission to make not a second speech to the House but for one remark only to the last speaker. I will hand to Mr. Seshagiri Ayyar the opinions which he recorded about our Bill when he was a Judge of the Madras High Court, and I would ask him to point to a single remark which he then made in opposition to this section of the Bill. Obviously his opinion as a Judge was not then as strong as he expresses to us now. There is not a single word of his on the subject.

Mr. N. M. Samarth: It is a later development, Sir.

Mr. Harchandrai Vishindas: Sir, to the experiences which have been just now detailed by Mr. Seshagiri Ayyar, I might add my own. Now, I will begin by saying that in many cases the provisions of this chapter are salutary and are worked salutarily, but at the same time there are many instances in which they are misused; I will not go so far as to say that they are misused in 90 per cent. of the cases in my own province. Still I have personal experience of many cases in which they were misused. Not only is it the case that the Police go about and ask people that this is a dangerous man and therefore he should be restrained or some action of this kind should be taken, but, as a matter of fact, there are standing professional witnesses for these cases under section 110, and they are very glib witnesses too. I remember a case in which a baniya who was a mere shop keeper whom nobody could possibly conceive of being a habitual offender rendered himself obnoxious, for circumstances which need not be mentioned, to the police and the police brought up two or three witnesses who were in the habit of giving evidence against habitual offenders, and when the witnesses were asked as to instances of the accused person having harboured thieves, they glibly gave 10 or 15 cases, of which there was no possibility of verifying. On the one hand, I say that the provisions of this section do require to be administered, and on the other hand there are many cases in which they are misused and they are taken advantage of by the police as instruments to run in persons whom they consider obnoxious.

The Honourable Sir Malcolm Hailey: Was security taken from the baniya you mention?

Mr. Harchandrai Vishindas: It was. Sir Malcolm Hailey might say one bad case does not mean that the law is improper or improperly worked, and, as they say, hard cases make bad law. At the same time, I think, the absolute abolition of this chapter in this country would be undesirable, because, whilst there are cases in which these sections are being misused, in some cases the presence of this section is absolutely necessary in the interests of the people. In a place where dacoities are very rife, as it very often happens in my own province, when it is impossible to adduce evidence to identify dacoits when they commit dacoities, there is no other means of pinning down those dacoits than by having resort to the provisions of this section. Therefore in reply to Mr. Agnihotri and Mr. Seshagiri Ayyar, I have to say, as Sir Malcolm Hailey has pointed out, it would be impossible

[Mr. Harchandrai Vishindas.]

to work this chapter if you were to remove these provisions altogether. It is impossible to bring evidence of persons who would speak to the fact that they saw this man commit a theft or some such thing. They can give evidence of a general character that they had heard that this man had harboured such and such offenders in his house and was usually a man in the habit of receiving stolen property. Still, I am of opinion that if this amendment of Mr. Agnihotri is allowed, the result would be that it would be impossible to work this chapter. The better course would have been to have moved for the abolition of the whole chapter and Mr. Agnihotri would have been better advised if he had moved for the abolition of the whole chapter, but not merely for inserting a provision which will make the provisions of the rest of the chapter entirely nugatory. As we should look to the greater good of the greater number, I think people who require some order to be preserved in their provinces will, in the interests of the peaceful man, agree that the provisions of this chapter are very necessary. It very often happens in my province that there are waves of lawlessness and waves of dacoity and then it becomes very essential to have the provisions of this chapter.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, the discussion on this clause has given opportunities to indulge in moods of reminiscences. But the point taken by my friend, Mr. Agnihotri, is, as I understood him, that this clause is liable to be harshly worked. That is the evidence in support of it would be vague, and, therefore very difficult for an accused person to meet it. That, I think, is the main objection to this clause. Another point which has been taken up by my friend, Mr. Seshagiri Ayyar, is that out of 90 out of 100 cases which came up before the High Court the provisions had been misused. The two are distinct. There is the law. It may be sometimes that those who work the law go wrong, and therefore when the matter goes before the higher Court, naturally the errors are corrected. But, taking Mr. Agnihotri's objections, what is it he offers us in the place of this clause? Is it easy, is it workable, to offer an alternative to the clause that exists? Well, that alternative has not been placed before the House. Well, the question naturally turns to the point whether we should have a clause like this and whether it is necessary to control the men who are brought under this clause. The question is apart from the reference of the percentage which my Honourable friend, Mr. Seshagiri Ayyar, gave, which, no doubt, requires to be verified, whether really such a large percentage of cases had been found to have been so egregiously dealt with. The interpretation of the phrase 'general repute' as the Honourable the Home Member very clearly pointed out has not led to any difficulties. No doubt, subordinate Magistrates sometimes have admitted what is called hearsay evidence, and they have sometimes admitted vague general aspersions against the man, but in every one of those cases, the High Court has corrected. Now, the phrase has got a regular well understood meaning. The words 'general repute' have practically been defined by judicial decisions and no practitioner of any standing or no judge of any legal knowledge can have any difficulty in interpreting the words 'general repute.' That has practically become a phrase of accredited interpretation. Now witnesses of general repute must speak from personal knowledge. That excludes mere vague hearsay. It must be the reputation in the locality and among the people where the person resides. I do not want to define the law at length because, as I have said, it has been done

exceedingly well by the Honourable the Home Member, but as the discussion has taken a form which is not entirely germane to the interpretation of the term, I refer to it. Courts have not any difficulty in laying down the conditions and the elements of evidence necessary to come under this clause, and therefore there is no difficulty in understanding the phrase "general repute" in this clause. Now we are faced with this alternative. If you omit that, then there are absolutely no means of bringing in offenders who come under this clause. I will give an instance which recently occurred. There was the case of a man who was a real bully. That man used to terrorise the neighbourhood. The neighbourhood was in a slum locality. And it happened one night that a number of people joined together and beat him to death, and when I inquired, I heard he was a bully who had been bullying the neighbourhood for a great many years, and then the people could not stand it any longer, and they combined and beat him to death. Now if proceedings had been taken against that man and he had been bound over, that man would not have been killed. That is one case where it has gone to extreme lengths. As the section as to good behaviour stands, I may say that I am not convinced that it has been really abused. No doubt the evidence judged from the standpoint of evidence required to convict a man is less exact. All the same that section when used in regard to good behaviour, which I am discussing now, has produced salutary results, and therefore it cannot be said that it has been misused. It is no doubt liable to be misused by people, or Magistrates who have got the requisite training or balance of mind. That no amount of training or legislation can give. Therefore I say that the clause which my learned friend, Mr. Agnihotri, wants to be dropped ought to be retained.

Rao Bahadur T. Rangachariar: I move that the question be now put.

The motion was adopted.

Mr. Deputy President: It would be perhaps more convenient if I put the question in the following terms:

The question is:

"That sub-section (3) of section 123 of the Code be omitted."

The motion was negatived.

Mr. Deputy President: Mr. Seshagiri Ayyar.

Mr. K. Ahmed: Sir, I rise to a point of order. You see, Sir, the next amendment covers amendment No. 60. A portion of No. 61 is amendment No. 60, and therefore 61 swallows up No. 60, or at least 60 is a part of 61. I think, Sir, if 61 is moved, that will be sufficient to cover 60.

Mr. Deputy President: Mr. Seshagiri Ayyar.

Mr. T. V. Seshagiri Ayyar: Sir, I said a few words on the last occasion which to a considerable extent bear upon the amendment which I now move, namely:

"That in clause 20 (iii) omit the words from 'and after' to 'instead'."

There is this additional factor, so far as this amendment is concerned; it is not an old-standing provision, it is something which the Government wants to introduce for the first time. Under the original section the fact that a person is a habitual offender may be proved by general repute or otherwise. It is now sought to add to the clause relating to "habitual offender" the clause "or is so desperate and dangerous as to render his being at large without security hazardous to the community." It is bad enough to have reputable evidence as regards old offenders; we are going to add a new

[Mr. T. V. Seshagiri Ayyar.]

terror to the lives of peaceable citizens by introducing a new clause and by permitting evidence to be given by the police for the purpose of showing that a man is of so dangerous and desperate a character that his liberty should be curtailed. Sir, as far as possible in all civilized Governments, there should be as little evidence of this vague character as possible; evidence which can be easily manufactured, evidence which would give a handle to persons who do not like a particular person to go before a Magistrate and swear that this is a very dangerous and desperate man and it is desirable that his liberties should be curtailed. My friend, Mr. Subrahmanayam, seemed to a certain extent to doubt whether I was justified in saying that in 90 per cent. of cases the evidence is not good. I will not refer to anything which I know personally, but I say, Sir, that the appearance of this clause in the form in which it has been introduced is likely to be greatly abused, and is likely to put honest men into the clutches of the police, and I think it is desirable that no innovation should be made in regard to the letting in of evidence of this character in the Criminal Procedure Code. The Honourable the Home Member has already advocated the retention of the existing clause, but I do not think he would be justified in asking that there should be an addition to that clause; namely, you must allow the police to let in evidence for the purpose of showing that a man is a very dangerous and desperate character. And after all, what is the evidence which would be allowed? A few people would come in and say: "We know this man is very dangerous and should not be allowed to live in the village; he is a very desperate man, if he is allowed to live in the village, our lives would be in danger," and if they are asked to give instances, there would be great difficulty in getting anything specific in regard to the matter. It has been said by my friends that Courts have always required in such matters that specific evidence should be given. But that is only when the matter goes before the High Court, after the man is called upon to show cause why he should not execute a bond for good behaviour. Evidence of this nature would be let in and the man would be bound over for a long time and subjected to all manner of difficulties before the matter is taken up to the High Court. The High Court may later on point out that there was no evidence of a specific nature but the mischief would have been done. That has been the experience of a number of police, and I do not think it is desirable that this means should be left in the hands of the police to harass honest men; and I therefore move, Sir, that this new clause which it is intended to insert should be dropped.

Mr. Deputy President: The amendment moved is:

"That in clause 20, sub-clause (iii), omit the words from 'and after' to 'inserted'."

The Honourable Sir Malcolm Hailey: I find that we are again under the imputation of attempting to gain extensive and undesirable powers under the cover of a little addition of this nature. But if I give the House an explanation of the reason for the addition of these words in the drafting, they will see that, after all, our intentions were not so dreadful, nor on so vast a scale as suggested. The history of the case is as follows: It is sufficient to say that in 1872 you could get security against a man on the ground that he was of notoriously bad livelihood or a dangerous character, and you could prove this by evidence of general repute. When the Act came to be amended subsequently, in 1882, the Legislature omitted the condition that you might proceed against a man merely because he was a dangerous character. In other words, it was necessary then to prove that he was

a habitual thief, receiver of stolen property and the like. Now, we have already had by the vote of the House this morning, a very general admission that it was unfortunate that the revision of 1882 left out the provision that you could proceed against a man on the ground that he was a desperate and dangerous character. That, I say with confidence, was a result which every one must admit was arrived at on the discussion of Munshi Iswar Saran's amendment. We actually discussed a particular case in which, acting under the law of 1882, a Judge, who found that a man was what in other and perhaps lighter terms we should describe as a holy terror, could not be proceeded against because of the omission of 1882. Our Legislature, wisely as I claim, re-introduced this provision in 1898, but, when it did so, it was unfortunately not noticed that it had not provided, as was provided in 1872, that you could prove that a man was a dangerous character by evidence of general repute. If Honourable Members will glance at section 110, they will see that from (a) to (e) the clauses are proceeded by the words "habitually" or "by habit". When you come to clause (f), namely, the case of a man who is so desperate and dangerous as to render his being at large without security hazardous to the community, these preliminary words are omitted, and the Courts found, when they came to interpret section 117, sub-clause (3), that the omission of these words made it impossible to prove by evidence of general repute that a man was of so dangerous and desperate a character. All we seek to do, therefore, is to correct the inadvertent omission of 1898 and to bring back the law as it stood in 1872, so as to make it possible to prove by evidence of general repute that a man is a dangerous and desperate character. We seek to do that and nothing else; and I leave it to the House to judge whether what we propose is anything in substance so dangerous as to merit the terms which Mr. Seshagiri Ayyar has used. I think I need confine my further argument to one point only. I need only put it to the House that, if a man is really so dangerous and desperate as to render his being at large without security hazardous to the community, that is exactly the kind of case which you would ordinarily prove by evidence of general repute and for which it would be difficult to find proof of any other kind than general repute.

Mr. N. M. Samarth: Sir, I beg to support this amendment. The judicial decisions on this subject are to the effect that it is wrong in principle to apply evidence of general repute to a person who is to be condemned as a desperate man.

The Honourable Sir Malcolm Hailey: Might we have those?

Mr. N. M. Samarth: The Honourable Member will find them in Sohoni's edition of the Criminal Procedure Code under section 123, note 52, clause (ii), namely, 34 M., page 255, 5 C. W. N., page 249, 13 Cr. L. J. (9 All.). Then, again, there are several cases given under note 45. The principle is this. In the case of habitual offenders one can understand evidence of general repute being given, but in the case of a man who is for the first time being pounced upon as a desperate man, that is to say, in regard to whom there is no habitual offences brought home, it is not right that you should resort to general repute. You must give specific instances in his case to show that he is a desperate man, and that is the *raison d'être* of the decision in 34 M., page 255, and other cases. I submit, therefore, that it is not right that we should now extend in the case of these men the principle that they should be condemned by general repute; the ordinary rules of evidence must apply. It is quite easy, if a man is really a

[Mr. N. M. Samarth.]

desperate and dangerous man, to prove by actual evidence, by specific, concrete, acts on his part, that he is so, and it is not right that that man should now be brought under this clause of general repute.

I, therefore, support this amendment.

Sir Henry Moncrieff Smith: Sir, I think it is not right that the House should be misled by any remarks that have just fallen from my Honourable and learned friend.

Mr. N. M. Samarth: I should be delighted to know how I have misled the House.

Sir Henry Moncrieff Smith: I shall endeavour to explain. I understood Mr. Samarth to be attempting to persuade the House to believe that the High Courts had suggested that the principle of section 117 (3) was wrong.

Mr. N. M. Samarth: No, I never said that.

Sir Henry Moncrieff Smith: That evidence should not be given of general repute and that we should not make any exception to our general law of evidence in these cases.

Mr. N. M. Samarth: May I rise to a point of explanation before the discussion proceeds further. What in effect I said was that the High Courts have laid down that a provision of law which is an exception to the general rule of evidence must be applied only to the cases to which it is confined by the Legislature, and that the Legislature should not now proceed beyond the limits that have been already laid down.

Sir Henry Moncrieff Smith: Sir, I must again remark that I understood Mr. Samarth to refer to the principle and he suggested that the High Courts had also referred to the principle of this section 117 (3). However, admitting the Honourable Member's explanation, we come to this. What did the Madras High Court say? Merely this, that section 117 (3), which enables evidence of general repute to be given, can only be used in cases where you are attempting to prove that a man is a habitual offender. They said: "You cannot prove that a man is of so desperate and dangerous a character by evidence of general repute." It was no more than this. The cases that followed took exactly the same point. Munshi Iswar Saran has quoted another case which took almost the same point. The Courts kept on holding that evidence of general repute was not admissible in cases of persons whom you wish to prove to be so desperate and dangerous that their being at large was hazardous to the community. They have not said anything further—I have been unable to find any ruling and I do not think Mr. Samarth has found a ruling, in which the Courts have condemned the principle of this section.

Mr. K. Ahmed: May I support the argument of Mr. Samarth by saying that the Calcutta High Court has also held that this sort of evidence of general repute is inadmissible. Their decision is reported in I. L. R. 29 Cal., page 779, in the judgment of Mr. Justice Ameer Ali and Mr. Justice Pratt:

"A charge under clause (f) of section 110 of the Criminal Procedure Code cannot be proved by general reputation, but by definite evidence.

To prove a charge under section 110 that a person is by habit a thief and a dacoit or that he is so desperate and dangerous as to render his being at large without

security hazardous to the community, there should be proof of specific acts showing that he, to the knowledge of some particular individual, is a dangerous or desperate character.

It is not sufficient that persons, however respectable, should come forward and depose that they have heard that such person is a thief and a dangerous character, when they themselves have no personal knowledge of or acquaintance with him. Such evidence is not only such as could not be safely acted upon, but is also likely to work serious prejudice."

Now, Sir, the closing lines of the judgment that was delivered by the Honourable Judge of the High Court are these:

"They say that they have heard that these men are thieves and dangerous characters, but when they are asked, if they know them personally, they answer in the negative, nor can they mention the people from whom they derived their information. In our opinion the evidence is not only such as cannot be safely acted upon, but it is also likely to work serious prejudice. If the men from whom these witnesses purported to derive their information were examined, it would be possible for the accused to test their means of knowledge that they were men of bad character. General suspicion of this nature, however, is not safe to act upon."

Having regard to the nature of the evidence in this case, we are of opinion that the order against the two petitioners cannot be sustained. We accordingly set it aside, and direct that the petitioners be discharged."

This is the sort of thing that is sometimes brought up against a man—that he is by general repute a thief or the son of a thief and *ipso facto* the finding of the Magistrate is that he must be a thief. That is generally the conclusion of the Magistrate against these poor unfortunates, who are the victims of police oppression; and this sort of thing is happening every day. It will continue so long as the District Magistrate, who is under the present law supposed to be also the head of the police, acts, I am sorry to say, in collusion with the police. When the matter goes up to the High Court, the learned Judges find that there is not a single item from (a) to (f) which has been proved; that he is neither a thief nor the son of a thief, nor a desperate and dangerous character, nor in the habit of committing robberies. One of the witnesses, the best man of the locality, comes forward and says "He is a thief—*chor ka lurka*." But what do Mr. Justice Ameer Ali and Mr. Justice Pratt say about it? That not an iota of reliance should be placed on evidence like this. The police, Sir, is like a magic lantern in the village that tantalises the minds of honest people who have asked again and again when this sort of thing is going to stop. I am very much obliged to my Honourable friend the Home Member for saying that in about 1872 the words were there. . . .

The Honourable Sir Malcolm Hailey: No, Sir, I said 1882.

Mr. K. Ahmed: I beg your pardon, it is 1882. And now, Sir, we have this recent case from Calcutta to which I have made reference, i.e., I. L. R. XXIX Calcutta at page 779. What we want is not to strengthen the hands of the police or to help the police any longer, but to protect the victims of this oppression. We have had no other argument from the other side which will hold water, as my friend from Karachi said the other day; and therefore, Sir, it is advisable that those words that my Honourable friend Mr. Seshagiri Ayyar moved—"or is so desperate and dangerous as to render his being at large without security hazardous to the community"—should be deleted.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, it seems to me that it has become necessary to clear the position with

[Dr. Mian Sir Muhammad Shafi.]

reference to the remarks which fell from the lips of my Honourable friend Mr. Samarth in order that the House may be in a position to know what the law at present is, and whether it is desirable to incorporate into this sub-section the words which we seek to introduce. The principle laid down by the Madras High Court in the ruling to which my Honourable friend referred was not that the Legislature ought not to restore the position which, as was pointed out by the Honourable Sir Malcolm Hailey, existed in 1872. All that the High Court did say was this, that the evidence relating to the general repute which a man may bear in his neighbourhood not being ordinarily evidence admissible under the Indian Evidence Act must be confined to the particular cases which fall within the purview of section 117. That is all that the High Court laid down. The Courts of law when judging whether certain evidence relating to general repute is admissible against the person who is on his trial before the Court should see that such evidence is strictly confined to the cases expressly laid down in section 117, and the Courts should not go outside the purview of those cases, for as a general principle the evidence relating to general repute is inadmissible under the Evidence Act.

Mr. N. M. Samarth: I quite agree.

The Honourable Dr. Mian Sir Muhammad Shafi: That being the position, the rulings referred to by my Honourable friend or that may be referred to by other Honourable gentlemen are really entirely beside the point. They do not help the issue which is now before the House. The question for decision by this House is whether the rule which obtains at present under the provisions of the Act of 1898 with regard to the eligibility of evidence of general repute against habitual offenders should or should not be extended to the class of persons who are described in the phrase which we want to introduce in clause 3; that is to say, "men who are so desperate and dangerous as to render their being at large without security hazardous to the community". If this House is of opinion that persons falling under this section should be called upon to furnish security—and I assume that the House has already arrived at that opinion—

Mr. N. M. Samarth: And I quite agree with that opinion.

The Honourable Dr. Mian Sir Muhammad Shafi: Then it is clear, I submit, that the evidence of general repute ought to be considered admissible in the case of this class of persons also, because it seems to me that this is the one class of persons to whom on *a priori* grounds such evidence ought to be held applicable. No doubt it would strengthen the evidence of general repute if the prosecution or the police is able to prove specific cases against them. Surely it is men of this character, who are dangerous to society within the meaning of the words which we want to incorporate in this section, against whom evidence of general repute ought in the interests of society to be held as admissible. After all, remember what is the meaning of general repute. According to Chief Justice Petheram "a man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen". Moreover it has been held by the High Courts that when security is demanded from a person on the evidence of general repute, that repute must be universal and there should be no doubt about it. Now that being so, surely in cases where it is proved by general repute, that is to say, general repute amongst the neighbours in the midst of whom such a person resides, where it is proved by evidence of an overwhelming majority of those neighbours that

the man is dangerous, so dangerous and so desperate as to render his being at large without security hazardous to the community, is there any reasonable person who would still maintain that although this proof, this evidence, is forthcoming against the particular individual, yet he should not be called upon to furnish security simply because the evidence that has been adduced against him is evidence of the character of general repute? Surely, such a position as that is hardly maintainable. I therefore submit that this is exactly the class of persons against whom this House should hold that evidence of general repute ought to be made admissible in order to bring them within the purview of section 117, clause 3.

Sir Deva Prasad Sarvadhikary: Sir, I am afraid I must plead guilty to being an unreasonable person in the sense in which the Honourable the Law Member has just used the words. Having contributed to a certain extent to the retention of sub-clause (f) in section 110, about dangerous and desperate characters being required to give security in certain circumstances, I owe it to myself to disclaim the further liability of making abnormal evidence applicable to such a person. I am not quite sure, Sir, that the draftsmen of olden times were so very careless as has been indicated to-day. When clause (f) came to be re-introduced in section 110, I am not sure that the further extension in section 117 was accidental. Let us examine what (a), (b), (c), (d) and (e) in 110 are. Every one of these relates to a case where certain specific offences, concrete misdeeds, are indicated. Furthermore, we have the element of their having to be what is termed habitual offenders. With regard to clause (f), before this section could be applied to them or before evidence about repute could be admitted a man may be a veritable tyro, a young blood just taking to bad ways and means, there cannot be any confidence in him, and therefore he has to be checked. In his case what would determine the quality of evidence, and also the quantum would not then be the same as in (a), (b), (c), (d) and (e) and ordinarily the rules of evidence would apply. Furthermore, habitual offenders are sneaks who work in the dark; while the dangerous and desperate characters are the contrary. (A Voice: "No.") I hear a voice 'No' behind me. I think people find that that is so. Apart from it being possible to pin him down to his overt misdeeds, there is this further danger and difficulty. In regard to (a), (b), (c), (d) and (e) we know exactly what the witness is speaking of and what the accused is guilty of. With regard to (f), it is more or less nebulous, may to some extent be imaginary. Any witness saying "I believe the man to be desperate or dangerous" or that he is dangerous or desperate without being able to quote definite facts will be throwing the gate far too wide, and therefore I think it was a wise discretion that the Legislature exercised in not introducing with regard to clause (f) what finds place in clause 3 of section 117. It has been suggested that my Honourable friend Mr. Samarth on this side of the House was suggesting that the Courts have held that it is wrong in principle for the Legislature to extend the scope of this section if they thought fit to do so. The Honourable the Law Member, if I may say so with great respect, is quite right in saying that the law courts found themselves powerless in these cases, because clause 3 of section 117 did not apply to the case of dangerous and desperate characters. But, Sir, the point that I should like to make with regard to those cases is that, if the Courts felt that such an enactment was necessary with regard to dangerous and desperate characters, and that its absence was really felt one should have found some indication of that in the judicial decisions. Their trend is on the other hand that the courts were unwilling that this principle should be

[Sir Deva Prasad Sarvadhikary.]
extended to the cases in question in the absence of express provision and that they did not want to countenance such unauthorised extension.

The Honourable Sir Malcolm Hailey: Is that so?

Sir Deva Prasad Sarvadhikary: I say that is the trend. I am entitled to draw my own conclusions. . . .

The Honourable Sir Malcolm Hailey: Have you a single case in which language of that kind is used?

Sir Deva Prasad Sarvadhikary: My suggestion is that there is not a single word in any one of these cases where the courts found it necessary to suggest the need for the extension of this principle to dangerous characters.

The Honourable Sir Malcolm Hailey: Could you quote any case?

Sir Deva Prasad Sarvadhikary: No. That proves my point all the more, because it was not the Judge's business to make remarks against the principle of extension if the Legislature later intended it. But as custodians of peace and order, as some law Courts here have imagined themselves to be, we should have found some indication if that was necessary. And because of real dangers that there are in extending the principle in the case of those not yet guilty of anything habitual, we should be well advised in not pressing for enactment of the provision of clause (iii) of section 117 with regard to (f) of 110.

Colonel Sir Henry Stanyon: Sir, the fears entertained by the Honourable Mover and those who sustain him can easily be understood. There is no doubt that the conferring upon Courts of a general power of this kind is attended with a certain amount of risk. As has been pointed out by the Honourable the Law Member, this is a case where you create an exception to a rule of the law of evidence. Nevertheless, a Legislature has to take risks of this kind. The amendment which the framers of the Bill propose to introduce seems to me almost consequential to a retention on the Statute Book of clause (f), section 110. To my mind, it seems to be inconsistent that we should have one rule of evidence for cases coming under clauses (a) to (e) of that section and that we should shut out that exceptional rule of evidence, if I may so speak of it, in the case of clause (f), where perhaps its presence is more necessary than in any one of the other cases. The High Court rulings which have been cited will be accepted as sound law by every lawyer. As the Honourable the Home Member has pointed out in his very clear enunciation of the subject, they restrict the exception to the cases expressly provided for. But for that very reason they indicate the necessity of the amendment which the framers of the Bill have now put up. The Honourable Mover said, if I heard him correctly, that this would be a dangerous power to put into the hands of the police. We have heard also other speakers condemning the police. That condemnation, I take it, is based upon "general reputation"; but it seems to me that it is not a power placed in the hands of the police: it is a rule of procedure laid down for the guidance of the Courts. No doubt, it is a procedure which the Courts of supervision have to watch with extreme care. If the estimate made by the Honourable Mover is correct, that in Madras 90 per cent. go wrong, then either the quality of the magistracy or the supervision of the supervising authorities there calls for improvement. But I think that, if Honourable Members will halt a moment and give their full significance to

the words "general repute," perhaps they will be disposed to see that many of their fears are not so well founded as the casual consideration of that phrase might lead one to believe. "General repute" means something than mere statements by one or two persons as to the reputation of a man. It means that there is a general body of people, in a position to know and to hear and to sense the character of a man who lives among them, who are agreed in condemning him as desperate and dangerous. A headman of a village may receive daily complaints from ryots concerning the unscrupulous conduct or dangerous conduct or intimidation or bullying of a particular man but only upon the understanding that he is not to give them away as informants lest they should find themselves going from the frying pan into the fire. In all communities, every day, it happens that you have a marked man. Plenty of people are ready to tell one another in confidence about him but very few have the necessary moral courage, or the necessary standing, to take active steps to put a stop to the acts which have made him a marked man. I think it is very essential that, since desperate and dangerous characters do exist against whom specific offences cannot be proved, that our Courts should be armed with authority to help the general body of the public in obtaining relief against the acts and misconduct of such characters. I admit,—as I have already said—it is a power which requires very careful control and watching; but that of itself is no reason why the power should not be given. We are dealing now with what we have been reminded over and over again to be preventive and not punitive sections. We do not want here provisions to *punish* crime. We want provisions to *prevent* crime. We do not want evidence so much that a particular crime has been committed, as evidence that a particular individual is likely to commit a particular crime; and I find it difficult to understand how you can have anything except evidence of this class to say what a man is likely to do—what there is danger that he may do—if he is not checked by an order for security or the like. And so, I think that while we retain clause (f) as a part of section 110, we should in all consistency include the additional words added by the Bill, but proposed to be omitted by the motion now before the House.

(Several Honourable Members: I move that the question be now put.)

Mr. Deputy President: The question is:

"That in clause 20, sub clause (iv), omit the words from 'and after' to 'inserted'."

The Assembly then divided as follows:

AYES—35.

Abdul Quadir, Maulvi.
 Agnihotri, Mr. K. B. L.
 Ahmed, Mr. K.
 Ahsan Khan, Mr. M.
 Asad Ali, Mir.
 Asjad-ul-lah, Maulvi Miyan
 Ayyar, Mr. T. V. Seshagiri.
 Bagde, Mr. K. G.
 Bajpai, Mr. S. P.
 Basu, Mr. J. N.
 Bhargava, Pandit J. L.
 Das, Babu B. S.
 Faiyaz Khan, Mr. M.
 Ghulam Sarwar Khan, Chaudhuri.
 Gulab Singh, Sardar.
 Hussanally, Mr. W. M.
 Ibrahim Ali Khan, Col. Nawab Mohd.
 Ikramullah Khan, Raja Mohd.

Iswar Saran, Munshi.
 Jethkar, Mr. B. H. R.
 Joshi, Mr. N. M.
 Lakshmi Narayan Lal, Mr.
 Man Singh, Bhai.
 Misra, Mr. B. N.
 Mukherjee, Mr. J. N.
 Nag, Mr. G. C.
 Nengy, Mr. K. C.
 Rangachariar, Mr. T.
 Sanarth, Mr. N. M.
 Sarvaghiary, Sir Deva Prasad.
 Singh, Babu B. P.
 Sircar, Mr. N. C.
 Srinivasa Rao, Mr. P. V.
 Venkatapetiraju, Mr. B.
 Vishindas, Mr. H.

NOES—41.

Abdul Rahim Khan, Mr.
 Abdul Rahman, Munshi.
 Abdulla, Mr. S. M.
 Akram Hussain, Prince A. M. M.
 Allen, Mr. B. C.
 Barua, Mr. D. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Chaudhuri, Mr. J.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Dalal, Sardar B. A.
 Faridoonji, Mr. R.
 Ginwala, Mr. P. P.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.

Holme, Mr. H. E.
 Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.
 Kamat, Mr. B. S.
 Ley, Mr. A. H.
 Mitter, Mr. K. N.
 Moncrieff Smith, Sir Henry.
 Muhammad Hussain, Mr. T.
 Muhammad Ismail, Mr. S.
 Percival, Mr. P. E.
 Ramayya Pantulu, Mr. J.
 Sen, Mr. N. K.
 Singh, Mr. S. N.
 Sinha, Babu Ambica Prasad.
 Spence, Mr. R. A.
 Stanyon, Col. Sir Henry.
 Subrahmanayam, Mr. C. S.
 Tonkinson, Mr. H.
 Webb, Sir Montagu.
 Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 28rd January, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 23rd January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Mr. Deputy President then took the Chair.

STATEMENTS LAID ON THE TABLE.

Mr. J. Hullah (Revenue and Agriculture Secretary): Sir, I lay on the table the information promised in reply to a question by Khan Bahadur Sarfaraz Husain Khan, on the 16th January, 1923, regarding the Pusa Institute. •

The reply to

(a) is—17 years since the foundation stone was laid in 1905, but the Institute came into full working order from 1908.

(b) The chief objects of the Institute are (i) research with a view to evolution of principles and methods likely to be of general application in agricultural improvements; (ii) Post graduate instruction.

Care has been taken to avoid dealing directly with cultivators where the Provincial Departments can do the work, but the Institute assists local Agricultural Departments, when called upon, mainly with regard to measures for the suppression of diseases and insect pests, in supplying seed of improved varieties of crops, in the testing of improved methods, in the supply of pedigree cattle, etc.

The work of the Institute is described in its Annual Reports from which it will be seen that the research aims mainly at establishing general principles which can be put into practice with the necessary modifications to suit local conditions. Amongst results which have been adopted directly in the provinces, however, the following may be cited:

1. The evolution of superior strains of wheat which are fast replacing the country varieties in the United Provinces, parts of the Punjab and Bihar;
2. The successful production of a superior type of tobacco suitable for Indian made cigarettes;
3. The use of phosphate manures combined with green manuring as a method of maintaining the fertility of soils which are being depleted through overcropping;
4. Improvement of Indian cattle from the point of view of the production of milk;
5. Successful campaign bud rot disease of palms in the Godavari delta;
6. Methods of storage of grain and potatoes against insect attack;
7. Improvement of agricultural implements.

As regards (c), the total expenditure up to 1921-22 is as follows:

	Ra.
Recurring since 1903-04	75,46,000
Non-recurring—	
(being the cost of buildings, etc., constructed by the Public Works Department)	15,38,000

As regards (d) and (e) the Institute offers facilities for post-graduate work in the laboratories. A statement is enclosed showing the number of students trained (total 369) including short course students. Most of the students, especially of the long course (123) are those who are deputed by the Provinces and Indian States for special training and are absorbed in the respective Departments after the training. Out of the students trained at Pusa, 4 are now in the Imperial Agricultural Service, 12 in the Provincial Agricultural Service and 4 are employed in Pusa as Research Assistants. Definite information regarding others is not available but the majority of them are employed in the subordinate service of the Provincial and Indian States Agricultural Departments.

Statement showing the number of students who received a training at Pusa from 1908-1921 and how they are employed.

Subjects in which trained.	No.	HOW EMPLOYED.					REMARKS
		In I. A. S.	In Provincial Agricultural Service.	In Native States and Foreign Governments.	In Pusa.	By private bodies.	
<i>Post-graduate training</i>							
Agricultural Chemistry	16	...	1	3	2	...	Majority of other students are employed in the subordinate service of the Provincial Departments of Agriculture.
Mycology	14	1	3	2	1	2	
Entomology	23	...	4	4	...	...
Bacteriology	14	...	1	3	1	...	
Botany	8	...	1	...	...	1	
Agriculture	15	3	2	1	...	...
General training in laboratory methods and farming.	33	...	...	...	...	...
Total	123	4	12	13	4	3	
<i>Short course training.</i>							
Sericulture	116	...	...	...	...	...
Lac culture	54	...	...	...	...	...
Fruit culture	53	...	...	...	...	...
Total	223	...	...	...	...	...
<i>Special study in laboratories</i>							
Worked in laboratories on special subjects.	23	...	...	...	...	...
Total	23	...	...	...	...	...
GRAND TOTAL	369	...	...	...	...	...

Mr. J. Hullah: Sir, I lay on the table in pursuance of the provisions of sub-section (2) of section 10 of the Indian Emigration Act, 1922, a draft notification specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to the Straits Settlements, the Federated Malay States and the Unfederated Malay States.

No.

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE AND AGRICULTURE.

(EMIGRATION.)

Delhi, the January 1923.

NOTIFICATION.

In exercise of the powers conferred by section 10 of the Indian Emigration Act, 1922 (VII of 1922), hereinafter referred to as "the Act", the Governor General in Council is pleased to issue the following Notification in the form in which it has been approved by both Chambers of the Indian Legislature :—

Emigration to the Straits Settlements, the Federated Malay States of Perak, Selangor, Negri-Sembilan and Pahang and to the Unfederated Malay States of Kedah, Perlis, Johore, Kalantan, Trengganu and Brunei for the purpose of unskilled work shall be lawful on the following terms and conditions, namely :—

- (1) The emigrant shall
 - (a) have been recruited by a person licensed for that purpose by and responsible to an officer (hereinafter called the Emigration Commissioner) appointed by the Government of the Straits Settlements and by the Governments of the Federated and Unfederated Malay States, or
 - (b) have applied direct to the Emigration Commissioner for an assisted passage and have been accepted by him.
- (2) The emigrant shall not before leaving British India, have entered into any engagement to labour for a period exceeding one month.
- (3) Engagements to labour entered into by an emigrant in Malaya for a period exceeding one month shall be void.
- (4) The ^{Government of the} ^{Straits Settlements} ^{Federated and Unfederated Malay States} shall at any time when so desired by the Governor General in Council admit and give all facilities to an Agent appointed under section 7 of the Act.
- (5) Within one year of his arrival in the Colony any emigrant who has been assisted to emigrate at the cost of the Indian Immigration Fund shall, on satisfying the Agent appointed under section 7 of the Act that his return to his home is desirable either on the ground of the state of his health or on the ground that the work which he is required to do is unsuitable to his capacity, or that he has been unjustly treated by his employer or for any other sufficient reason, be repatriated free of cost to the place of recruitment and the costs of such repatriation shall be defrayed by the Government of the ^{Straits Settlements.} ^{Federated Malay States and Unfederated Malay States.}
- (6) If at any time there is no Agent appointed under section 7 of the Act, the ^{Government of the} ^{Straits Settlements} ^{Federated and Unfederated Malay States} shall appoint a person to perform the duties of the Agent as set forth in Clause 5.
- (7) There shall be no evasion of the provisions of the Act by the conveyance through foreign ports in the Peninsula of India of persons who would be emigrants for the purpose of unskilled work if they departed from British ports.
- (8) The Government of the ^{Straits Settlements} ^{Federated and Unfederated Malay States} shall furnish such periodical reports and returns as may be required from time to time by the Government of India in respect of the welfare of the persons emigrating to the colony in accordance with this Notification.

Mr. J. Hullah: I lay on the table in pursuance of the provisions of sub-section (2) of section 10 of the Indian Emigration Act, 1922, a draft notification specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Ceylon.

No.

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE AND AGRICULTURE.

(EMIGRATION.)

Delhi, the January 1923.

NOTIFICATION.

In exercise of the powers conferred by section 10 of the Indian Emigration Act, 1922 (VII of 1922), hereinafter referred to as "the Act", the Governor General in Council is pleased to issue the following Notification in the form in which it has been approved by both Chambers of the Indian Legislature:—

"Emigration to Ceylon for the purpose of unskilled work shall be lawful on the following terms and conditions, namely:—

(1) The emigrant shall—

(a) have been recruited by a person licensed for that purpose by and responsible to an officer (hereinafter called the Emigration Commissioner) appointed by the Government of Ceylon, or

(b) have applied direct to the Emigration Commissioner for an assisted passage and have been accepted by him.

(2) The emigrant shall not, before leaving British India, have entered into a contract of service for a period exceeding one month.

(3) Within six months from the issue of this Notification, or within such further period as the Governor General in Council may by notification appoint, the Legislature of Ceylon shall have enacted that any contract of service for a period exceeding one month entered into by an emigrant shall be void.

(4) No part of the cost of his recruitment, subsistence during transport, or transport shall be recoverable from any emigrant and all expenses in this connection shall be defrayed from a common fund to be raised in such manner and managed by such agency as may appear suitable to the Colonial Government.

(5) The Government of Ceylon shall at any time when so desired by the Governor General in Council admit and give all facilities to an Agent appointed under section 7 of the Act.

(6) Within one year of his arrival in Ceylon any emigrant who has been assisted to emigrate at the cost of the common fund referred to in clause (4) shall, on satisfying the Agent appointed under section 7 of the Act that his return to his home is desirable either on the ground of the state of his health or on the ground that the work which he is required to do is unsuitable to his capacity, or that he has been unjustly treated by his employer, or for any other sufficient reason, be repatriated free of cost to the place of recruitment, and the costs of such repatriation shall be defrayed by the Government of Ceylon or the Ceylon Planters' Association.

(7) If at any time there is no Agent appointed under section 7 of the Act, the Government of Ceylon shall appoint a person to perform the duties of the Agent as set forth in clause (6).

(8) Within six months from the issue of this Notification, or within such further period as the Governor General in Council may by notification appoint, the Legislature of Ceylon shall have enacted that no payment made in India by a recruiter to an emigrant to enable him to pay off debts before emigrating shall be recoverable.

(9) The Government of Ceylon shall furnish such periodical reports and returns as may be required from time to time by the Government of India in respect of the welfare of persons emigrating to Ceylon in accordance with this Notification.

QUESTIONS AND ANSWERS.

RUINED MOSQUES, MONUMENTS ETC: IN MALDAH.

211. *Mr. K. Ahmed: (i) Are the Government aware that in the District of Maldah in Bengal there have been many 'mosques', 'monuments', 'tombs', 'dargas' and sacred buildings of the Mogul Emperors of Gour and Pandua (ancient capital) under rack and ruin and their bricks, stopes and other materials are being stolen and carried away as *res-nullius* by the people without any interference by the Government and that many brick-built houses are being constructed by the people of the district with the materials thereof?

(ii) Will the Government be pleased to enquire how much of the properties has been taken away and usurped by the people for their personal uses, explaining in full and giving their particulars as regards the actual price of the same at the market rate if possible?

(iii) Will the Government be pleased to state how much money has been spent by Government for the preservation of the ruins of Gour and Pandua under the Ancient Monument Act?

(iv) Will the Government be pleased to inquire how much land appertaining to them has been settled with tenants by the Khas-Mahal and other local Zamindars having landed properties at and near the ancient capital of Gour and Pandua?

(v) Do Government propose to take proper step for the recovery of those properties, movable and immovable immediately, or in the alternative consider advisable to make over the present tombs, monuments, mosques, dargas and sacred buildings including all the lands appertaining to them left by the Mogul Emperor to the Mohammedan Community of the District with the necessary costs for the recovery of those lost properties in question as stated above?

The Honourable Mr. A. C. Chatterjee: The Government of India are not responsible for all mosques, monuments, etc., as suggested in the Honourable Member's question, but only for such as have been placed in the charge of the Archaeological Department as being of archaeological, historical, or artistic interest. In the circumstances it is not possible to give any reply to the Honourable Member's extensive enquiries. If the Honourable Member will specify clearly the buildings, etc., about which he needs information an endeavour will be made to get it.

Mr. K. Ahmed: What is the meaning of the Ancient Monuments Preservation Act? What are the provisions, what is the object of that Act, Sir?

The Honourable Mr. A. C. Chatterjee: They are as well known to the Honourable Member as to myself.

Mr. K. Ahmed: Is it not a fact that in the opening era of the present century His Excellency Lord Curzon went to inspect those Gour and Pandua tombstones, dargas and other sacred and holy places, and that for the preservation of these he brought out a certain scheme and made a large grant of money and that there has not been any substantial benefit from it?

(There being no answer to this question, Mr. Deputy President called upon Mr. K. Ahmed).

Mr. K. Ahmed: Is it not a fact, Sir, that there are

Mr. Deputy President: I have called upon the Honourable Member to put his question No. 212.

Mr. K. Ahmed: I am ready to put question No. 212 and I put it if I am not entitled to put the above supplementary question to question No. 211.

ACCESS TO HOWRAH RAILWAY STATION.

212. ***Mr. K. Ahmed:** (i) Are the Government aware that the gates leading to the platforms in the Howrah Railway Station are opened for the third and inter-class passengers only five minutes or so before the train starts and several barriers have been constructed near the platform gates preventing easy access of the passengers to the platforms?

(ii) Are the Government aware that in consequence of these restrictions great inconvenience is caused to the third and inter-class passengers especially women and children, who owing to rush often fail to catch the trains?

(iii) Do Government propose to consider the desirability of opening the platform gates at least half an hour before the starting of the trains and to remove the barriers near the platform gates for the convenience of the passenger public?

Mr. C. D. M. Hindley: (i) and (ii) Inquiry has been made from the East Indian Railway Administration and it is understood that the gates leading to the platforms at Howrah station are opened for intermediate and third class passengers an hour before the departure time in the case of main lines trains, and half an hour before the departure time in the case of local trains. Barriers are erected so as to prevent a rush of passengers against the entrance gates to the platforms. These measures have been taken in order to prevent passengers from boarding trains without tickets a practice from which the railway revenues have suffered considerably in the past.

(iii) In the circumstances, Government do not propose to take any action.

PURCHASE OF TICKETS ON E. B. RAILWAY.

213. ***Mr. K. Ahmed:** (i) Are the Government aware that on the Eastern Bengal Railway line in most stations passengers are not allowed to purchase tickets until the train leaves the previous Railway station, in consequence of which many passengers are unable to buy tickets owing to the great rush of passengers attempting to buy the tickets and many passengers thus fail to catch the trains?

(ii) Do Government propose to consider the advisability of arranging to sell the tickets in those Railway stations at least one hour before the arrival of trains and thereby removing the inconvenience of the travelling public?

Mr. C. D. M. Hindley: (i) This question was referred to the Agent, Eastern Bengal Railway, who reports that the booking offices at important stations are kept open day and night for the issue of tickets. At all other stations the booking offices are opened half an hour before the advertised time of departure of trains and closed five minutes before starting time. No complaints have been received from passengers that

they have not been allowed sufficient time to purchase their tickets, but if specific cases are reported to the Railway authorities they will be looked into.

(ii) In the circumstances, Government do not propose taking any action in the matter.

RAILWAY AND STEAMER RATES.

214. ***Mr. K. Ahmed:** Do the Government intend to take immediate steps to reduce the passenger and goods rates on the Indian Railways and Steamers plying in Indian Waters?

Mr. C. D. M. Hindley: Government have no control over steamer freights, and see no reason at present to make any change in the Schedules of maxima fares and rates laid down for Railways in India.

Mr. K. Ahmed: Is it not a fact that in England there has been a great deal of reduction in the fares of steamers plying both inside and outside the Thames in England as well as in the fares of goods trains carrying goods there in England managed by private companies?

Mr. C. D. M. Hindley: Government are not in possession of complete facts relating to the question which the Honourable Member has put.

Mr. K. Ahmed: If there are such reductions in England why should there not be reductions here in this country?

EASTERN BENGAL RAILWAY CONTRACT.

215. ***Mr. K. Ahmed:** (1) Will the Government be pleased to state:—

(i) How many times the contract with the Eastern Bengal Railway Company has been renewed and extended and the respective periods for which such extension was granted, and

(ii) Whether it was not declared that at the expiration of each period the management of the State-owned Line would be taken over by the State?

(2) Are the Government aware that at the expiration of each period, reasons were brought forward to which the Government agreed, why Company Management should be allowed to continue?

(3) Is it the intention of the Government to give a further extension of Company Management at the expiration of the present period?

(4) If any such reasons are likely to be brought forward either by the Railway Board or by the Company Directors, do the Government propose in the interest of the public, to place such reasons before the Assembly at least nine months before the expiry of the Contract with the East Indian Railway Company?

Mr. C. D. M. Hindley: (1) (i) It is assumed that the question relates to the East Indian Railway Company referred to in the latter part of Honourable Member's question and not to the Eastern Bengal Railway which is a State-worked line.

The East Indian Railway was purchased by Government in 1879 and the contract then entered into was to run for 50 years unless terminated by either party with two years' notice at the end of the 20th year, 1899, or any subsequent fifth year.

This contract was terminated in 1899 and a fresh contract entered into for 20 years on slightly different terms. At the end of this contract a fresh contract was entered into for five years which will expire on 31st December 1924.

(ii) So far as Government are aware no such declaration was made at the time of the earlier renewals of the contract.

The Honourable Member is, however, referred to the proceedings of the Imperial Legislative Council on 7th March 1919 when in reply to a question by the Honourable Rao Bahadur B. N. Sarma Government stated that the Secretary of State had agreed that on the termination of the contract on 31st December 1924 the direction would be transferred to India either under State or efficient Company management.

(2) Before deciding to renew the contract on each occasion Government took all relevant facts into consideration.

(3) and (4) Government are not prepared to make a statement on the matter at the present juncture but the Assembly will shortly have an opportunity of expressing its opinion on this subject.

Sir Deva Prasad Sarvadhikary: Has the five-year limit of agreement been found to be attended with any difficulties either by the Company or by the Government, or has it been considered necessary by either side that the period of renewal must be larger?

Mr. C. D. M. Hindley: I think that is a question of opinion.

Sir Deva Prasad Sarvadhikary: Has any opinion been expressed by either side?

Mr. C. D. M. Hindley: I am not prepared to enter into a discussion on this subject at present as the House will have a full opportunity of discussing it later on.

Mr. K. Ahmed: Is the answer to the question asked by my Honourable friend in the negative or in the positive?

Mr. T. V. Seshagiri Ayyar: That is the decision given with reference to the Honourable Mr. Sarma's question that the Board of management should be transferred. Does it hold good even now with regard to all railways whose contracts may come to an end?

Mr. C. D. M. Hindley: I understand that the declaration of the Secretary of State is still in force.

CLERKSHIP APPOINTMENTS, ETC., ON E. B. RAILWAY.

216. ***Mr. K. Ahmed:** (1) With reference to my question dated the 15th September, 1921, will the Government be pleased to explain in full how the register of qualified candidates is kept in the Eastern Bengal Railway and how the names of the candidates for clerkship and other appointments are registered and by what officers-in-charge of the Railway Administration?

(2) Will the Government be pleased to state the names and designation of Members of the Selection Committee and explain in full their different grades of the officers and clerks of the department appointed since 1921 to

December, 1922, giving their names, explaining in full the reasons of their selection in comparison to others who were not selected?

Mr. C. D. M. Hindley: (1) The Government do not think it necessary to call for a report from the Agent on these points.

(2) As explained to the Honourable Member in the reply to his previous question No. 222 put on 15th September 1921—the Selection Committee is intended to deal with appointments of officers only. It has not yet been constituted as the existing arrangements will apply in the case of students passing out of the Engineering College up to the end of the year 1923.

OFFICIALS AND CLERKS ON E. I. AND B. N. RAILWAYS.

217. ***Mr. K. Ahmed:** (i) In continuation of my question put on the 15th September, 1921, being the question No. 207, will the Government be pleased to state the number of officials and clerks of different grades respectively appointed since then up to December, 1922, and how many among them are Hindus, Muhammadans, Europeans and Anglo-Indians in the East Indian and Bengal Nagpur Railway office?

(ii) Will the Government be pleased to state how many applications were made by writing or otherwise for such appointment to the Railway office and disposed of giving full particulars regarding the test for their selection in comparison to others who were not selected?

(iii) Will the Government be pleased to state whether all the applications for appointment are received by any responsible officer or officers or the chief clerk (Bara Babu).

(iv) Do Government propose, in the interest of the public to find out method or methods by which all the applicants' names without any prejudice may be written in some office book ensuring easy access without any interference to applicants whether any post is vacant or not and whenever vacancies occur, claims of all the applicants may be considered duly and equitably so that proper men may get the appointment?

Mr. C. D. M. Hindley: Government has no information in respect to individual appointments on Company managed railways which are made at the discretion, and in accordance with the rules of the Company concerned.

Mr. K. Ahmed: Will the Government of India be pleased to take proper steps to introduce methods which will allow the people of India to get justice done to them for the purpose of getting service or for the purpose of being taken into the service of the company?

(There was no reply from the Government Benches).

EXPENSES OF INCCHAPE COMMITTEE.

218. ***Mr. K. Ahmed:** Will the Government be pleased to state in full giving all the details of the expenses incurred up to 31st December, 1922, from the very beginning on account of the Inchcape Committee item by item and the purpose for which the money was spent including the allowance given to each member of the Committee and to each of the witnesses examined with their respective names?

The Honourable Sir Basil Blackett: A statement is laid on the table giving the information asked for.

Statement showing details of the expenses incurred up to 31st December 1922, in connection with the appointment of the Inchcape Committee.

SUMMARY OF THE EXPENSES.

	Rs.
(1) Retrenchment Office	30,108
(2) Special Officer, Finance Department (O. B.)	23,409
(3) Finance Department (Military Branch)	15,000
(4) Military Estimates	12,000
(5) Retrenchment Committee proper	29,556
Total	1,20,073

Expenditure incurred in connection with the preliminary work of the Committee (i.e., Retrenchment Office).

Pay of Secretary to the Government of India, Retrenchment Office, from 6th July to 31st December 1922 at Rs. 4,000 per mensem	Rs. 23,355
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Establishment—	Rs.
1 Stenographer from 3rd July to 31st December at Rs. 300 a month	1,816
1 Assistant and Cashier from 7th July to 31st December at Rs. 125 a month	726
1 Typist from 31st October to 31st December at Rs. 80 a month	163
5 Peons	279
	<u>2,984</u>

Allowances—

Travelling allowance from Delhi to Bombay and back	1,234
Travelling allowance from Simla to Delhi	790
Other allowances	399
	<u>2,413</u>

Contingencies—

Service Stamps	309
Other charges	1,047
	<u>1,356</u>
Total	<u>20,108</u>

Special Officer in the Finance Department (Ordinary Branch).

Pay of the Special Officer in the Finance Department at Rs. 2,250 from 22nd May to 19th October and at Rs. 2,350 from 20th October to 31st December 1922 17,586

	Rs.	
Establishment—		
1 Assistant from July to October 1922	1,122	
2 Stenographers (1 from 15th June to 31st December and 1 from 5th September to 24th October) at Rs. 175 per mensem each	1,430	
1 Clerk for October	156	
2 Typists	449	
2 Peons	261	3,418

Allowances—

Travelling allowance from Simla to Delhi—		
(i) Officer on Special Duty	265	
(ii) Office establishment	836	
Simla House Rent	540	
Separation allowance	300	
Grain Compensation allowance	12	1,953

Contingencies—

Stationery and Printing	250	
Carriage of records	132	
Postage and telegrams	20	
Other charges	50	452
Total		23,409

Finance Department (Military Branch).

	Rs.
Expenditure due to appointment of additional Financial Adviser, while Mr. Mitra was engaged on preparation of case for Committee	15,000
Total	15,000

Military Estimates.

	Rs.
Additional cost incurred in connection with special duty of Colonel Charles and Colonel Wigram	12,000
Total	12,000

Retrenchment Committee proper.

	Rs.	A.	P.
I. Subsistence allowance at Rs. 1,500 a month—			
1. Sir Thomas Catto (does not require any allowance)			
2. Sir Alexander Murray from 8th November to 31st December	2,401	9	0*
3. Sir R. N. Mookerjee from 9th November to 31st December	2,356	4	0*
4. Hon'ble Mr. Purshotandas Thakurda from 5th November to 31st December	2,537	8	0*
5. Mr. D. M. Dalal from 5th November to 31st December	2,800	0	0
6. Mr. J. Milne from 5th November to 31st December	2,800	0	0
7. Mr. H. F. Howard from 5th November to 31st December	2,800	0	0
8. Salary of Colonel J. C. Harding-Newman from 12th to 31st December 1922. (Pay at Rs. 2,200 plus special pay at Rs. 10 per diem)	3,837	7	0*
			19,533
Subsistence allowance to Messrs. Dalal, Milne and Howard during the period of voyage to India (15 days) at £100 a month	2,250	0	0
Salary of Mr. J. Milne to be re-imbursed by the India Office to Great Western Railway from 15th October to 31st December at £1,750 per annum	5,170	0	0
			7,720
II. Travelling allowances—			
(a) Three first class passages from England to India for Messrs. Dalal, Howard and Milne at £78 10-0 each	3,533	0	0
(b) One single first class fare each from Bombay to Delhi to Messrs. Dalal, Purshotandas Thakurda, Milne and Howard, who travelled by Special Train	430	0	0
(c) Double 1st class fare to Sir Alexander Murray and Sir R. N. Mookerjee from Calcutta to Delhi	420	0	0
(d) Haulage of motor cars of the President and Members of the Committee from Bombay and Calcutta to Delhi	1,303	0	0
			5,683
III. Office establishment from 27th October to 31st December 1922—			
	Rs.	A.	P.
(a) Ministerial establishment—			
1 Superintendent at Rs. 400	2,680	0	0
1 Assistant and Cashier at Rs. 200			
1 General Clerk at Rs. 125			
4 Typists at Rs. 120 each			
2 Typists at Rs. 100 each			
(b) Menial establishment—			
1 Duffry at Rs. 24	614		
1 Jamadar for President at Rs. 25			
1 Dafadar for Secretary at Rs. 20			
15 Peons at Rs. 16 per mensem each			
(c) Travelling allowance of Superintendent to and from Bombay	189		
IV.—Contingencies—			
Service Stamps	95		
Telephone charges	625		
Liveries, etc.	615		
Stationery and Printing	364		
Furniture	750		
Other charges	685		
			3,184
Total			39,556

* Amounts actually drawn after deduction of Income-tax.

Note.—No expenses have been incurred in connection with witnesses except travelling allowances to officers of Government under the Ordinary Rules.

SCOPE OF INCSCAPE COMMITTEE'S REPORT.

219. ***Mr. K. Ahmed:** (i) Is it a fact that the Inchcape Committee has not been empowered to report on all the subjects fit for retrenchment and that the Secretary of State has not given the Members of the Committee entire discretion to submit their independent report in the matter of retrenchment in all the departments under the Government of India?

The Honourable Sir Basil Blackett: The terms of reference to the Committee were published in the press and were as follows:

' To make recommendations to the Government of India for effecting forthwith all possible reductions in the expenditure of the Central Government, having regard especially to the present financial position and outlook. In so far as questions of policy are involved in the expenditure under discussion, these will be left for the exclusive consideration of the Government, but it will be open to the Committee to review the expenditure and to indicate the economies which might be effected if particular policies were either adopted, abandoned, or modified.'

It will be seen that these terms of reference are substantially identical with those adopted for the Geddes Committee which recently sat in the United Kingdom.

There is no limitation whatever on the Committee's powers of investigation.

Mr. W. M. Hussanally: May I ask when this Report will be out or likely to be out.

The Honourable Sir Basil Blackett: I am afraid I cannot answer that absolutely categorically but there is every expectation that it will be in the hands of the Government before the Budget.

Mr. W. M. Hussanally: Will the Report be placed before the Assembly for discussion?

The Honourable Sir Basil Blackett: That question was answered, I think, in an unstarred question that was asked on the 15th instant. The question was whether the Report of the Inchcape Committee will be placed for discussion in the Assembly before any final orders are passed by the Government. The answer was that the Government regret that this course is not practicable.

Mr. N. M. Joshi: May I ask whether the Inchcape Committee will consider the railway expenditure of both State managed railways as well as Company managed railways.

The Honourable Sir Basil Blackett: There is no limitation whatever on the terms of reference of the Committee's powers of investigation.

Mr. N. M. Joshi: May I ask whether the Committee propose to consider railway expenditure?

The Honourable Sir Basil Blackett: They are, I believe, considering railway expenditure.

Mr. K. Ahmed: Have the Committee examined any witnesses or representatives from the Assembly?

The Honourable Sir Basil Blackett: My answer must be in the interrogative.

SECRETARY OF STATE'S INSTRUCTIONS RE INCHEAPE COMMITTEE.

220. ***Mr. K. Ahmed:** Will the Government be pleased to lay on the table a copy of each of the instructions given to the Government of India or to the Inchcape Committee and the Members of it regarding the scope of the work and the departments of the Government on which the report for retrenchment is asked for by the Secretary of State?

The Honourable Sir Basil Blackett: There are no instructions other than those given in the terms of reference.

Mr. K. Ahmed: Will the Government of India be pleased to lay on the table the subject matter of the discussion?

The Honourable Sir Basil Blackett: The Honourable Member has anticipated question No. 221, the answer to which is that the Government regret that they cannot comply with this request.

Mr. K. Ahmed: Why is good money thrown out? Are the representatives of the people of India in this Assembly entitled to know?

The Honourable Sir Basil Blackett: I am afraid I did not succeed in quite catching the question.

Mr. K. Ahmed: Will the Government of India be pleased to lay on the table the subject matter of the discussion so that the Honourable Members of this House who are elected and nominated may know the exact situation with regard to recommendations of the Inchcape Committee who are holding meetings in camera and the public are not to see what is happening there?

The Honourable Sir Basil Blackett: I trust that every opportunity will arise in this House during the Budget to discuss in this camera the whole question.

Mr. K. Ahmed: That is like the reply which Mr. Hindley gave to the question on the North Bengal flood. We want a precise answer to the question.

The Honourable Sir Basil Blackett: I have done my best to give a precise answer, and if I have followed the admirable example of Mr. Hindley, I do not think I can do better.

RETRENCHMENT PROPOSALS.

221. ***Mr. K. Ahmed:** Will the Government be pleased to lay on the table all the communication by wireless, cable, and post passed on the subject of retrenchment between the Secretary of State and the Government of India?

The Honourable Sir Basil Blackett: Government regret that they cannot comply with this request.

LEAGUE OF NATIONS.

222. ***Mr. K. Ahmed:** (1) Will the Government be pleased to state the names of all the people who as members of the League of Nations, representing India, are now engaged in the Conference held abroad and why not a single Mohamedan representing the Muslim population of India

is being hitherto selected to take part in the discussions concerning their community both religious and political and otherwise?

(2) Is it a fact that the Government of India have selected non-Mohamedan Members from India to take part in the discussions of the Conference of the League of Nations abroad and thereby have categorically left off the Mohamedan interest to be protected thereto?

(3) Are the Government aware that a Conference of the representatives of Islam to settle questions regarding the khilafat is under contemplation by the Kemalists and that the Mohamedans of India will be invited to send in their representatives immediately to take part in the discussions which would be held at Angora?

(4) Do Government propose immediately to select suitable Mohamedan Member or Members having the confidence of the community and send them to take part in the League of Nations?

The Honourable Sir Malcolm Hailey: (1) India's representatives on the 3rd Assembly of the League of Nations at Geneva were—

(1) Lord Chelmsford,

(2) His Highness the Maharaja of Nawanager, and

(3) Sir Sivaswamy Aiyar.

I must emphasise that the Indian representatives are chosen to represent India as a whole and not any particular community.

(2) No.

(3) Government are aware that there have been reports to this effect in the press but the suggested Conference has of course no connection with the League of Nations.

(4) The 3rd Assembly of the League has now closed. The Honourable Member will understand that when representatives are again nominated the same criterion must be employed as before, namely, fitness to represent India as a whole, but I need not add that should any topic of particular interests to Muhammadans be likely to come up for discussion the advisability of including a representative from among Indian Muslims will not be overlooked.

Mr. K. Ahmed: Are the Government of India aware that in London the Moslem League claimed that at least there should be two representatives elected by the Council of State and the Assembly and it wanted that the Government of India will accede to that and send the representatives?

The Honourable Sir Malcolm Hailey: I am aware of the facts mentioned by Mr. Kabir-ud-din Ahmed. But I am also aware that when the matter was discussed in this Assembly, it was not of the same opinion as the Moslem League regarding representative by election.

Mr. K. Ahmed: Was there an article ten days ago published on the 13th by the Allahabad paper 'Independent' in which it was said that General Wali Khan who is not an Indian was alleged to have represented India?

The Honourable Sir Malcolm Hailey: If there was such an article, it is entirely inaccurate. No General Wali Khan was sent to represent India.

Mr. K. Ahmed: That is what the article said and I wanted to ascertain and verify the facts.

RESIGNATION OF MR. BHURGRI.

223. ***Mr. K. Ahmed:** Will the Government be pleased to state the reason or reasons why the Honourable Mr. Bhurgri has tendered his resignation refusing to act as a member of the Council of State any longer and lay on the table the whole correspondence that has passed between him and the Government of India or the Governor General or the Viceroy and the references which are available from the office of the Home Department?

Sir Henry Moncrieff Smith: Mr. Bhurgri addressed no communication to the Government of India on the subject of his resignation. There is, therefore, no correspondence between the Government of India and Mr. Bhurgri which can be laid on the table. Mr. Bhurgri tendered his resignation by means of a telegram addressed to His Excellency the Viceroy. The Government of India are not in a position to lay a copy of this telegram on the table.

Mr. K. Ahmed: On the 14th of November last a paper called "The Servant," a Calcutta paper, Sir, published this: "Mr. Bhurgri, while in England, resigned his Membership of the Council of State as a protest against Mr. Lloyd George's pro-Greek policy and his resignation was held by the anti-war Press as a timely warning reflecting the Indian position."

Mr. Deputy President: That is not a question.

Mr. K. Ahmed: Is not that the reason, Sir?

Sir Henry Moncrieff Smith: I would suggest to the Honourable Member that he should ask Mr. Bhurgri.

Mr. K. Ahmed: I am sorry, but I am entitled to an answer, according to the rules of this Assembly, from the Honourable Member representing the Government.

ACCOMMODATION FOR LASCARS.

224. ***Mr. K. Ahmed:** (i) Are the Government aware that in the House of Commons on the 11th December, 1922 Mr. Gilbert, National Liberal Member of Southwark asked the President of the Board of Trade whether Steamship Companies who bring Lascar Crews to British Home ports are under liability to provide house accommodation and food to either discharged or waiting crews of Eastern Origin, and the reply was given by the Under Secretary of State, Earl Winterton, stating that there is room for considerable improvement in the accommodation available for Lascar Seamen at the London Docks?

(ii) Do Government propose amending their answer in answer to my question No. 378 dated the 8th March, 1921 at page 591 put in the Assembly, in view of the reply given by Earl Winterton, the Under Secretary of State in the House of Commons as above?

(iii) Will the Government be pleased to state or otherwise consider whether they will follow the same course in the case of Indian Seamen regarding house accommodation for them in all the ports of India including Home or foreign as was promised by the Under Secretary of State for white seamen in various ports?

The Honourable Mr. C. A. Innes: (i) Yes.

(ii) and (iii) The Government have nothing to add to the answer referred to by the Honourable Member.

Mr. K. Ahmed: Will the Honourable Member make a statement to this House showing that he is ready and willing to place on the table of this Assembly for the benefit of the public any account or description they might come to have, after enquiry is made with regard to the subject in question involved in No. 224, (i), (ii) and (iii)?

The Honourable Mr. C. A. Innes (Commerce and Industries Member): The Government of India do not propose to make any enquiry.

WAGES, ALLOWANCES, ETC., OF INDIAN AND EUROPEAN SEAMEN.

225. ***Mr. K. Ahmed:** Will the Government be pleased to state giving full particulars, the difference between Indian Seamen and European Seamen regarding their monthly wages, allowances, outfits, accommodations and quality, quantity and prices of food supplied to them per day and the number of hours they work on board the vessels both Mercantile and those chartered by the Government?

The Honourable Mr. C. A. Innes: The Honourable Member will find the information he wants regarding Indian seamen in section 70 of the Indian Merchant Shipping Act, 1859, and in the Lascar Agreements. I am afraid that I cannot undertake to supply him with the required information regarding European seamen but if he desires to study the subject, I shall be happy to place at his disposal such books of reference as the Commerce Department Library contains.

Mr. K. Ahmed: I am very much obliged to my Honourable friend, but will he be good enough to take the trouble to ameliorate the condition of the poor Indian seamen through the Department of which my Honourable friend is the Member?

The Honourable Mr. C. A. Innes: We are always prepared to consider specific grievances brought to our notice.

Mr. K. Ahmed: Will my Honourable friend explicitly say how and when he is going to do that?

DEMANDS OF INDIAN SEAMEN.

226. ***Mr. K. Ahmed:** (i) Is it a fact that Indian Seamen engaged in Indian ports while going to foreign ports in vessels frequently visiting ports which are much colder than Indian ports, ask for warm clothing, rich food, cabin and saloon accommodations similar to those provided for European Crews along with their higher salaries and that in spite of promises made by the Captains and other persons in authority, their requirements have not been complied with?

(ii) Will the Government be pleased to state on enquiry from the Calcutta Shipping Office how many cases or instances have occurred mentioning the names of vessels and their agents during the last five years up to 1922 in which the demands mentioned as above have been made by the Indian Seamen and in spite of promises of Captains and other persons in authority specially regarding the increment of pay, the said demands have not been complied with?

The Honourable Mr. C. A. Innes: The Honourable Member is probably referring to the fact that Indian seamen may not be taken during the winter months to ports on the East Coast of America North of 38°

North latitude except under special agreements voluntarily undertaken. These special agreements provide for special clothing and special heating of the Seamen's quarters. In the circumstances the Government are not prepared to make the enquiry suggested in part (ii) of the question.

Mr. K. Ahmed: May I state one or two names of steamers in which Indian seamen have been engaged through men registered under the Shipping Act both in Calcutta and Bombay and elsewhere also and when they arrived at the foreign ports and ask for higher wages. . . .

Mr. Deputy President: I am afraid I cannot allow the Honourable Member to make a speech.

Mr. K. Ahmed: I am not making a speech, Sir—and the Captain of the steamer, it was the Steam Ship s. s. *Hatipura* or *Hatinara*; there is another steamer, Sir, under the agency of Messrs. Shaw Wallace and Co., a big office in Calcutta,—they entered into a fresh contract only last year that they will pay 50 per cent. more than the salary. . . .

Mr. Deputy President: I think, I asked the Honourable Member to abstain from making a speech. If, after hearing the reply to his question, he thinks that the statement is of great importance, I think it might well form the subject matter of another question.

(Mr. K. Ahmed again rose.)

Mr. Deputy President: Order, order.

SEAMEN RECRUITMENT COMMITTEE'S REPORT.

227. ***Mr. K. Ahmed:** (i) Are the Government aware of the Report of a meeting of the Indian Seamen's Union, Calcutta, published in the issues of the *Statesman* and the *Amrita Bazar Patrika* dated the 5th December last in which the Union urged the Government to take immediate steps to give effect to the Recommendations contained in the Reports of the Seamen's Recruitment Committee in non-compliance of which it has been declared that there will be a Seamen's Strike?

(ii) (a) Do Government propose in the interest of the country to expedite the enforcement of the Recommendations of the Seamen's Recruitment Committee immediately during this Session without waiting any longer?

(b) If the answer be in the affirmative, will the Government be pleased to state whether they are going to introduce Legislation embodying the Recommendations of the Committee in this Session?

The Honourable Mr. C. A. Innes: (i) Yes.

(ii) The attention of the Honourable Member is invited to the answer given on the 7th September last to a similar question asked by Mr. Joshi. The Government of India are still awaiting the views of the Governments of Bengal and Bombay on the recommendations of the Committee and until these have been received they are unable to make any statement on the subject.

Mr. K. Ahmed: Is it not a fact, Sir, that in the report submitted last May and published in the *Gazette of India* dated May 27th 1922, the majority of the Committee Members state this: "The proposals of the Committee will be examined at once in consultation with the Maritime Local Governments?"

The Honourable Mr. C. A. Innes: They were examined at once, and they were referred after a very short period of time to the two maritime Local Governments whose names I have given.

MR. S. K. GHOSE, SHIPPING BROKER.

228. *Mr. K. Ahmed: (a) Is it a fact that the Government of Bengal after the termination of the sittings of the Seamen's Recruitment Committee in March 1922 appointed a new Shipping Broker in the person of Mr. S. K. Ghose in contravention of the recommendations of the said Committee and that the said new Shipping Broker of Calcutta is a relation of one of the nominated Labour Members of the Bengal Council who had recommended him?

(b) Will the Government be pleased to state whether they received any resolution of protest from the Indian Seamen's Union, Calcutta against the appointment of Mr. S. K. Ghose as the new Shipping Broker in the port of Calcutta by the Government of Bengal?

(c) If so, what steps the Government have taken for his removal?

The Honourable Mr. C. A. Innes: The attention of the Honourable Member is invited to the answer given on the 26th September 1922 to a somewhat similar question (No. 230) asked by Mr. Hussanally. Mr. S. K. Ghose was recommended by a Member of the Bengal Council, but the Government of India do not know whether they are in any way related. As already explained, the new broker was appointed purely as a temporary measure by the Government of Bengal, pending a decision on the recommendations of the Seamen's Recruitment Committee. The appointment was made by the Government of Bengal in the interests of the seamen themselves in order to break an existing monopoly, and the Government of India do not propose to take any action.

Mr. K. Ahmed: Will the Honourable Member explain the reasons why the Government of Bengal made this temporary appointment?

The Honourable Mr. C. A. Innes: I have nothing to add to what I have already said.

Mr. K. Ahmed: Will the Government of India take steps, Sir, for the removal of that broker according to the terms of the Committee's report?

The Honourable Mr. C. A. Innes: No, Sir.

EMPLOYMENT OF LASCARS AND CASUALTIES IN THE GREAT WAR.

229. *Mr. K. Ahmed: Will the Government be pleased to answer my question No. 198 *re* Indian Seamen and lascars put in the Assembly on the 7th September 1922 as early as possible giving all the particulars in full?

The Honourable Mr. C. A. Innes: The answer to question No. 198, dated the 7th September 1922, was sent to the Honourable Member on the 11th January 1923, and will now be laid on the table.†

† The statement will be printed in the next issue of these Debates.

Mr. K. Ahmed: I want a ruling from the Chair. Suppose, certain questions are put by an Honourable Member. The Honourable Member gets a demi-official letter written by a certain Department of the Government of India saying "would you be good enough to withdraw the question,—I shall be very much thankful in case you approve of the terms set forth in the letter" instead of his answering the question publicly in the open Assembly for the benefit of the country?

Mr. Deputy President: I am afraid the Chair can take no notice of private correspondence between the two Honourable Members.

Mr. K. Ahmed: No, Sir. I think you have caught hold of the wrong end of the stick. What I am asking is whether a starred question put by an Honourable Member of this Assembly should not be answered openly in the Assembly for the benefit of the Members and the country and not in a demi-official letter, in which the Department writes to the individual and asks him to be good enough to withdraw the question instead of troubling the Honourable Member in charge of the Department to answer it.

Mr. Deputy President: I can add nothing to what I have said before.

Mr. N. M. Joshi: I want to inquire from Government, whether they approve of the practice which is growing in this House of not answering questions in the House but sending the information to the Member?

The Honourable Mr. C. A. Innes: May I say, Sir, that that practice has been adopted solely in the interests of economy and to avoid printing charges. In regard to this particular question, I am certainly prepared to lay the answer on the table in order that Honourable Members may see it in the printed proceedings; but I may point out to the Honourable Member that if I had taken that course it would not have enabled him to ask the supplementary questions on which he was so keen.

Mr. K. Ahmed: I think this point has already been decided. Mr. K. C. Neogy met the argument of my Honourable friend, Sir William Vincent, and it was decided by this Assembly that all the questions would be answered in the House. The excuse brought forward by my Honourable friend, Mr. Innes, therefore, will not hold water. It is not a question of space but the irregularity and error which my Honourable friend's Department committed, and they were accused of the same thing by Mr. Neogy. So far as printing charges are concerned, they have printed this long syllabus instead of taking the trouble of answering the question. I think we come within the four corners of the principle then decided and are entitled to have everything published in the proceedings; there is no getting out of it. May I ask, Sir, that the answer read out by my Honourable friend from his papers and the demi-official letter written to me by one Mr. E. Rogers of his Department. . . .

Mr. Deputy President: I think the Honourable Member has already intimated his intention of having the answer published and laid on the table.

Mr. K. Ahmed: When Sir? Will that question be put down again for answer?

Mr. W. M. Hussanally: May I ask if it is a fact, as stated by my Honourable friend, Mr. Ahmed, that he was asked by demi-official letter to withdraw his question?

The Honourable Mr. C. A. Innes: I understand that one of the officers of my Department got this question after the information required by Mr. Ahmed had been sent to him, and he wrote to Mr. Ahmed and asked whether in those circumstances he still wished the question answered. Those are the facts of the case.

Mr. K. Ahmed: Sir, I place the letter in the Assembly.

Mr. Deputy President: I am afraid I cannot allow the Honourable Member to go into that question.

Mr. K. Ahmed: Could not that question be threshed out in this Assembly, so that we may have a ruling from the Chair?

The Honourable Sir Malcolm Hailey: Might I suggest that a general question of this nature could better be brought up on a motion, or by special leave at a convenient time and need not delay the House during question time.

Mr. Deputy President: I hope the Honourable Member will take the advice of the Leader of the House and bring this matter up on a formal motion or through a separate question.

LICENSED SHIPPING BROKERS.

230. ***Mr. K. Ahmed:** Will the Government be pleased to state how many Licensed Shipping Brokers are there in the ports of Calcutta, Bombay, Rangoon, Madras and Karachi and the time when the licenses of these brokers commenced and terminated during the years of 1918, 1919, 1920, 1921 and 1922 giving full particulars of any period when their licenses were in abeyance and they had acted as broker or brokers; and how many licenses were renewed each year and who renewed them giving full particulars of the same?

The Honourable Mr. C. A. Innes: Since the licensed brokers system has recently been the subject of enquiry by a special committee and since the question of discontinuing that system is now under correspondence with Maritime Local Governments, the Government of India do not think it necessary to put those Local Governments to the trouble of collecting and supplying the information required by the Honourable Member.

Mr. K. Ahmed: Was it not illegal for a broker without a licence to supply seamen?

The Honourable Mr. C. A. Innes: If a shipping broker committed any illegal act the person aggrieved had a remedy in the Courts of law.

Mr. K. Ahmed: Is it not for the Government of India to prosecute them, Sir, without leaving it to other people?

The Honourable Mr. C. A. Innes: No, Sir. The Mercantile Shipping Acts are administered by Local Governments.

DEPUTY SHIPPING MASTER, CALCUTTA—DISSATISFACTION AGAINST.

231. ***Mr. K. Ahmed:** (a) Are the Government aware that the Indian Seamen's Union, Calcutta, dated 8th December 1922 passed a resolution declaring that the present Deputy Shipping Master, Calcutta be immediately recalled Home, removed or transferred as his office was not for

the purpose of facilitating appointments of Seamen and also for their interest and benefit?

(b) If the answer be in the affirmative, will the Government be pleased to state the reasons for such dissatisfaction of the Seamen?

(c) Will the Government be pleased to state what action the Government have taken in the matter, if there be any?

COMPLAINT AGAINST DEPUTY SHIPPING MASTER.

232. ***Mr. K. Ahmed:** (a) Will the Government be pleased to state whether they received a petition signed by some 400 Seamen of Calcutta complaining against the Deputy Shipping Master for his treatment towards the seamen in general?

(b) If so, what action the Government have taken or propose to take in the matter.

The Honourable Mr. C. A. Innes: (a) Yes. I will answer the preceding question at the same time as this.

(b) and (c) The Government of India recently received an English translation of a petition signed by certain seamen in Calcutta in which it was alleged that the Shipping Master and the Deputy Shipping Master were unsympathetic and took the side of the shipping brokers. The petition has been returned for submission through the prescribed channel, i.e., the local Government.

INDIAN SEAMEN IN THE GREAT WAR.

233. ***Mr. K. Ahmed:** In continuation of my question No. 198, dated the 7th September, 1922, regarding the number of Indian Seamen engaged from all the Indian ports in foreign ships registered from the United Kingdom, as well as in ships registered under the Indian Registration of Ships Act, 1841 and the Indian Steam Vessels Act, 1917, will the Government be pleased to state how many seamen were engaged in 1921-1922 from each of the ports in India including the number of Indian Seamen who were killed during the last European War in the Merchant Ships as well as the ships chartered by the Government?

The Honourable Mr. C. A. Innes: Particulars of the numbers of Indian seamen killed during the European War and also of the number of such seamen shipped from Bombay and Calcutta during 1921-22 were supplied to the Honourable Member on the 11th instant in response to question No. 198, dated the 7th September 1922. They will now be laid on the table.† Information relating to recruitment from Karachi and from the other ports (except Bombay) in the Bombay Presidency is not available, while there was no recruitment either from Rangoon or from Madras.

Mr. K. Ahmed: Sir, with reference to the demi-official letter in connection with this question No. 233, it states that there were 1,200 seamen captured and imprisoned in the enemy countries. I want to ask a test question. You see, Sir, there are two double zeros after the figure 12. Whether it would not be a few less or a few more than 1,200 if the Honourable Member is prepared to answer?

The Honourable Mr. C. A. Innes: I understand, Sir, that the information supplied to the Honourable Member was correct to the best of the Commerce Department's knowledge.

† The statement will be printed in the next issue of these Debates.

COMPENSATION TO INDIAN SEAMEN.

284. ***Mr. K. Ahmed:** (a) Are the Government aware that the dependants of seamen in England killed in the War received pensions and compensations and that in addition they are getting a share of German Reparation Award?

(b) Do Government propose to follow the same principle in dividing the same Reparation Award among the dependants of the Indian Seamen instead of transferring the same to the different funds?

GERMAN REPARATION AWARD FOR SEAMEN.

285. ***Mr. K. Ahmed:** Will the Government be pleased to lay on the table all the correspondence that may have passed between the Government of India and the Secretary of State regarding the German Reparation Award for Seamen and the matters ancillary thereto?

The Honourable Mr. C. A. Innes: I will answer the preceding question at the same time as this.

The suggestion in part (a) of the Honourable Member's question is not correct; and as a report appears to be current among Indian Seamen that in addition to receiving pensions dependants of British Merchant Seamen killed in the war are receiving compensation from German reparations, the Government of India take this opportunity of clearing up the matter. The facts are as follows:—In 1921 His Majesty's Government decided that a sum of five millions sterling should be devoted to the payment of compensation for "Suffering and Damage by enemy action." It was originally intended that the expenditure should be met from reparation claims. But in January 1922 His Majesty's Government decided not to wait to see whether any payments would be received on reparation account from Germany, and they provided the promised sum of five millions sterling in the Civil Service estimates partly for 1921-22 and partly for the current year. A Royal Commission was then appointed to consider claims. As I have said, the sum was provided for compensation for suffering and damage by enemy action, but the Commission decided that in the first instance they would recommend grants in specially necessitous cases, whether among seamen and their dependants or among other classes of the population. It will be seen that it has not been decided to earmark any portion of reparation payments for distribution specially to British seamen, and in the circumstances neither part (b) of the Honourable Member's question or his succeeding question arise.

FRANCHISE FOR INDIANS IN KENYA.

286. ***Mr. T. V. Seshagiri Ayyar:** (a) Will the Government be pleased to state whether they have received any communication from Indians living in Kenya relating to the exercise of franchise by them at the ensuing election for the Legislative Council?

(b) Whether the Government has addressed the Secretary of State on the subject and if so, would the Government be prepared to lay on the table of the House a copy of the communication, if any, addressed by them?

Mr. J. Hullah: (a) Yes.

(b) The Honourable Member is referred to the answer given by me on the 15th instant to a similar question asked by Mr. Jamnadas Dwarkadas in which I stated the substance of the telegram addressed by the Government of India to the Secretary of State. Government are not prepared to lay the correspondence on the table at the present stage.

Mr. T. V. Seshagiri Ayyar: Has any reply been received from the Secretary of State in regard to any representation made by the Government of India on the subject?

Mr. J. Hullah: Yes.

Rao Bahadur T. Rangachariar: Are the Government aware that the conditions are getting very acute in that colony?

Mr. J. Hullah: Yes, certainly judging from newspaper reports.

Rao Bahadur T. Rangachariar: Are the Government taking proper steps to protect the interests of Indians there?

Mr. J. Hullah: Yes.

Mr. Harchandrai Vishindas: Are the Government prepared to state the substance of the reply of the Secretary of State?

Mr. J. Hullah: No; but I can say that the Secretary of State is working in complete accord with the Government of India.

Mr. Jamnadas Dwarkadas: Is there any likelihood of Government yielding to the threat held out by the European community that if the claim of the Indian community to the franchise is accepted they will resort to violence?

Mr. J. Hullah: No such threat has been communicated to the Government of India.

Mr. Jamnadas Dwarkadas: It has not been communicated to the Government of India, but has the Honourable Member read the telegram purporting to the effect that that threat has been held out by the European community?

Mr. J. Hullah: Yes, I have seen a telegram of that kind in the press.

Mr. Jamnadas Dwarkadas: Has the Government impressed on the Secretary of State for India and the Secretary of State for the Colonies that any attempt at whittling down the rights of the Indian Community would be subversive of the Resolution of the Imperial Conference of 1921?

Mr. J. Hullah: Certainly, we have done that.

Mr. Harchandrai Vishindas: In view of the fact that Government are aware of this information, although they have not received it officially, are the Government prepared to take any action in the matter or send any communication to the Secretary of State as to the threat held out by the European community?

Mr. J. Hullah: Yes, Government will certainly consider, and consider immediately, the advisability of making such a communication.

Mr. T. V. Seshagiri Ayyar: Will the Government of India communicate to the Governor of the colony its opinion that care should be

taken to protect the lives of the Indians in the colony against violence. Will the Government take proper steps to protect the domiciled Indians there against the contemplated violent action of the European settlers there?

Mr. J. Hullah: We should certainly take steps if we had any reason to believe that there was serious danger of violence, but we have received no information of the kind.

Rao Bahadur T. Rangachariar: Has the Government of India received a telegram addressed to His Excellency the Viceroy by the Indian Congress where they appeal for protection to His Excellency Lord Reading?

The Honourable Mr. B. N. Sarma: We propose to communicate to the Secretary of State the feeling of the House and the feeling of the Indian community to see that all that can be done is done.

FOUR-WHEELER COACHES.

237. ***Mr. N. M. Joshi:** What is the number of coaches, in terms of four-wheelers, which do not normally form part of the daily passenger carrying trains and their cost?

Mr. C. D. M. Hindley: I am sorry that I cannot answer this question for I do not know precisely what information the Honourable Member requires. If he will let me know later what information he wants I will endeavour to supply it.

Mr. N. M. Joshi: What I want to know is this. There is a lot of rolling stock of passenger trains which is not used daily. I want to know what the number of such stock is.

Mr. C. D. M. Hindley: I beg to suggest that if the Honourable Member will perhaps discuss this matter with me, I shall be able to explain the difficulties and then if he will make a specific request, I will give him any information in my power.

MANAGEMENT OF E. I. AND G. I. P. RAILWAYS.

238. ***Mr. N. M. Joshi:** Do Government propose to place their proposals regarding the future management of the East Indian and the Great Indian Peninsula Railways before the Legislative Assembly during the current session?

Mr. C. D. M. Hindley: In accordance with the undertaking given by the Government in the Legislative Assembly on the 7th September 1922 in the course of the discussion on the Resolution relating to the revision of the Indian Railways Act, 1890, moved by Moulvi Miyan Asjad-ullah, a Government day will be given during the current session of the Legislative Assembly for the discussion of that Resolution. Notice has been given of amendments to that Resolution which will give the Assembly an opportunity of discussing the future management of the two Railways mentioned.

Rao Bahadur T. Rangachariar: Will that date be before the other Resolution by Government about the separation of Railway and ordinary Budget is taken up? Will an opportunity be given to the Assembly before that?

The Honourable Sir Malcolm Hailey: We have not yet settled our dates, but we shall do so as soon as possible. I may remind the House that at present we have great difficulty in settling them owing to the delay in disposing of the Criminal Procedure Code Bill.

Rao Bahadur T. Rangachariar: My question was whether the discussion will be before the other question is taken up.

The Honourable Sir Malcolm Hailey: I cannot give any indication at present of the date. We will consider the point and let the Honourable Member and the House know as soon as possible.

Mr. Harchandrai Vishindas: Do I understand that the Government is not in a position to chalk out the whole programme of this session, because I intended to put a question before the commencement of business to-day whether we will be in a position to know, so that we may regulate our movements accordingly.

The Honourable Sir Malcolm Hailey: We should be very glad, if we could give such information to the Honourable Member which would enable him to regulate his movements; but at present we are unable to say even whether the session will terminate in March or not. At our present rate of progress it appears not impossible that we may have to sit through April and possibly through part of May.

Mr. Harchandrai Vishindas: I want to know whether the Governor General in Council has fixed the date under the Standing Orders for the introduction of the Budget.

The Honourable Sir Malcolm Hailey: Yes, Sir. It is the usual date, 1st of March.

Mr. Jamnadas Dwarkadas: Coming back to the original question, will the Government kindly make a note of this point that many of the Members of this House desire that the discussion of the question of State *versus* Company management of Railways should precede the discussion on the question of the separation of the Railway Budget.

The Honourable Mr. C. A. Innes: I will certainly take note of that and will discuss it with the Honourable the Leader of the House.

Mr. K. Ahmed: Is it not a fact distinctly understood by the Member of the Assembly and my Honourable friend, Mr. Innes, that the earliest date will be fixed for the discussion of this Resolution which was moved by my Honourable friend Miyan Asjad-ullah and I, Sir, objected when the Home Member said that there will be an adjournment of this at the next November Session, which has not been held at all, the reason for which is obvious to the Honourable Member. Under these circumstances are we not entitled to have the earliest date fixed for the discussion of this Resolution, *viz.*, Company *versus* State management.

The Honourable Sir Malcolm Hailey: Without entering into further discussion, I might say that we shall do our best in the circumstances to give the House as early a date as possible.

TEMPLES AT PAHARGUNJ, DELHI.

299. ***Rai Sahib Lakshmi Narayan Lal:** (a) Has the attention of the Government been drawn to the proceedings of the All-India Hindu Maha-

Sabha held at Gaya on 31st December last regarding the demolition of the temples situate within the area proposed to be included in the New Railway station at Pahar Gunj, Delhi?

(b) How many temples and Dharmshalas appertaining to the temples were there within the said area?

(c) Has any of the said temples or Dharmshalas or any portion thereof been demolished; if so, to what extent and by whose order?

(d) Has any body been consulted in the matter?

(e) What do the Government propose to do in the matter now?

Mr. C. D. M. Hindley: (a) No.

(b) Six temples and one dharamsala.

(c) No.

(d) Yes. All those who claimed to be interested in the matter and who approached the Chief Commissioner, Deputy Commissioner, or the Engineer-in-Chief have been consulted.

(e) Nothing at present.

PILFERING AND COMPLAINTS ON N. W. RAILWAY.

240. ***Dr. Nand Lal:** 1. Is Government of India aware that

(a) there is a great deal of pilfering on the North Western Railway;

(b) there is a general complaint in respect of overcrowding in the third class carriages;

(c) there is a great inconvenience to women and children travelling in the third class.

2. If answer to question No. 1 be in affirmative, then will they be pleased to state as to what steps they have taken to put an end to them (pilfering, complaints, and inconvenience)?

Mr. C. D. M. Hindley: (a) Government are not aware that there is a great deal of pilfering on the North-Western Railway. Cases of pilferage occur on the North-Western Railway but they are not peculiar to that Railway. The subject of prevalence of theft and pilferage on railways and the measures for remedying the evil were examined in detail by the Railway Police Committee in 1921 and steps have been taken by the railways on the basis of the recommendations made by the Police Committee. Copies of the Committee's Report are available in the Library.

(b) and (c) The Honourable Member is referred to the answer given on 16th January 1923 to item (b) of starred question No. 92 asked by Rai Bahadur Lachmi Prasad Sinha in a similar connection.

Mr. T. V. Seshagiri Ayyar: Does that answer imply that the recommendations made by the Railway Police Committee have been acted on by the Railways?

Mr. C. D. M. Hindley: I am not prepared to say they have all been acted on. They have all been considered, and will be acted on if necessary.

Mr. J. Chaudhuri: Is there any improvement in regard to pilfering since the report of the Committee?

Mr. O. D. M. Hindley: I am afraid I have no figures to substantiate that point one way or the other.

Mr. J. Chaudhuri: I personally know there has not been. A motor car fittings were pilfered the other day.

PRESENTS TAKEN BY TRAFFIC INSPECTORS.

241. ***Dr. Nand Lal:** 1. Is Government of India aware that some of the Traffic Inspectors on the North Western Railway take a periodical allowance, in the form of presents or pecuniary gratifications, from some of the Station Masters, excepting those who are posted at principal and very important stations?

2. If answer to question No. 1 be in affirmative, will they be pleased to state as to what step they have taken to put an end to it?

Mr. O. D. M. Hindley: The Government regret that a sweeping allegation of this kind should have been made against a whole class of Railway servants. If the Honourable Member has charges of corruption to make against individual Traffic Inspectors, the Government trust that he will make them to the Agent. The charges will then be investigated and suitable action taken if necessary.

INCREASE IN RAILWAY FARES.

242. ***Dr. Nand Lal:** (i) Will Government be pleased to state as to whether the last increase in the Railway fare of the third class has effected any appreciable increase in the revenue? If so, what is the amount of that increase up to the end of December 1922?

(ii) Will Government be pleased to state as to whether the last increase in the Second Class Railway fare has effected any appreciable increase in the revenue? If so, what is the amount of that increase up to the end of December 1922?

Mr. O. D. M. Hindley: The Honourable Member is referred to the answer to a somewhat similar question, *viz.*, No. 150 asked by Mr. P. L. Misra on the 17th instant. The Government hope to collect shortly more detailed figures and on receipt of them, they will be able to give to the Honourable Member the information he requires.

DISCONTINUANCE OF RAILWAY RETURN TICKETS.

243. ***Dr. Nand Lal:** Will the Government be pleased to state as to whether the last discontinuance of Second and First Class Return tickets has occasioned any appreciable increase in the revenue? If so, what is the total amount thereof?

Mr. O. D. M. Hindley: The revenue derived from 1st and 2nd class passenger traffic increased year by year from 1915-16 to 1921-22. The extent to which the abolition of 1st and 2nd class return tickets at less than two single fares contributed to this increase cannot be estimated, owing to factors being involved, the effect of which cannot be calculated.

FEMALE TICKET COLLECTORS.

244. ***Dr. Nand Lal:** Will the Government be pleased to state as to whether there are female ticket collectors at every principal and important Junction Stations?

Mr. O. D. M. Hindley: Women ticket collectors are employed at the larger railway stations situated in Upper India where tickets are checked. Their employment on railways in other parts of India and in Burma is generally speaking not considered necessary.

SUPPLY OF WAGONS TO TRADERS.

245. ***Dr. Nand Lal:** Is the Government aware that, at many Railway Stations of the North Western Railway, Traders and Merchants cannot get wagons till they pay in the form of bribe to the Station Masters or Goods Clerks?

Mr. O. D. M. Hindley: The Government of India are of course aware of the remarks of the Acworth Committee on the subject of irregularities on the distribution of wagons. The matter is one which has been receiving the careful attention of the Railway Board. The systems of registration in force on the various railways have been under examination and are now under trial. The matter has also been taken up by the Indian Railway Conference Association. Further steps will be taken as is found possible in consultation with the Railway Administrations.

CORRUPTION IN THE SERVICES.

246. ***Dr. Nand Lal:** 1. Is Government aware that there is corruption in

(a) Railway Department—both Traffic and Engineering?

(b) Commissariat Department?

(2) If the answer to question No. 1 be in affirmative, will Government be pleased to state as to what effective measures they have taken to put an end to it?

Mr. O. D. M. Hindley: As regards the Railway Department the Honourable Member is referred to the reply given in the previous question.

To enable Government to answer satisfactorily that part of the question which relates to the "Commissariat Department", it has been necessary to make certain enquiries, the result of which will be communicated to the Honourable Member as soon as possible.

CREW SYSTEM OF CHECKING TICKETS.

247. ***Dr. Nand Lal:** (a) Is Government of India aware that the Railway Department, though it is according to section 60 of the Indian Railways Act, required to collect Tickets from passengers at the end of journey or near that, have, in the Lahore District of the North Western Railway, recently introduced a new system, called the Crew System, according to which seven or eight Ticket Collectors and an Inspector are put in charge of a train at the starting station in order to collect tickets, and check the train at each station giving little chits, as substitutes or tokens, for the collected tickets?

(b) Is the Government of India aware that no female ticket collectors are provided under the new Crew System?

(c) Is the Government of India aware that some passengers and a Municipal Commissioner of Wazirabad complained against this new system some months back?

Mr. C. D. M. Hindley: Government have no information. Enquiry will be made from the Agent, North-Western Railway, and the result communicated in due course.

WATERING STAFF ON N. W. RAILWAY.

248. ***Dr. Nand Lal:** (a) Is Government of India aware that only 58 extra watermen were employed for supplying water to trains on the Lahore District of the North Western Railway, last summer, whereas 80 watermen used to be employed in the previous years?

(b) Is Government of India aware that the Traffic Department of the North Western Railway dismissed, in the Lahore District, water staff at many roadside stations, barring a few principal ones?

(c) Is Government of India aware that this dismissal of watering staff caused great trouble to the third class passengers?

Mr. C. D. M. Hindley: The Government of India presume that if the facts are as stated the Agent was satisfied that the reduction in the staff would cause no inconvenience to the public. They are however forwarding the Honourable Member's question to him in order that he may reconsider the matter if he thinks it necessary so to do.

REVENUE FOLLOWING ON CHANGE IN POSTAL RATES.

249. ***Dr. Nand Lal:** (1) Will Government of India be pleased to state as to whether the last abolition of pice post cards has occasioned some increase or decrease in the Revenue, giving in either case an approximate amount of such increase or decrease.

(2) Will Government of India be pleased to state as to whether the last increase in postage stamps on letters, namely, from half an anna to one anna, has brought about some increase in Revenue and if so, what is the approximate increase, and if there is a decrease in consequence thereof, then, what is the amount thereof up to the end of December 1922.

Colonel Sir Sydney Crookshank: (1) and (2) Separate information regarding the revenue from the sale of postcards is not available, but it may be stated that the gross amount realised from the sale of ordinary postage stamps and postal stationery of all kinds for the period from April to December 1922 was Rs. 5,03,88,000 as compared with Rs. 4,77,04,481 for the corresponding period of 1921.

Mr. W. M. Hussanally: May I inquire if the anticipated income has been realised?

Colonel Sir Sydney Crookshank: Sir, it is difficult to state at this particular period of the year whether the anticipated revenue on the Posts and Telegraphs combined will be fully realised, but I can inform the House this much, that it is likely that the profits on the two branches taken together will amount to over 30 lakhs of rupees as compared with the deficit which would have occurred had this Honourable House not had the foresight to increase the postal rates from a quarter anna to half an anna for post cards and from a half anna to one anna for letters.

Mr. W. M. Hussanally: What has been the total cost of reprinting and labelling to be deducted from this Rs. 30 lakhs?

Colonel Sir Sydney Crockshank: I shall be much obliged if notice can be given of that question.

DR. JIWAN LAL, BUSHIRE.

250. *Dr. Nand Lal: 1. Is Government of India aware—

- (a) that one Doctor Jiwan Lal, Sub-Assistant Surgeon, Military Indian Station Hospital, Bushire (Persian Gulf) was convicted and sentenced to five years' rigorous imprisonment in May 1922, under the charge of tampering with the loyalty of the troops, by the Court Martial;
- (b) that the convict was transferred to some Jail in India;
- (c) that the relations (brothers) of the convict addressed the Government of India begging to be informed as to where the convict was;
- (d) that his brothers are anxious to know whether he is living;
- (e) that the convict was an inexperienced youth.

(2) If the answer to question No. 1 be in affirmative, will Government be pleased to state as to whether the convict is living and if so, in what Jail he is.

Mr. E. Burdon: (1) and (2) Government are aware that Dr. Jiwan Lal was convicted of the offence mentioned by the Honourable Member. As far as their present information goes, he is in Thana Jail, Bombay Presidency, to which he was transferred from Bushire. I will ascertain definitely whether he is still in Thana Jail, and I will inform the Honourable Member of the result.

IMPRISONMENT OF PAIRA BHAN, CHAUDHURI NIRMAL DAS AND DEVI DAS OF DERA ISMAIL KHAN.

251. *Dr. Nand Lal: 1. Is Government aware—

- (a) that on 31st October, 1921, Païra Bhan, Chaudhri Nirmal Das and Devi Das and others, residents of Dera Ismail Khan, were charged under section 40 of the Frontier Crimes Regulations, for repeating the Karachi resolution and were convicted by the District Magistrate and sentenced to two years' simple imprisonment;
- (b) that they were transferred to Peshawar Jail on 9th November, 1921;
- (c) that on 12th November, 1921, the District Magistrate without notice to the accused enhanced the imprisonment of all the accused by changing the simple imprisonment into a rigorous one;
- (d) that there was a constant complaint of bad food;

- (e) that the treatment accorded to them was worse than that of ordinary criminals;
- (f) that a memorial was submitted to the Honourable the Chief Commissioner, North-West Frontier Province, in which these circumstances, *inter alia*, were referred to.

2. If answer to question No. 1 be in affirmative, will the Government be pleased to state as to what enquiry has been made by them and what result they have arrived at? Have they done anything to redress these grievances of the convicts and considered the prayer of the memorialists?

The Honourable Sir Malcolm Hailey: The information has been called for and will be supplied when available.

GRATUITIES IN INDIAN MEDICAL SERVICE.

252. ***Dr. Nand Lal:** (1) (a) Is Government aware that temporary European candidates, to be recruited on five years' contract, are to get a gratuity at the rate of Rs. 250 per mensem, while temporary Indian Officers of the Indian Medical Service are not getting any gratuity?

(b) Is there any special reason for this inequality?

(c) If there were no special reason for this inequality, will the Government be pleased to state as to why this inequality should exist?

(2) Is Government aware that Temporary Indian Officers of the Indian Medical Service are not allowed any proportionate yearly gratuity in lieu of the pension of the permanent members of that service. If not, why not?

(3) Is Government aware that unlike the permanent members of the Indian Medical Service, temporary Indian Members of the Indian Medical Service, do not get any increment of pay according to the time scale, after three or more years' service as a captain?

If not, why not?

(4) Is Government aware that unlike the permanent members of the Indian Medical Service temporary Indian Officers of the Indian Medical Service, do not get the advantage of their accelerated promotion for captaincy towards their pay?

If not, why not?

Mr. E. Burdon: (1) (a) The position is substantially as stated by the Honourable Member.

(b) and (c) There is an essential difference between the respective obligations of the two classes of officers mentioned. The 80 European officers are being recruited conditionally for permanent commissions in the Indian Medical Service and for a minimum period of 5 years. If they fail to serve the minimum period, they receive no gratuity. The Indian officers mentioned serve on a purely temporary engagement which is for a maximum period of one year.

(2) and (3) Yes. The terms offered are sufficient to secure the candidates required for the purely temporary posts.

(4) Promotion to Captain is granted, both to temporary and permanent officers, after three years' service. This promotion is not accelerated in the case of either class of officers.

POLICY REGARDING WAZIRISTAN.

253. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to lay on the table the correspondence that may have passed between the Government of India and the Secretary of State for India relating to its future policy with respect to Waziristan.

Mr. Denys Bray: Government do not consider it in the public interest to make public the correspondence.

RAILWAY WORKSHOPS.

254. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to state—

- (a) What stations of the East Indian Railway, Bengal and North-Western Railway, and at Lucknow on the Oudh and Rohilkhand Railway have workshops?
- (b) Alongside which of the workshops referred to in question (a) have technical schools been established?

Mr. C. D. M. Hindley: There are workshops at Jamalpur and Lillooah on the East Indian Railway, at Gorakhpur on the Bengal and North-Western Railway, and at Lucknow on the Oudh and Rohilkhand Railway. At all four stations apprentices in the shops receive technical training. At Jamalpur and Lucknow schemes for the erection of new and larger technical schools at which a higher class of training will be possible are now being introduced, the local Government in each case co-operating with the railway administration.

INTERMEDIATE CLASS ACCOMMODATION.

255. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to state:

- (a) Whether all the trains of the East Indian Railway, Bengal and North-Western Railway and Oudh and Rohilkhand Railway are provided with intermediate classes?
- (b) If not, will it be pleased to issue necessary instructions to the Railway authorities to make the provisions?

Mr. C. D. M. Hindley: (a) All trains carrying passengers on the East Indian and Oudh and Rohilkhand Railways are provided with intermediate class accommodation but certain trains on the Bengal and North-Western Railway carry third class passengers only.

(b) Government do not consider that any instructions are necessary in the matter.

PUSA AGRICULTURAL RESEARCH INSTITUTION.

256. ***Khan Bahadur Sarfaraz Husain Khan:** Will the Government be pleased to lay on the table the last Annual Report of the Pusa Agricultural Research Institution?

Mr. J. Hullah: The Honourable Member will find copies of the report in the Library adjoining this Chamber.

URINAL ARRANGEMENTS ON RAILWAYS.

257. ***Khan Bahadur Sarfaraz Husain Khan:** Is the Government aware of the great inconvenience caused by the absence of privy and urinal arrangements in all servants compartments attached to 1st and 2nd class compartments of Railway trains?

If so, do the Government propose to issue necessary instructions for the removal of the inconvenience referred to?

Mr. C. D. M. Hindley: Government has not received any complaints in regard to the alleged inconvenience, but the matter will be brought to the notice of the railway administrations.

WAZIRISTAN OPERATIONS.

258. ***Mr. B. S. Kamat:** Will Government be pleased to state:

- (i) the total expenditure incurred since April 1922 up to date for the Waziristan operations;
- (ii) the cost of the punitive air operations recently undertaken and the quantity of bombs used to date;
- (iii) the total number of persons killed since April last by enemy raids and also persons killed on the enemy side by the Waziristan force?

Mr. E. Burdon: (i) Figures up to the end of October, 1922, only are at present available. The total military expenditure booked up to that date is approximately Rs. 109 lakhs. This amount includes certain charges including arrear charges on account of the North-West Frontier as a whole which it is impracticable to distinguish from the charges incurred on account of Waziristan proper.

(ii) The cost of the recent air operations cannot be precisely stated. The total weight of bombs dropped between the 17th December, 1922, and the 16th January, 1923 (both dates inclusive) is 78 tons.

(iii) The total number of persons on our side killed by enemy action since the 30th April, 1922, is as follows:

Military 68, including followers.

Civil 14, including levies.

So far as is known, 57 of the enemy have been killed.

Mr. J. Chaudhuri: Is it not a fact that the air operations have not proved effective in Waziristan?

Mr. E. Burdon: I think I gave an answer to that question to the 12 Noon. Honourable Member at the last meeting of this Assembly.

RECOMMENDATIONS BY THE RETRENCHMENT COMMITTEE.

Rao Bahadur T. Rangachariar: Sir, may I be permitted to ask a question of which I have given notice to the Honourable the Finance Member. It is as follows:

Will the Government be pleased to give an opportunity to the Assembly to discuss the recommendations of the Inchcape Committee, more especially those recommending the abolition of civil departments of the Government of India, before action is taken thereon by Government?

The Honourable Sir Basil Blackett: This question has been to some extent anticipated in the supplementary questions that were asked in the course of the last hour, as also by an unstarred question put on the 15th instant, when it was asked:

“Will the Government be pleased to state whether the report of the Inchcape Committee is to be placed for discussion in the Legislative Assembly before any final orders are passed by the Government?”

The answer to that was:

“The Government regret that this course is not practicable.”

It is hoped that a full opportunity will arise in connection with the Budget discussions for considering the recommendations made by the Inchcape Committee in connection with the Budget for the next year.

Rao Bahadur T. Rangachariar: No doubt the Honourable Member is aware that, in connection with matters excluded from the Budget, it is not open to this House to get them included. The Honourable Member is no doubt aware of that difficulty.

The Honourable Sir Basil Blackett: I am aware of that fact, but I think there will be every opportunity for discussing the recommendations of the Inchcape Committee in connection with the Budget.

Rao Bahadur T. Rangachariar: May I ask if the Inchcape Committee cannot be asked to adopt the procedure of sending their report in batches, as the Geddes Committee did, so that more time may be saved, instead of waiting for the final report?

The Honourable Sir Basil Blackett: I will inquire as to what procedure the Inchcape Committee think they may be able to adopt in this matter.

Sir Deva Prasad Sarvadhikary: Does the Government propose to prepare and place before this Assembly its Budget on the basis of the recommendations of the Inchcape Committee as far as they may reach the Government in time for the preparation of the Budget?

The Honourable Sir Basil Blackett: The Government have every hope that they will be able to take full advantage of the work of the Inchcape Committee in the preparation of the Budget.

UNSTARRED QUESTIONS AND ANSWERS.

INDIAN ENGINEERS ON RAILWAYS.

106. **Mr. N. M. Joshi:** Will Government kindly lay on the table the information re Indian Engineers on Railways, referred to in the answer given in the Council of State on the 6th September 1922 to question No. 18 (i) and (ii)?

Mr. C. D. M. Hindley: The statement containing the information asked for by the Honourable Member is placed on the table.

Statement showing numbers of Indian Engineers recruited annually on the Great Indian Peninsula, East Indian, Bombay, Baroda and Central India and South Indian Railways, the percentage to recruitment of Europeans and particulars in cases of termination of service.

Railway.	INDIANS RECRUITED IN					Total number of Indians recruited as Engineers in the 5 years 1917-21.	Percentage of recruitment of Indian European Engineers in the 5 years 1917-21.	REMARKS.
	1917.	1918.	1919.	1920.	1921.			
Great Indian Peninsula	5*	1	1†	1	2	10	35.7	
East Indian	...	...	1	4	1	6	37.5	All Indians recruited in 1919-21 are still in service.
Bombay, Baroda and Central India.	2	1	3	1	2	9‡	41.00	
South Indian	...	1	...	...	...	1§	12.5	

* One resigned in 1920 to better his prospects.

One was discharged as his services were no longer required.

† Reverted to his original grade of Supervisor in November 1919 owing to return of Engineers from military duty but reappointed in April 1919.

‡ Of the nine Indians recruited in the years 1917-21, five are still in service, three resigned of their own accord and the services of one were terminated at his own request with three months' pay in lieu of notice owing to ill health.

§ Still in service.

WAGON SERVICE ON RAILWAYS.

107. **Mr. N. M. Joshi:** With reference to the suggestions made by the late Mr. Thomas Robertson in 1903 in paragraphs 181-189 of his report for obtaining greater amount of service with a smaller amount of wagons, will Government kindly lay on the table a statement showing the steps taken and progress achieved during the decade immediately preceding the outbreak of the Great War?

Mr. C. D. M. Hindley: The more efficient working of rolling stock was the constant care of the Railway Board and Railway Administrations during the period referred to, and every effort was made to effect an improvement.

Records show, however, that they were hampered by lack of adequate facilities.

Information as to the work done by rolling stock year by year can be ascertained by reference to the Administration Reports of Indian Railways.

QUARTERS ON E. I. AND G. I. P. RAILWAYS.

108. **Mr. N. M. Joshi:** Will Government kindly lay on the table a statement showing the designation of the officers for whom quarters have been built during the five years ending 31st March 1922, the pay of each officer, the cost of each quarter, the interest payable on the capital cost of each quarter, and the rent per annum realized on each of the quarters on the East Indian and the Great Indian Peninsula Railways?

Mr. C. D. M. Hindley: The information asked for is not readily available, and Government do not consider that the time and labour involved in collecting the particulars are commensurate with the results to be obtained.

O. AND R. RAILWAY DISCOUNT SINKING FUND.

109. **Mr. N. M. Joshi:** With reference to the item "Oudh and Rohilkhand Railway Discount Sinking Fund in redemption of debt incurred in excess of money raised" appearing in the Railway Budget for 1922-23, will Government kindly state:

- (a) the amount of debt incurred in excess of money raised;
- (b) the date of the loan and the date fixed for redemption;
- (c) the amount accumulated in the Fund up to 31st March 1922;
- (d) the amount payable into the Fund every year;
- (e) the amount yet remaining to be paid into the Fund; and
- (f) the circumstances differentiating this debt from the issue of £10,089,146 India 3 per cent. stock to the stockholders of the Bombay, Baroda and Central India Railway Company in satisfaction of £9,085,581 in part payment of the purchase price of the Undertaking.

Mr. C. D. M. Hindley: In order to reply fully to the Honourable Member's question, it will be necessary to refer to the India Office. This is being done and the reply will be communicated to him in due course.

TEMPLES AT PAHAR GUNJ, DELHI.

110. **Rai Sahib Lakshmi Narayan Lal:** Will the Government be pleased to lay on the table:

- (a) A full statement of what has been done or is proposed to be done with respect to the temples and Dharmshalas appertaining to the temples situate within the area proposed to be included in the New Railway Station at Pahar Gunj, Delhi?
- (b) The copies of all the correspondence on the matter?

Mr. C. D. M. Hindley: (a) Apart from consultations with those immediately interested in the temples and Dharamsala nothing has been done nor is it proposed to do anything at present. Government therefore does not propose to lay a statement on the table.

(b) As the matter is still under consideration Government do not propose to lay on the table copies of the correspondence.

DR. GOUR'S CIVIL MARRIAGE BILL.

83. †Lala Girdharilal Agarwala: Will Dr. Gour, M.L.A., be pleased to state whether he has received a copy of the Resolution adopted at a meeting of the Parsees held on the 26th November, 1922, protesting against the Honourable Member's Civil Marriage Bill, and if so, will he be pleased to place a copy of the same on the table?

Dr. H. S. Gour: The answer to the question is in the affirmative. I have also received a number of Resolutions adopted by the Parsees strongly approving of my Civil Marriage Bill. It seems that the Parsees like the other communities are divided into two sections, orthodox and reformers. The former oppose all changes, the latter consider each change upon its merits. As a distinct body of all communities are in favour of my Bill, both its utility and necessity are obvious.

TENURE NATURE OF POSTS OF SECRETARY, ETC., IN SECRETARIAT.

82. †Rai Bahadur G. C. Nag: Is it a fact that the posts of Secretary, Joint Secretary, Deputy Secretary, Under Secretary and Assistant Secretary in the Government of India Secretariats are all tenure appointments and if so, what is the maximum period fixed for such tenure appointments?

The Honourable Sir Malcolm Hailey: The posts of Secretary, Joint Secretary, Deputy Secretary and Under Secretary are tenure appointments and the period of tenure is normally three years. No maximum period is fixed and the period can be and is sometimes extended. The posts of Secretary, Joint Secretary and Deputy Secretary in the Legislative Department and of Secretary and Joint Secretary in the Railway Department are not tenure appointments.

The post of Assistant Secretary in the Education and Health Department is a tenure appointment and the tenure is limited ordinarily to three years. The post of Assistant Secretary in the Political Department has not been a tenure appointment but is limited to a salary of Rs. 1,600. Military officers appointed to Assistant Secretaryships in the Army Department have a fixed tenure of three years extensible to five years. Extensions beyond this period are only granted in exceptional cases. The other posts of Assistant Secretary in the Government of India are not tenure appointments.

† Vide p. 1003 of these Debates.

‡ Vide p. 1021 of these Debates.

THE INDIAN COTTON CESS BILL.

Mr. J. Hullah (Revenue and Agriculture Secretary): Sir, I move for leave:

"To introduce a Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India."

The purpose of this Bill, Sir, is, briefly, to improve the quality and quantity of the Indian cotton crop and to enable the industry to levy from itself a small tax for its own development. The Indian mill industry already consumes about half of the commercial crop in India, and half of the mill consumption consists of what are known as the long staple varieties, that is, those suitable for working up to 20 counts and over. This consumption of the longer staple varieties practically absorbs the whole of those varieties that are grown in India and, consequently, there is no surplus left over for export and practically none for what is still more important, the development of the mill industry itself. On the other hand, we have a very large exportable surplus of the inferior cottons, namely, those of the shorter staples, and the export of these amounts on an average to 12 lakhs of bales annually and has been as high as 20 lakhs. But the market for these is limited and uncertain, and we do not know that the world will always be ready to take cotton of this inferior kind. The recent shortage in the American crop has now created a favourable opportunity for us to export cotton of superior varieties, if we can work up an exportable surplus of these varieties, and it is, therefore, obvious that we should aid the cotton cultivator to produce varieties which will enable him to profit by the demand of the world's markets and at the same to produce the larger stocks which the development of the Indian mills must inevitably require.

Considerations of this kind led the Government of India some five years ago to appoint a small technical committee, known as the Indian Cotton Committee. That Committee recommended a very large expansion of agricultural work on cotton, the establishment of a Central Cotton Committee at Bombay with a technologist and a laboratory, and they estimated that the cost of bringing into effect the proposals that they made would be about Rs. 16 lakhs. They suggested that this sum might be obtained by the levy of a cess of eight annas a bale on the whole of the commercial cotton crop. We have already established the Central Cotton Committee and they have shown very great energy and activity. Their advice has been most useful to us in connection with the Cotton Transport Bill, of which the Report of the Select Committee was recently laid before this House. We have also received most valuable advice from them on the very vexed question of the licensing of gins and presses. They are framing constructive proposals for the improvement of the marketing of cotton, by which I mean that the cultivator should obtain premia for cotton of superior staple, and, lastly, or, in point of time, firstly, it was they who made the definite proposals for the imposition of a cess which now find expression in the Bill which I seek to introduce.

The cost of the Central Cotton Committee is at present borne by general revenues and provision on this account exists in the present year's budget to the extent of Rs. 79,000. It is proposed in the Bill that the cost of the Committee shall be met from the proceeds of the cess. If so, it disappears from our Budget and to that extent this Bill will effect a measure of retrenchment.

[Mr. J. Hullah.]

We placed the proposals of the Cotton Committee for a cess before the Local Governments and they in their turn consulted all the more important commercial bodies such as the Bombay Chamber of Commerce, the Indian Merchants Chamber and Bureau, the Mill-owners' Association of Bombay, the Mill-owners' Association of Ahmedabad, the Cotton Contracts Board, the Punjab Chamber of Commerce, the Upper India Chamber of Commerce, the Karachi Chamber of Commerce and so forth. On the general proposal that a cess should be imposed there is absolute unanimity of opinion. Everybody, official or non-official, agrees that there should be a cess. There are differences of opinion on points of detail and on two points especially there is some divergence. The first is whether the cess should be levied on all commercial cotton—by which I mean all cotton exported and all cotton consumed in the spinning mills; or whether it should be levied only on the cotton brought to the mills and consumed there; or again only on exports. The great majority of opinion is that it should be levied on all commercial cotton, and we have framed the Bill accordingly. The other point on which there is a divergence of opinion is that the cess should not be 4 annas a bale, as we propose, but 2 annas. But here again, in retaining the rate of 4 annas we have followed the very great majority of opinions, but we have made provision in the Bill that the Governor General in Council may reduce the amount of the cess.

We anticipate that the proceeds of the cess—and the estimate can be made with fair confidence—will amount to between 8 and 9 lakhs of rupees a year. So far I have mentioned only the expenditure on the Central Cotton Committee itself as a direction in which this money will be spent; but, of course, this will absorb a very small amount of the total proceeds. The bulk of the proceeds we propose to spend on agricultural development and research. The Indian Cotton Committee itself placed this in the forefront of their proposals and we are doing the same. Neither we nor the Central Cotton Committee have any intention of relegating to the background, or even to a secondary place, the important matter of doing all that we can for the agriculturist and from the agricultural point of view. The Indian Cotton Committee, as I have said, made proposals which they thought would cost 16 lakhs. Out of this 16 lakhs, 14 lakhs would be spent on the agricultural side. Those were days when the War had just come to an end; when peace—and, we thought, plenty—was at hand; and in those Arcadian days we were thinking of turning our sword into a ploughshare and not into an axe. But now it is clear that the Local Governments are quite unable to incur the extra expenditure which the proposals of the Indian Cotton Committee will involve, and it is proposed that from the proceeds of the cess expenditure of the kind contemplated should be met. There is plenty to be done. Mr. Burt, the Secretary of the Cotton Committee, has supplied me with some notes of the main schemes which are under the consideration of the Central Cotton Committee and some of which they have already decided to support. In the Punjab a very grave position has already arisen owing to the unsatisfactory yield of the Punjab American crop. The Punjab American crop covers an area of approximately half a million acres and has added about 140,000 bales to the supply of Indian long staple cotton. It is the most striking instance in India of the replacement of a very short staple by cotton of a superior staple and has until recently been very rightly regarded as a triumph of the Agricultural Department. But recently there has set in very serious deterioration and we urgently need research to remove the causes of this deterioration which are at present imperfectly known. The Central Cotton Committee

have recommended that a special Research Staff should be provided from the cotton cess funds, and the investigations that will be made in the Punjab will have an important bearing on problems in Sind, Northern India generally and the western part of the United Provinces. In Bombay there are several schemes which require to be taken up and which the Local Government is unable to finance. The Agricultural Department has drawn attention to the necessity of investigating two very important problems. One is the loss caused by wilt in the southern Mahratta country, and the other the loss caused by boll-shedding in Gujerat. Again, there is need for special plant breeding work for the production of a better strain of the upland type of the southern Mahratta country. These problems, as the Central Cotton Committee realise, are of more than provincial importance. The first of them affects all the black cotton-growing soil in India—that is, about three-fourths of the entire cotton producing country. The second affects a well-defined tract of country lying between two provinces and one Indian State. It is a problem of very considerable importance. Another important problem to which the Bombay Government draw special attention is the loss caused by the spotted boll-weevil, and the problem of attacking this menace is at present under the immediate consideration of the Central Cotton Committee. Madras has put forward its own problems—two important schemes of research which they are unable to undertake, plant breeding work on the herbaceous cottons. Others have been received from the Central Provinces and the United Provinces. So it is pretty evident there is a very great deal of work to be done if the necessary funds can be found. Another proposal which the Central Cotton Committee have made is the institution of research studentships for graduates of Indian Universities for research on cotton, to be trained under competent experts; and finally we have in view as well, if we have sufficient money, the establishment of a Central Research Institute for cotton. That scheme has already been worked out in full detail and we hope some day, when the necessary funds are available, that such an Institute will be established.

Honourable Members may have noticed, in the papers that have been sent to them, a proposal by the Central Cotton Committee, following the advice of the Indian Cotton Committee, for the appointment of a technologist and the establishment of a laboratory for him. The purpose of this is to have a small spinning plant to test the suitability of the different Indian cottons for spinning up to various counts and especially to test new varieties of cotton. The great problem in India has always been to get the cultivator a fair price for cotton of superior varieties, and our agricultural officers know by bitter experience how trade valuations of new cottons are practically useless. The fact is that a commercial mill cannot undertake this work. It cannot go through all the very thorough and detailed tests which are required, and it cannot work on the very small quantities which a plant breeder will produce in the early stages of attempting to evolve a new variety. . . .

Mr. Deputy President: I wish to draw the attention of the Honourable Member to Standing Order 87 and to ask him to bring his remarks to a close; he has taken already over quarter of an hour. Under that Standing Order only a brief explanatory speech is allowed at this stage.

Mr. J. Mulla: I am sorry, Sir. I only wish to add that there remain two points emphasised in the opinions we have received. One is that there should be central control so that no province shall be able, by over-representation on the Committee, to obtain an undue share of the proceeds

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of the cess; we have provided for this in the Bill; central control is reserved to the Government of India. The second point is that the proceeds of the cess shall be spent on cotton and on cotton only; that we have effected by keeping the proceeds out of the general revenues and making them into a separate fund.

I now, Sir, ask for leave to introduce the Bill.

Mr. Deputy President: The question is:

"That leave be given to introduce a Bill to provide for the creation of a Fund for the improvement and development of the growing, marketing and manufacture of cotton in India."

The motion was adopted.

Mr. J. Hullah: I now introduce the Bill.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. Deputy President: The House will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, it now falls to my lot—an unpleasant task—to criticise the action of the police under this section. My learned friend, Mr. Seshagiri Ayyar, moved the first portion of my amendment on the last occasion. Therefore, Sir, I propose to move the latter portion, giving up that portion which has been already moved by my Honourable friend

Mr. Deputy President: I am afraid I must ask the Honourable Mover to move the first portion of his amendment No. 61.

Mr. K. Ahmed: Yes, Sir, the first portion has been moved by my Honourable friend, Mr. Seshagiri Ayyar. You leave the matter entirely in my hands, Sir, and I shall do the needful

Mr. Deputy President: It will read like this:

"At the end of sub-clause (iii) insert the following:
'and the words 'or otherwise' shall be omitted'."

I call upon the Honourable Member to move that amendment.

Mr. K. Ahmed: I beg to move, Sir, that:

"At the end of sub-clause (iii) insert the following:
'and the words 'or otherwise' shall be omitted'."

and at the end.

Mr. Deputy President: No, it would be to the convenience of this House if the latter portion of the amendment is taken up at a later stage.

Mr. K. Ahmed: So I am moving just the middle clause, Sir. Honourable Members of this Assembly are aware that when a man is brought forward before a Magistrate under section 110 he is alleged to have committed the offence of bad livelihood; that is to say, whenever it is within the knowledge of a Magistrate—Sub-divisional Magistrate or Presidency Magistrate—that a man is by habit a robber and that he is by habit a receiver of stolen property knowing the same to have been stolen or habitually protects or harbours thieves or aids in the concealment or disposal of stolen property or habitually commits or attempts to commit or abets

the commission of offences under Chapter XII of the Indian Penal Code or habitually commits mischief, extortion or cheating or counterfeiting coin or offences under any such sections as 489-A, 489-B, 489-C, 489-D of the Code or is so desperate and dangerous as to render his being at large without security hazardous to the community, then, Sir, under section 117 and sections 112 and 118 the accused is tried according to the evidence which is adduced by the police. The police as a matter of fact bring all sorts of evidence—such as was discussed on the last occasion. The word 'otherwise' is a very extraordinary word. Learned Judges of many High Courts have observed that this sort of word is very objectionable. As a matter of fact the meaning of the words 'or otherwise' has been held to be ambiguous by Judges, and reported in 15 Criminal Law Journal at page 705 and also in 21 Criminal Law Journal at page 810. Their Lordships found that a man's guilt under the above sections could not be proved by witnesses in all those ways and otherwise. What is the meaning of the words 'or otherwise?' If I follow the definition of law as it is defined by Bentham, Holland, Austin and by Professor Kenny of Cambridge University, Lecturer to the law students as well as to the successful candidates of the Indian Civil Service, who teaches them criminal law, i.e., Indian criminal law,—he defines it in this way, that unless and until you have got authentic evidence to prove that a man is bad, the science of jurisprudence tells you that in the eye of the law *ipso facto* he is an innocent person, and therefore you cannot prove anything against him by 'otherwise.' The science of jurisprudence tells you that every one is supposed to be innocent in the eye of the law, an honest trustworthy person, not a habitual criminal of the description given in the section I have read. A police sub-inspector arrests a man and tries to prove that he is an offender of the description given in any of those items; and in the matter of proving the guilt of the particular person the fact that he is a habitual offender or is a person so desperate and dangerous as to render his being at large without security hazardous to the community is to be proved by evidence of general repute or otherwise.

This man is a bad man. Give the dog a bad name. But why should you not go in a straightforward manner and prove that he is a bad dog or a bad man? Instead of doing that, you are making provision in the administration of justice to prove bad character by getting evidence not in a proper channel, not in a straightforward manner and something besides which is called "or otherwise." Suppose, Sir, in returning a compliment, any Member of this Assembly, out of courtesy, goes to pay a visit to my Honourable friend, Sir Henry Moncrieff Smith, at his residence, and at the time of coming back, after leaving his card in the box, anything is found or alleged to have been found stolen from his premises. Then you say "Oh, this thing has happened when such-and-such M. L. A. was walking along the street" and you prove by calling witnesses that he was found in such-and-such a place. Is that the way, Sir? No, certainly not. That is not the principle of law in any country, and I hope sincerely that this part of the clause—"or otherwise"—will be omitted. Here, Sir, I will quote from the judgment of two of the most important judges—for whom I have the greatest respect and reverence—two distinguished judges, the people of India have ever seen—I mean Sir W. Comer Petheram, Kt., Chief Justice and Mr. Justice Beverley of the Honourable High Court of Calcutta. It is reported in I. L. R. 28 Calcutta, page 621. They say:

"Evidence that there are rumours in a particular place that a man has committed acts of extortion on various occasions, that he has seducements in his employ to assist

[Mr. K. Ahmed.]

him, and generally that he is a man of bad character is not evidence of general repute under section 117 of the Criminal Procedure Code.

Evidence of rumour is mere hearsay evidence of a particular fact. Evidence of repute is a different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of good character. On the other hand, if the state of things is that the body of his fellow-townsmen, who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a man of bad character.

It cannot be said that, because there are rumours in a particular place among a certain class of people that a man has done particular acts or has characteristics of a certain kind, these rumours are in themselves evidence under section 117 of the Code."

Now, Sir, you have the words "or otherwise," that is, by means fair or foul, either this way or the other, you can bring evidence. You know the police. They are all-mighty, as I have said, and it is not difficult for the police to get any number of witnesses to depose that a man is of bad character. This is a matter which is specially confined to the police and he can prove anything he likes. There is the Evidence Act. It applies anywhere and everywhere. But, as I have said already, the police is a magic lantern which gives you all shades of light, the mystery of which we cannot understand. The Evidence Act fails; knowledge and experience fail when you bring a man under arrest and prove his character to be bad by calling in anybody and everybody in any way you like. Certainly, Sir, for the ends of justice, these words "or otherwise" should be omitted, and I therefore move that the words "or otherwise" should be deleted from sub-clause (iii) of clause 20.

Mr. Deputy President: Amendment moved is:

"At the end of sub-clause (iii) insert the following:

'and the words 'or otherwise' shall be omitted'."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I have listened to my friend, Mr. Kabeer-ud-Din Ahmed, with great attention because I wondered what arguments he was going to advance for the deletion of these words "or otherwise." He began by regretting—I am glad that it is a matter of regret for him—that he had to attack the police. Well, Sir, that, I would suggest, was not relevant to the amendment before the House. There is no question here in this clause of the conduct of the police at all. The sub-section which the Bill amends is merely framed for the guidance of the Magistrates, and the police have no concern in it whatever. The case is, by the time this sub-section operates, entirely in the hands of the Magistrate.

Sir, Mr. Kabeer-ud-Din Ahmed recited numerous rulings which, he says, go to show that the words "or otherwise" cause great difficulty. He went so far as to read us a long extract—a very interesting extract indeed, but entirely irrelevant to his notice of amendment. All that the Court said in that case was that certain evidence which had been produced was not evidence of general repute. We are not talking about evidence of general repute at the moment. We are talking about the words "or otherwise." Sir, the point is a very simple one and I hope I can explain it to the House clearly. The words "or otherwise" have occurred in the Code of Criminal Procedure since 1882. When the Lowndes Committee was appointed to consider the Code and to suggest a revision, they cut these

words out. They gave no reasons for it. They just merely mentioned in their report: "We have, however, deleted the words 'or otherwise' ". I venture to suggest to the House that they did so without full consideration of the effect of the amendment which they were suggesting. The Courts in this country, as in any other country in the world, look upon the Legislature as a reasonable and responsible body. That is to say, when the Legislature does something, the Court assumes that the Legislature had some reason for its action. Here we have got a law which has been in force for 40 years. The Legislature suddenly cuts out the words "or otherwise" and apparently makes a change in this section. Well, Sir, the Courts then say to themselves, "The Legislature must have had some reason for cutting these words out," and they find it rather difficult to find that reason. It is not that the words 'or otherwise' are doubtful. There has never been any doubt about them at all. (*Mr. T. V. Seshagiri Ayyar*: "What is the meaning?") I will explain what the meaning is if the Honourable Member will wait for a moment. It is merely this. The sub-section runs thus:

"For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise."

The meaning of that simply and solely is this, that evidence of general repute is not the only means of proving that the person is an habitual offender. The words "or otherwise" are added to make it quite clear that you are not overriding the provisions of the law of evidence; that is, any evidence which would be relevant or admissible under the Evidence Act can also be utilised for the purpose of proving that a man is an habitual offender. I think that is the only explanation. If we cut out the words, and the Courts seek for the reason of our action, what conclusion do they come to? They arrive at this conclusion,—the Legislative Assembly and the Legislature, if the Bill is passed in this form, intended to lay down that the word "may" in this section, as so often happens in our Statute Book, is equivalent to "shall"; that if you want to prove that a person is an habitual offender, the only way you can do it is by evidence of general repute. That point was very carefully considered by the Joint Committee. The Joint Committee decided that it was unsafe to remove the words and that it was much better to put them back again, and I submit that this is a case in which, at all events, this House should endorse the action of the Joint Committee. (*Rao Bahadur T. Rangachariar*: "Will you please read the chit I sent you?") (*An Honourable Member*: "May be proved also by evidence of general repute.") (*A Voice*: "'Also' by itself has no meaning there.") *Mr. Rangachariar* has sent a note across from which I gather he quite understands that it means that it may be proved by evidence of general repute in addition to any evidence that is admissible under the Evidence Act. The section may be worded in numerous ways, but I would suggest to the House that the drafting that has stood for forty years is clear. *Mr. Ahmed* has cited rulings to support his contention that the words have caused difficulty, but the words "or otherwise" have not been referred to in those rulings. There is not a single case in which they have caused difficulty. Commentaries refer to the words in one High Court Judgment, but in that case they caused no difficulty. Therefore I would suggest that we do not alter the phraseology of the section which has stood so long.

Colonel Sir Henry Stanyon (United Provinces: European): I have very little to say in supplement to what has been said in explanation of these words by *Sir Henry Moncrieff Smith*. The argument of the Honourable

[Colonel Sir Henry Stanyon.]
and learned Mover suggests that he interprets the words "or otherwise" to mean "or in any other informal or illegal or hearsay manner that the police and the Magistrate may please." They do not mean that at all. This is a portion only of the adjective law and this section is governed by the Law of Evidence. It provides an exception to the law of evidence where it provides for proof by evidence of general repute; and then it makes it clear that the general law of evidence also applies by using the words "or otherwise." "Or otherwise" means "or in any other way allowed by law." There is no published judgment which has interpreted the words in any other way; and that being so, although there is much to be said for the improved form which has been suggested by the Honourable Mr. Rangachariar (if I may refer to him by name), still it is always advisable to keep to a phrase that has been on the Statute Book so long as this phrase "or otherwise." Therefore I would suggest that the clause be allowed to stand as it is.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I do not like to prolong the discussion, but I would just point out to the Government that there is a difficulty which it is better to avoid by adopting the suggestion which Mr. Rangachariar has brought forward. If you use the word "otherwise" following the words "of general repute," according to the ordinary canon of construction, the word "otherwise" would govern the kind of evidence which is referred to in the previous clause. That is the reason, I take it, the Calcutta High Court has felt some difficulty. Unfortunately I have not been able to get at the judgment. When I read the clause it struck me that the word "otherwise" is liable to be misunderstood, and that is the reason why the Lowndes Committee wanted its omission. If your idea is that the general rule of evidence should apply *plus* "repute" evidence, the proper way of carrying out that idea is to use the language which has been suggested to you by my Honourable friend, Mr. Rangachariar. If you allow the words "or otherwise" to stand, I fear it is capable of being interpreted, as evidence of the same character that has been enumerated before, namely, "repute" evidence. That is the proper rule of construction and it is liable to be understood in that light. Therefore, in order to make the position clear, I think the Government will be well advised to accept it—we do not care very much about the matter—but I think in the interests of proper drafting, it is desirable that the ambiguity should be removed, as the words "or otherwise" are liable to the construction which I have just mentioned.

Mr. Deputy President: The question is:

"At the end of sub-clause (iii) insert the following:
'and the words 'or otherwise' shall be omitted'."

The motion was negatived.

(Mr. Deputy President then called upon Mr. Agnihotri to move his amendment.* Mr. Agnihotri was absent.)

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatam: Non-Muham-madan Rural): I am appearing for Mr. Agnihotri. I do not move it* as Mr. Ahmed is moving his amendment.

* "After sub-section (5) as re-numbered the following sub-section shall be inserted:

"(6) General repute in this section means an opinion based on either personal knowledge of the deponent or concrete instances."

Mr. K. Ahmed: I move:

"That the following clause may be inserted after clause 20, sub-clause (iii).

Explanation: General repute is the reputation of a person in the place where he resides or carries on business, among the general body of his neighbours who are acquainted with him or have personal knowledge of his reputation, and excludes mere belief and opinion not founded on specific instances of acts falling under clauses (a) to (e) and rumour."

It is not necessary for me to dilate upon the subject any further. I will add to them by reading the closing lines of the judgment of Sir Comer Petheram C. J., and Beverley J., reported in I. L. R., 23 Cal. page 621. The closing lines are these:

"We cannot help thinking that if that state of things, which is said to exist and to have existed, had in truth existed there, some very different measures would have been taken by the authorities on their own motion than those which have been taken; and that being the state of things, we cannot think it safe to act upon this evidence, and the result is that the rule will be made absolute and the bonds were cancelled."

That is the opinion of the Learned Chief Justice of the Calcutta High Court and his words are before the country and the Honourable Members of this Assembly who represent the people of this country. We get so many Statutes and Acts passed by this Assembly and they are interpreted by the Honourable Judges of the High Court and their rulings are accepted in the interpretation of Acts. That was the ruling of the Chief Justice and Mr. Justice Beverley. We use that ruling and use it successfully in any Court of law to defend persons accused on evidence of general repute adduced by the police. What I want is that the law should be brought into conformity with the ruling given by the Judges of the High Court and that the following words should be added as an explanation:

"General repute is the reputation of a person in the place where he resides or carries on business among the general body of his neighbours who are acquainted with him or have personal knowledge of his reputation and excludes mere belief and opinion not founded on specific instances of acts falling under clauses (a) to (e) and rumour."

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Do you mean to say clauses (a) to (e) or only clauses (a) and (e).

Mr. K. Ahmed: I have no hesitation in moving that the concluding portion should read "clauses (a) to (e) and rumour". In order to prove a case like this, it is absolutely necessary that it should be "clauses (a) to (e)." That evidence is necessary to prove reputation. It is absolutely necessary for the ends of justice that it is only the people who live in the neighbourhood or vicinity of the village who can come forward and they are the only persons who come forward and give evidence as regards the reputation of a man and not persons who are not in any way concerned to come forward and give evidence in support of the defence or the accused and therefore it is necessary that this Explanation after clause 20, sub-clause (iii) should be added. Otherwise there is no royal road for the poor accused to get out of the trap. That being so, my proposition has been supported by the rulings and the observations which I have read out. I think, Sir, representing the people of India, we are not here to accept a law which does not give protection to our people whom we are supposed to represent and therefore it is the duty cast upon each and every Member of this Assembly to see that the welfare and the amelioration of the condition of these Indian peoples is not endangered and that they are not made victims in the hands of the police. I suppose, Sir, I have made out a strong case. The ruling which I have cited is already in existence and we generally use it. I cannot go back on the ruling of the

[Mr. K. Ahmed.]

Honourable High Court Judges. My Honourable friend, Mr. Innes, is not here. He would have wanted a little bit of economy towards this expenditure of paper and I ask the Honourable Member for the Government to accept this Explanation after clause 20, sub-clause (iii) and will not object to any further, depriving the justice suggested by the Judges in those rulings which I have already read out. I hope the Government Member will accept this amendment.

Sir Henry Moncrieff Smith: I want to put forward two reasons why the Government cannot accept this definition of "general repute" put forward by my Honourable friend. Experts have recognised for a long time that it would be a most excellent thing if we could introduce a definition of "general repute" into our Code of Criminal Procedure in this section 117, but the experts have always failed to arrive at a satisfactory definition. The House will remember that only on Saturday my Honourable and learned friend, Mr. Subrahmanayam, who is not here, to-day, pointed out that no difficulty had arisen from the absence of a definition and that the courts had had to consider it so often and had laid down so clearly the principles that the magistrates should follow that no magistrate now found the slightest difficulty in finding out and deciding for himself what evidence was admissible and what was not. Those were practically Mr. Subrahmanayam's words. Here again, I would ask the House to realise what section 117 (3) really means. It says that the fact that a person is a habitual offender can be proved by evidence of general repute. That is

1 P.M. to say, notwithstanding what we have in the Evidence Act, general repute is a relevant fact when you try to prove that a person is an habitual offender. Now Mr. Ahmed has, I think, followed the line of examining all the High Court rulings he could get hold of and of trying to bring them together under one definition. One High Court has had before it a case in which the witnesses have come from distances, and their evidence has been mere hearsay: the High Court said, 'this was not evidence of general repute, because the evidence was hearsay evidence, it was not evidence within the knowledge of the witnesses and therefore could not be brought within the four corners of the law of evidence.' That is what happened in every ruling. The Judges have merely laid down that if you attempt to give evidence of general repute, general repute as a relevant fact must be proved according to the law of evidence. I wish to indicate to the House the dangers of attempting the definition of a term like this. As I say, the Courts have in various cases indicated what evidence should not have been admitted; and when they go on to say that evidence of general repute must be of people living in the neighbourhood, that remark naturally applies to the particular case. If we are to attempt a definition at all, the definition should be on such lines as the rulings of the Courts, that evidence of general repute is not so and so, and it should be in a negative form; it is practically impossible to get an exhaustive definition in the positive form which will not rule out very much valuable evidence. Let us take the ordinary case of an habitual offender or of a desperate or dangerous person who now comes within the purview of the section. A very ordinary case is that of a man who is never at home at night. He is a suspected person. The police go round to his house at night, and they never find him at home. On the contrary, they always find him asleep all day. Well, that, by itself, may be no evidence, because he may have an occupation which keeps him employed. But suppose the evidence is that the man has no occupation at all, none whatever,—that he is seen

in the company of ex-convicts, and he has no income; nobody knows what his income is, and yet this man lives in very good style, spends a lot on his clothes, on luxuries, and on vices. Well, all that is corroborative evidence, surely, of the man's reputation, and it might come within some of the four corners of Mr. Ahmed's definition, but it is very dangerous indeed to attempt an exhaustive definition in case you rule out evidence, the only evidence in the case which may be available, to bring this habitual offender to book. I began by saying that experts realised that it would be an excellent thing if we could have a definition and it is not the first time it has been considered. It has been attempted over and over again. It has been attempted so often that the House will find, if it looks at the Report of the Lowndes' Committee, that that Committee referred to it and said, "it has been suggested that a definition should be introduced into the Code", and they went on to say, "we have not attempted to frame a definition". They realised the impossibility. The fact is, you would have to work right through the Evidence Act and consider every clause of the Evidence Act and to have regard to that in making your definition if it is to be at all exhaustive. Therefore, I would suggest to the House that where experts have failed and where the Lowndes' Committee, which included many eminent Judges and many eminent lawyers, has failed, has realized the impossibility of even making an attempt, the House itself should not attempt to make any change in the law which has stood in this case also for 40 years.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan, Urmah). Sir, I cannot support this amendment and must object to it strongly. In the first place, the man who would require most protection, if this is a protection, is the one covered by clause (f) of section 117 which is now added to the category of people against whom evidence of general repute may be given. I need not labour the point because I set out my objection in opposing that amendment about the desperate character who however dangerous might be a tyro against whom anything in the shape of general repute such as could be predicted about an habitual offender might be urged; but I do think, Sir, and I should suggest to Mr. Ahmed to consider that what he is seeking is not a help to the people, not a help to the accused but is really taking away existing safeguards broadcasted over a series of well understood judicial interpretations and decisions about which neither the police nor the magistracy can have the slightest doubt. If you were to attempt to circumscribe and define it in that way, however much a good definition or explanation be needed a variety of safeguards, such as the decisions, however contending, already contain would not be provided for. Mr. Chief Justice Petheram's judgment itself for example is a strong argument against the acceptance of this amendment. It is by a series of negotiations that the different High Courts have from time to time provided the safeguard as to what is or is not general repute and what shall not reckon as general repute. They are there and they have the force of law, therefore, why interfere with them? Let the accused have the fullest possible benefit of these judicial decisions upon which nobody can go back unless the Legislature chooses to go back upon them, as is now suggested. However necessary they may be, it cannot be effectively done on the way proposed. If my view is correct, Sir, I would like to suggest to Mr. Ahmed and some of my friends that we might agree upon the different amendments that might well be given the go-bye and let us concentrate our attention on things that really matter. We have a tremendous number of clauses yet to go through, and, as was indicated to-day by the Leader of

[Sir Deva Prasad Sarvadhikary.]

the House, other necessary work of the House must suffer unless we are very careful about time. I do not for a moment suggest that the things that matter should be hustled or rushed, but we ought to concentrate our attention upon those, and might well agree upon letting things alone that may very well be let alone. I believe this, as put, is one of them.

Rao Bahadur T. Rangachariar: Sir, I am sorry, my Honourable friend, Sir Deva Prasad Sarvadhikary, has chosen the wrong moment for his homily to the movers of amendments to the Criminal Procedure Code. Sir, those of us who have to work the machinery of this Code alone know the defects which exist in the Code, and, Sir, the lay public, the impatient lay public, no doubt are getting impatient over the amendments moved in this House, and they offer all sorts of advice; and I am surprised that my Honourable friend, Sir Deva Prasad Sarvadhikary, has chosen to join those ranks.

Sir Deva Prasad Sarvadhikary: Not of the lay public, though.

Rao Bahadur T. Rangachariar: But this subject of general repute has given the greatest difficulty to the Courts in administering this section, and I can quote from the Honourable Bar to which my Honourable friend belongs. This is what the Calcutta Bar Association say, it is important:

"There is no phrase in the Code round which a larger body of legal literature has grown up than general repute. It is hopeless to reconcile the bewildering array of rulings on this subject or to draw any clear ruling from them taken as a whole. As evidence of habit, general repute is of the least value; it is mere opinion, it is hearsay. We therefore think that the elucidation of the meaning and scope of the expression 'general repute' is absolutely necessary.

We suggest here a few salient points based on certain rulings, though we do not pretend to deal exhaustively with such a difficult matter."

Sir, I am glad to admit that there is no greater Bar than the Bar of the Calcutta High Court; and when they recognize such great difficulty in this matter, for my Honourable friend to spring up and warn the movers of amendments not to waste the time of the House, etc., he is really quite out of place. I may also say, Sir, that the Madras Bar have felt the same difficulty. They say:

"The character of the so-called repute evidence is well-known to be a very dangerous departure from the salutary principle of the exclusion of hearsay evidence. The manner in which the evidence of repute, so-called, has been admitted, even where admissible under the present law, has not been satisfactory."

I think I may say from my own experience that this is a very very difficult question. And we are now dealing with the cases of Magistrates of the second and first-class, probably raw men who are put on to perform the duty of admitting evidence of general repute. Admittedly, that evidence ought not to be admitted; we are making an exception in the general law of evidence and we are departing from the English law and from our ordinary law in this respect in allowing this evidence to be admitted at all. Therefore, it is but right that we should give some guidance to the magistracy by way of an explanation. That explanation is based upon several rulings of the Calcutta and other High Courts. My Honourable friend, Sir Henry Moncrieff Smith, has no objection to the wording of the explanation so far as that goes; at any rate he has not said that it is incorrect; but what he fears apparently is that there may be other cases of evidence relating to general repute which may be excluded by this explanation. But what is the explanation? "General repute is the reputation of a person in the place where he resides or carries on business." what is there wrong in that?

Do you want the reputation which a person residing in Madras has in Calcutta or anywhere else equally far? Then it goes on—"among the general body of his neighbours who are acquainted with him or have personal knowledge of his reputation, and excludes mere belief and opinion not founded on specific instances of acts falling under clauses (a) to (e) and rumour." That is what the explanation is and it is embodied, so far as I have been able to see on the rulings of the Calcutta High Court. I am not able myself to see what other evidence can be admissible as evidence of general repute. It must be remembered too that repute evidence is admissible only as an exception, and I think we should limit it as far as possible. It is dangerous to allow this exception, and it is much more dangerous to allow it without an explanation for the guidance of the magistrates who are not trained lawyers. Even English Judges in trying matrimonial cases, in which repute evidence is admissible, have felt the greatest difficulty in deciding what evidence is admissible and what not. Unless, therefore, the Government Members are able to suggest some other kinds of evidence which come under general repute, I do not see why we should not use the explanation, which is comprehensive enough to allow all such evidence as can safely be admitted.

The Assembly then divided as follows:

AYES—32.

Abdul Quadir, Maulvi.
 Abdulla, Mr. S. M.
 Agarwala, Lala Girdharilal.
 Ahmed, Mr. K.
 Ahsan Khan, Mr. M.
 Asad Ali, Mr.
 Ayyar, Mr. T. V. Seshagiri
 Bagde, Mr. K. G.
 Bapat, Mr. S. P.
 Basu, Mr. J. N.
 Bhargava, Pandit J. L.
 Chaudhuri, Mr. J.
 Gulab Singh, Sardar.
 Ikramullah Khan, Raja Mohd.
 Iswar Saran, Munshi.
 Jafkar, Mr. B. H. R.

Lakshmi Narayan Lal, Mr.
 Mau Singh, Bhai.
 Misra, Mr. B. N.
 Mukherjee, Mr. J. N.
 Nabi Hadi, Mr. S. M.
 Nag, Mr. G. C.
 Neogy, Mr. K. C.
 Peary Lal, Mr.
 Ramayya Pantulu, Mr. J.
 Rangachariar, Mr. T.
 Reddi, Mr. M. K.
 Sarfaraz Hussain Khan, Mr.
 Shahani, Mr. S. C.
 Srinivasa Rao, Mr. P. V.
 Venkatapatiraju, Mr. B.
 Vishindas, Mr. H.

NOES—39.

Abdul Rahim Khan, Mr.
 Aiyar, Mr. A. V. V.
 Akram Hussain, Prince A. M. M.
 Allen, Mr. B. C.
 Barua, Mr. D. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Dalal, Sardar B. A.
 Davies, Mr. R. W.
 Faridoonji, Mr. R.
 Ghulam Sarwar Khan, Chaudhuri.
 Gidney, Lieut.-Col. H. A. J.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.

Holme, Mr. H. E.
 Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.
 Ley, Mr. A. H.
 Mitter, Mr. K. N.
 Moncrieff Smith, Sir Henry.
 Muhammad Ismail, Mr. S.
 Percival, Mr. P. E.
 Samarth, Mr. N. M.
 Sarvadhikary, Sir Deva Prasad.
 Sen, Mr. N. K.
 Singh, Babu B. P.
 Singh, Mr. S. N.
 Sinha, Babu Ambica Prasad.
 Spence, Mr. R. A.
 Stanyon, Col. Sir Henry.
 Subrahmanayam, Mr. C. S.
 Tonkinson, Mr. H.
 Webb, Sir Montagu.

The motion was negatived.

Mr. Deputy President: The question is that clause 20 stand part of the Bill.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, I move the amendment which stands in my name, *viz.*:

“Omit the whole of clause 21.”

I wish to briefly explain the object of this amendment. We are now dealing with the Chapter relating to taking security for keeping peace and good behaviour. We have passed the stage in which the order has been passed by the Magistrate calling upon the accused person to give security. The stage now is where the security is offered under section 122. As it now exists a Magistrate may refuse to accept any surety offered under this chapter on the ground that for reasons to be recorded by the Magistrate such surety is an unfit person. The new clause proposed by the Government is an attempt to improve that section. Honourable Members will notice that the section as it stands leaves it to the discretion of the Magistrate to refuse to accept a security for reasons to be recorded by him on the ground that he is an unfit person. The first attempt made in this amendment by the Government is to define what is meant by an unfit person, and in making that attempt, if Honourable Members will now look at the amended clause before them, they will see that they want to tell the Magistrate in such and such a case you may call him an unfit person, that is, he is not a man of good moral character. What is meant by a man not of good moral character. Not only is the reputation of the poor fellow who is called upon to give security for keeping the peace or good behaviour at stake, but the reputation of the unfortunate person, whom it may be very difficult to secure in order to find as a surety, is in the hands of this Magistrate, who can say that he is not a man of good moral character. Are persons belonging to the C. I. D. men of good character, of good moral character, when they pry into other peoples' affairs? Do people belonging to the Income-tax Department come under the category of men of good moral character when they pry into my accounts and encourage my neighbours to spy on me and give evidence? What is meant by a man of good moral character? Is a big zemindar who openly lives with his concubine a man of good moral character? Is he a man of substance? Is he not a man quite worthy? Is he not a man whose bond is good enough? What is meant by the alteration now proposed by Government? It is merely adding to the terrors of this chapter. Not only do you bind the man to give you security for keeping the peace but you make it impossible for him to give that security. Would I, even if he were my best friend, go and stand surety and take the risk of being called a man of bad character at the hands of the Magistrate? Am I to place my reputation in the hands of the ill-paid police and the other agencies which are at work in binding over people to keep the peace? Now, take the other thing: “unable to control the movements or action of the person by whom the bond is to be executed.” You cannot judge beforehand. If I am unable to control the movements, if the man commits a breach of the bond, I forfeit a substantial sum, and the man who breaks the bond will be convicted for the offence and sent to jail; and I forfeit a heavy bail which I have given. The Magistrate is to decide whether I, the surety, will be a man who will be able to control the movements or action of the person by whom the bond has been executed. It is a very difficult task which you are imposing upon the Magistrate. The next condition is “of insufficient means to enable him to fulfil his

pecuniary liability under the bond." That goes without saying. Why do you want an explanation? Have any Magistrates found any difficulty in rejecting a security when they found that the man was not of sufficient means? That shows that you do not want to have any faith in the Magistracy and that you do not think that they have the common-sense to find whether a surety is a fit surety or not. If he is not possessed of means to fulfil his pecuniary liability under the bond, that is the commonest ground on which the Magistrate would refuse to accept a security, so that the guidance given to the Magistrate in this case is in one respect unnecessary and in other respects it is a dangerous pitfall and shows the anxiety of the authorities to make it difficult for the man to find a surety, which even ordinarily is difficult to find. That is one of the objects in view. I now come to the second object in view. Under the law as it now stands, the Magistrate, once he has taken security, once he has accepted the surety, cannot cancel it afterwards if the circumstances change. Now it is proposed not only that he may originally refuse to accept the securities, but after having accepted security, say after six months of the period is over, that the Magistrate should have power to cancel it and call upon the man in question to give security all over again. Of course the position now is that the surety himself may come forward, after having given security and ask to be relieved of the security if he finds the man on whose behalf he has given it is a troublesome man. Then the Magistrate will call upon the man to furnish additional security. Now we are to give this power to the Magistrate again, although a man finds difficulty enough in finding the original security. To give this power to a Magistrate to revoke a security once it has been accepted is not necessary and it may lead to abuse of the power. It is not a case of punishment; it is of a purely preventive nature. A man has given security which is thought good enough; there is no reason why power should be given to revoke it afterwards.

The third provision is that if the surety is to be rejected the Magistrate is to do this and that. It is a judicial discretion which has been invested in the Magistrate; he is to be taught the elements of his duties, informing him that if he wishes to reject a surety, he must, in making an order refusing to accept, take evidence. Any Magistrate with any sense in him will do it. What is the use of telling him to record the substance of the evidence? It is not necessary for this duty to be taught to him; otherwise he is not fit to be a Magistrate. Therefore the three objects aimed at by this amendment are either unnecessary or likely to be mischievous, and this amendment is unnecessary. The section may be left as it is; it is wide enough. The discretion may be left to the Magistrate. What is the difference? The Magistrate may refuse to accept a surety on the ground, for reasons to be recorded by him, that such surety is an unfit person. His hands are not tied, and that judicial discretion is to be controlled by the High Court. I do not think therefore that any case has been made out for making this change. The 17 and odd amendments which follow will show what difficulty lawyers feel in laying down rules for the guidance of the discretion of Magistrates. I think it was Jenkins C. J. who said:

"In these matters of discretion, it is always very difficult to lay down rules for guidance. You must leave it to the good sense of the Magistrate, and that good sense is liable to be controlled by higher authority."

Therefore I ask that the section be left as it is, and this amendment be not made, and I move the amendment which stands in my name.

Mr. Deputy President: The amendment is to omit the whole of clause 21.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, my Honourable friend proposes to delete the whole of clause 21 from the Bill. This clause, Sir, proposes to substitute a new section for the existing section 122. Let us see, in the first instance, what the provisions consist of. In the first place the Magistrate is given power to refuse to accept any surety offered, or to reject any surety previously accepted by him or by his predecessor. Secondly, provisions are made as to what is to take place before a Magistrate refuses to accept or reject any such surety. He must satisfy himself by inquiry on oath into the fitness of the surety, or cause such an inquiry to be held by a subordinate Magistrate. Then for the guidance of the courts an attempt has been made to indicate the grounds upon which a Magistrate may find a person to be unfit. Fourthly, it is provided that he shall record the substance of the evidence [sub-section (2)]; and finally in the case of an order rejecting a surety, it is provided that the person for whom the surety is bound to appear must be present. Now, Sir, my Honourable friend objects, in the first place, to the provisions as to the reasons for finding a surety to be unfit. We have amendments later in the list on which this question can be more fully and perhaps more properly considered. I would merely remark now that, as regards the first clause in it, as to good moral character, the Government lay no particular stress upon the word 'moral.' That a person is not of good character is, however, certainly a ground which has been generally considered by all the High Courts as one which should be applied. Then he objects, Sir, to clause (c) to the effect that the surety is unable to control the movements or actions of the person by whom the bond has been executed. That, Sir, is, in very general terms, the criterion which has been consistently considered by the Allahabad High Court to be the principal ground for finding whether a surety is fit or is not fit. Surely, Sir, what we should consider on the present motion is not these particular provisions. We shall have a chance of considering those at length later. Is it not now advisable to consider whether it is desirable to place in the Code definite provisions which will guide our Magistrates as to the action which they should take in these cases? Before proceeding further, I should like to draw the attention of the Assembly to the fact that in clause 107 of the Bill we are providing for an appeal against the orders passed under this section. Now, Sir, that clause has not been unnoticed by my Honourable and learned friend because he has given notice of an amendment to that clause. I submit, Sir, the amendment which he has proposed to that clause is entirely inconsistent with the amendment which he has proposed to this one. The position is that we propose to provide in the Code for an appeal against the orders of a Magistrate. At present we have a provision for revision. Well, there is a great difference between provisions for revision and provisions for appeal. Powers of revision are powers given to the courts. They are discretionary powers which may be exercised or not as the courts think fit; but when we give a right of appeal, we grant a right to the subject, and if we are to call upon our appellate courts to deal with these questions on appeal, it is essential that they should have proper material upon which to base their decision.

Rao Bahadur T. Rangachariar: Even now the section runs: "For reasons to be recorded."

Mr. H. Tonkinson: The Honourable Member asks the question as to what is the necessity of providing in the Code for an inquiry. He sug-

gests that it is practically teaching the Magistrate what he should do. Well, Sir, I suppose he will admit now that our High Courts are practically unanimous to the effect that there should be a judicial inquiry under this section. They are not, Sir, unanimous as regards the other point as to whether the inquiry should be on oath. The only rulings on that point are to the effect that in such an inquiry the Magistrate has the power, if he thinks fit, to take evidence on oath. I do not know whether it is necessary now to refer to the rulings on the question, but I should like to refer to the history of the clause. The proposals of the Government of India were contained in the Bill of 1914. In that Bill Government proposed to include a provision that

"before making an order refusing to accept a surety under sub-section (1), the Magistrate shall either himself inquire into the fitness of the surety or direct such inquiry to be made by any Magistrate subordinate to him, and the report of such subordinate Magistrate shall be admitted as evidence of the facts stated therein."

That clause, Sir, with opinions received upon it was considered by Sir George Lowndes' Committee and they noted in their remarks on clause 17:

"We think that the inquiry should be held upon oath and that the Magistrate should be bound to record the substance of the evidence adduced before him."

Then the Joint Committee included fresh provisions and so we have the clause as it stands in the Bill, a clause which I suggest is a distinctly reasonable proposal. We are providing for an appeal; we must, Sir, therefore definitely enact in the Code what are the materials which the Magistrate must include in the record of his inquiry under this section. Incidentally, I may say that the section does give power to enable a Magistrate to delegate the inquiry to a Magistrate subordinate to him, which the Allahabad High Court has held cannot now be done. In view of the fact that my Honourable and learned friend must, as I think he will admit, see that the amendment which he has proposed to clause 107 of the Bill is entirely inconsistent with his present amendment, I hope that he will withdraw his amendment.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. Deputy President was in the Chair.

Mr. Deputy President: The amendment moved is:

"Omit the whole of clause 21."

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, I rise to support the amendment so ably moved by my learned and Honourable friend, Mr. Rangachariar. I say that the proposed new clause is quite vague and unworkable and would cause delay in the disposal of surety cases. One result would be that every person from whom a security is demanded will have to remain in custody for some time till the question whether a surety is proper or improper is decided. Now the limitation placed upon the competence and the qualifications of a surety are to be limited by these words, namely, not of good moral character. Now what is the meaning of these words—not of good moral character? It would depend upon the sweet whim of a Magistrate. One Magistrate may say that a person who is an ex-convict for murder is a man of bad character. Another Magistrate may say that every ex-convict is a man of bad character,

[Lala Girdharilal Agarwala.]

including a man who has been fined one rupee in a case where he drove his motor without a lamp at 6-15 P.M. Then again one Magistrate may say that a Non-co-operator is a man of bad character, or not of good character; while another may say that a man who does not vote according to the Joint Magistrate's view at a municipal meeting where the Joint Magistrate happens to preside is not a good character. Where is the line of difference? How do you draw the line? Now, Sir, an orthodox Hindu might say that a man who drinks soda and lemonade is not a man of good character. Again, the "drys" will say that a man who drinks is a man of bad character. The "wets" on the contrary will say that a man who abstains from drink is a bad character. Now where is the line to be drawn? Now, Sir, some people might say that a man who marries in a community which is not his own is a man of bad character. There are many who say that. Others may say that a man who keeps a concubine secretly is a man of good character, but that he who keeps a concubine openly is a man of bad character. I do not want to be long; I have just explained my object that this is too vague. Now, sub-clause (b) runs:

"of insufficient means to enable him to fulfil his pecuniary liability under the bond."

This is simply saying that a man who has got no property should not be a surety. That is the ordinary law now; the present law provides also for that, and nobody would take a surety from a man who has got no means. This does not require to be changed. The last sub-clause is "unable to control the movements or actions of the person by whom the bond has been executed."

How is the Magistrate to know that beforehand? I submit that this too is most improper and one result that would be inevitable in every case would be that the person against whom an order for finding surety has been passed would have to live in jail for some time before he is, if at all, released on furnishing security. With these words I support the amendment.

Sir Deva Prasad Sarvadhikary: Sir, I wish even at the risk of earning a Rangachariar like rebuke from the Government Benches I could have preached what Mr. Rangachariar calls a homily and ask them to economise time; because if they consented to dropping this proposed clause and accepted Mr. Rangachariar's amendment they would have got rid of 17 amendments at a stroke and economised much time. I am afraid, however, that that homily at all events would be inopportune. There are occasions when however it can be successfully and effectively preached and Government might also respond to my appeal by accepting what can be accepted without detriment to the public weal, as I said previously.

It is always a pleasure to be able to agree with Mr. Rangachariar. Sometimes it is possibly expedient because the severity, assumed or otherwise, of his wrath and the mode of its expression is apt to be uncomfortable now and again. But here, Sir, we have a vivid illustration of the utter baselessness of his contention. Section 122 is far too broad and general. Government attempts to define, Government attempts to afford some safeguards, some differentiating elements, that would be the much needed guide, but Mr. Rangachariar thinks that generalities, indefiniteness and vagueness are about the best and had better continue and attempted definition is to be deprecated. I do not know whether he has behind him on this

occasion the support of his own Bar Association. Now, it is quite clear that section 122 as it stands is capable of improvement, certainly in two directions; one has been pointed out already by Mr. Tonkinson. We are going to have an appeal now, and the materials for a proper appeal must be there. Therefore evidence is to be recorded, at least its substance. Well, so far as insistence on moral character in sureties goes, I am afraid it is a dead horse as far as the Government is concerned. It is no good Mr. Agarwal's multiplying his notion about various elements of good or bad character; Government is prepared, I believe, to drop its insistence upon moral character in sureties, if I understood Mr. Tonkinson aright . . .

Mr. H. Tonkinson: On the word 'Moral.'

Sir Deva Prasad Sarvadhikary: Government does not want to insist on the word 'moral.' Any way we can discuss all that detail only in the course of the amendments that follow and we shall judge which to accept and which not to. But if you drop as Mr. Rangachariar suggests the whole of the proposed clause 122, why the, the very necessary safeguard I have referred to will be denied to us. If we can get rid of the objectionable features of section 122, as pointed out in the amendments against sub-clause (a) of clause 122 (1) and also in Mr. Iswar Saran's amendment with regard to the incoming man interfering with what his predecessor had done, where is the good in retaining the clause as Mr. Rangachariar suggests? I think we ought to concentrate our attention upon the details that suggest improvements, and without attempting to preach a homily once more I suggest the omnibus desire to drop section 122 should be dropped.

The Honourable Sir Malcolm Hailey (Home Member): Just before the interval, we on the Government side took certain risks; we did not desire to prolong the discussion on the proposal to introduce a definition of "repute" which we thought to be thoroughly bad, and therefore did not discuss it at length, although we had material by which we could have riddled it not in one, but in fifty different directions. Fortunately the House showed that we were justified in taking that risk, for it refused to support Mr. Kabeer-ul-Din Ahmed in stepping in where one of the greatest legal luminaries had feared to tread. But the present case is one which we must argue out, because we feel that in justice to ourselves we must make it clear that it is not primarily in the interests of Government that our revised clause 122 has been put forward. It has been put forward entirely in the interests of persons affected by an order to provide security. It is always a pleasure to have to deal with an amendment by Mr. Rangachariar; he always supports it on definite grounds, capable of no misapprehension. What is his ground here? It is, that we already in the present section 122 have all that we want. Why seek to lay down for Magistrates rules designed merely to help them to decide who they shall and who they shall not accept as surety? Trust your Magistrates; they are men of discretion. Why tie their hands in any way? I am only too glad that the genial influences of yesterday's holiday have so weighed with Mr. Rangachariar (*Rao Bahadur T. Rangachariar*: "It was not a holiday to me") that he is now prepared to place so high a measure of confidence in our Magistrates. There have been other respects in which he has not shown an equally liberal spirit. When we were dealing with section 107 he showed no such spirit of confidence. In dealing with the question of taking security for breach of peace (section 107), what did he demand the Magistrate

[Sir Malcolm Hailey.]

should do? Why, that he should immediately report each and every order to the Sessions Judge, who was to pass orders as to the propriety or otherwise of his conduct. But now that we have this handsome admission from Mr. Rangachariar, we shall not forget it, and when we come to the numerous amendments tabled by him, which propose to place restrictions on the discretion of our Magistrates, he will not, I know, resent it if I remind him of what he has said this morning, and hold him to it. But, as a matter of fact, have we been unwise in attempting to lay down for our Magistrates definite rules of conduct here? Like the sons of Levi, have we taken too much upon ourselves? Let me give the reasons why it has been done. Let me quote the demand of an authority which Mr. Rangachariar will, I think, be the last to depreciate. This is what the Bar Library of Calcutta said to us:

"We think it absolutely necessary that the question of the grounds of fitness of sureties should be determined by the Code having regard to the great diversity of judicial opinions on the matter. The Allahabad rulings have generally adopted ability to control as the test. The Calcutta decisions while dissenting from this view are in conflict *inter se*. Some accept the test of property qualifications and others regard the question as one to be determined on the facts of each case."

Then again, let me quote the opinion of the Calcutta High Court. They say:

"Some difference of opinion exists as indicated in recent decisions of this Court whether the obligation of the surety is simply pecuniary or whether he may be expected and required to exercise some measure of control over the person whose good behaviour he guarantees. The clear intention of the Legislature might, in the opinion of the Judges, find expression in the section."

And all that the Lowndes' Committee proposed to do was to allow the Legislature to express its opinion on this particular point. It is not really Government that has initiated the insertion of the new section; it was legal opinion itself that has prompted us to this action. That, I think, is a sufficient answer to one part of Mr. Rangachariar's attack on us; but to complete my case I will quote to the House yet one further legal authority on the point. The Chief Court in Rangoon found that its Magistrates needed guidance in the matter; they felt the matter so important that they laid down the following rules for Magistrates in accepting sureties. They say:

"Before any person is accepted as surety for good behaviour the Magistrate should satisfy himself that the person . . ."

I ask the House to note the words which follow; they bear a curious similarity to what we have got in our Bill.

"is of good character, is able to pay the penalty in the bond and lives in a place where he is likely to be able to exercise some supervision over the conduct of the suspect."

If then our legal advisers and the administrators of our Courts are correct, it is clear that Magistrates do actually need some guidance in the matter. It is particularly the case, as Mr. Tonkinson pointed out this morning, that some such provision as this is required now that we are prepared to give an appeal against the refusal of sureties. If you take section 122 as it now stands in the Code, all that the appellate Court could say is since there are no criteria laid down by the Legislature, it had no material upon which they can over-rule them, and the same differences of opinion as to what criteria should be applied would continue to trouble both the Magistrates and the appellate Courts. That the differences are material

the rulings in the commentaries show. I have given reasons—perfectly adequate reasons—for making some provision of the nature of the new section 122 to take the place of the very wide discretion left under the existing section 122. I am not at this point proposing to argue the details of our new clause. It has been attacked by Mr. Rangachariar on principle, and not primarily on questions of detail. As Mr. Tonkinson said this morning and as Dr. Sir Deva Prasad Sarvadhiary has just repeated, the House will have full opportunity to judge whether the criteria we have laid down are adequate or need amendment. We are, for instance, quite prepared to give way on the question of the insertion of the word “moral” before “character.” After all, a person’s private peccadilloes lie between him and his creator or his wife. There is no real reason why they should be allowed to count in deciding his sufficiency as a surety. With regard to the remaining two requirements, (b) and (c), we are quite prepared to argue them on the merits and if necessary to amend them on the merits. I am arguing here solely on the question whether some provision such as the new 122 is required or not, and that is the point on which the decision of the House is in the first place necessary.

Colonel Sir Henry Stanyon: Sir, I took advantage of the holiday yesterday to give a good deal of consideration to this amendment and I came to the conclusion that the proposal of the Honourable Mover ought to have support. I have listened to the arguments which were advanced in support of the clause in the Bill which the Honourable Mover wishes to have omitted and my opinion in favour of the motion remains unshaken. The present section 122 is a simple and straightforward section, introducing no complications, involving no undue delay in procedure, which, if it is to be worth anything, ought to be prompt, and it contains in its one simple provision, namely, that the Magistrate shall record his reasons in writing, all the safeguards which can possibly be got if the Magistrate is to be anything more than a mere machine. I at all events can claim freedom from any inconsistency in asking for confidence in the discretion of Magistrates. The clause which the Bill now before us proposes to substitute for this simple section shows many disadvantages. The first thing is that it involves an error of a well known judicial principle. It is an attempt to crystallise judicial discretion. It purports to substitute for the simple procedure laid down by the present section 122 a cumbrous and complicated procedure. I join issue with those who say that this proposed clause will introduce safeguards. My own impression is that while affording excuse to the weak Magistrate, to the arbitrary Magistrate, to the pro-police Magistrate—and there are such Magistrates—to refuse security, it will merely harass and confuse the conscientious Magistrate. What does it involve? When a man offers security, instantly on behalf of the prosecution in a great many cases will come the objection to the security; and then the Magistrate will be required to enter upon a preliminary inquiry into the moral character, or into the solvency of the surety or into his power of control over the accused, (if I may so speak of him) before anything is done in the original case itself. A regular case will be tried, substantive evidence recorded and a finding delivered; and then will follow an appeal which may take days, or weeks or months; and all this time the man who is required to give security will be “hung up,” possibly under arrest. Well, that I think is a procedure which will not commend itself to the House. Why is this particular distinction made in this case? If a Magistrate can be trusted to take surety for bail in serious cases, why not in a

[Sir Henry Stanyon.]

case where there is no offence whatever alleged except the general badness of character or an intent to commit an offence. The reason for that distinction does not appear to be quite clear. Then, without going into the little details that have already been sufficiently urged, as to the difficulty of deciding exactly what is a bad moral character, I would submit for the consideration of the House, that in a great many of these cases under the rule "set a thief to catch a thief," a man of bad character may be the best security that the public can have, to look after the man that wants supervision. No doubt the solvency of the surety is a very proper subject of inquiry; and I do not imagine that any Magistrate or any court would accept a surety unless he or it was satisfied in a reasonable way that he was a man whose bond could be depended upon. With regard to the point of control over the person bound, it is difficult to understand exactly what is meant by the surety's control. A surety must not indulge in wrongful restraint or wrongful confinement, he can only use moral influence or whatever influence he may have, to control the person bound over. Well, no surety will ever bind himself unless he feels he can control the man. The mere fact that he binds himself indicates that he feels confident of being able to keep his man in the right way so as to save his own money. When a man stands surety for a particular person for not breaking the peace or for being of good behaviour, he naturally stands surety to see that he does so. In that view the provision is unnecessary. But the main ground upon which I venture to oppose the clause in the Bill and to support this amendment is this that this crystallising, or an attempt to crystallise, the discretion of the Magistrate, is not a move in the right direction. It is a retrograde step; and while it will not control the Magistrates in any particular way, it will, on the other hand, furnish excuses to refuse sureties upon unjustifiable grounds. For all these reasons, I recommend to the House to sustain the amendment.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I move that the question be put.

The motion was adopted.

Mr. Deputy President: The question is that the whole of clause 21 be omitted.

The Assembly then divided as follows:

AYES—36.

Abdul Quadir, Maulvi.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Asad Ali, Mr.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Gulab Singh, Sardar.
Iswar Saran, Munshi.
Jannadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.

Lakshmi Narayan Lal, Mr.
Man Singh Bhai.
Misra, Mr. B. N.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambika Prasad.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Venkatapatriaju, Mr. B.
Vishindas, Mr. H.

NOES—37.

Abdul Rahim Khan, Mr.
 Abdulla, Mr. S. M.
 Aiyar, Mr. A. V. V.
 Allen, Mr. B. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Crookshank, Sir Sydney.
 Dalal, Sardar B. A.
 Davies, Mr. R. W.
 Faridoonji, Mr. R.
 Gidney, Lieut.-Col. H. A. J.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.

Hullah, Mr. J.
 Ikramullah Khan, Raja Mohd.
 Innes, the Honourable Mr. C. A.
 Ley, Mr. A. H.
 Moncrieff Smith, Sir Henry.
 Muhammad Hussain, Mr. T.
 Muhammad Ismail, Mr. S.
 Mukherjee, Mr. J. N.
 Percival, Mr. P. E.
 Ramayya Pantulu, Mr. J.
 Samarth, Mr. N. M.
 Sarfaraz Hussain Khan, Mr.
 Sen, Mr. N. K.
 Singh, Mr. S. N.
 Sinha, Babu L. P.
 Tonkinson, Mr. H.
 Webb, Sir Montagu.
 Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. B. N. Misra (Orissa Division. Non-Muhammadian): Sir, practically my amendment is the same as that of my predecessor, the Honourable Mr. Rangachariar. My amendment is to the effect that the Magistrate may refuse to accept any surety offered under this Chapter on the ground that, for reasons to be recorded by the Magistrate, the surety is not fit to stand as such.

Mr. Deputy President: I am afraid, it cannot be moved. Munshi Iswar Saran.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadian Urban): Sir, after the speeches that have been made on the subject, I do not think it is at all necessary for me to make a long speech. The House will notice that under section 122 in the Bill it is provided that a Magistrate may after having accepted a surety reject it. I submit that it is not at all necessary to give him this power, and I do not see that any necessity has arisen for introducing this change in the law as it stands. The provisions in the present Criminal Procedure Code have stood the test of time and they have worked very well. I submit that a change like this in certain cases is apt to be misused. If you have a weak Magistrate or a pro-police Magistrate, as Sir Henry Stanyon puts it, he may, after having accepted a surety, very well say, "well, on further facts that have been brought to my notice, I am inclined to reject this surety." I therefore submit to the House that this power should not be given to the Magistrate. I move, Sir:

"That in clause 21 in section 122:

Omit the words from 'or may reject' to the word 'predecessor' in sub-section (1)."

Sir Henry Moncrieff Smith: Sir, all that the Bill proposes in this matter is to enable a Magistrate to reject a surety previously accepted, not arbitrarily, but on the same grounds which would have justified him in refusing to accept the surety in the first case. There is a clause in the Bill, much later on, which provides for two possible contingencies which may arise. One is when a surety becomes insolvent, and the other when a surety dies. The Bill provides for both those cases and enables a Magistrate to demand fresh security. He obviously must do so. But there are other cases in which a surety may subsequently become an unfit person

[Sir Henry Moncrieff Smith.]
 though at the time he was accepted he may have been fit. It seems to me that it is only logical to provide that if a surety subsequently becomes unfit for reasons which would have justified the Magistrate in rejecting him in the first case, then the Magistrate should be able to call for fresh security. What is to happen if a person who has been bound over under these sections finds a surety who at the time is perfectly fit, able to control the person for whom he stands, is of good character and sufficient financial means, but who later emigrates to Fiji? In the first place there can be no question of his controlling the person for whom he stands surety. In the second place there will be no means of enforcing the bond as the man will be gone. Or take the case of a surety who is sent to jail for a long period. Is there any reason why in such cases the Magistrate should not have power to call for a fresh surety?

Mr. Deputy President: The question is:

"That in clause 21 in section 122:

Omit the words from 'or may reject' to the word 'predecessor' in sub-section (1)."

The Assembly then divided as follows:

AYES—32.

Abdul Quadir, Maulvi.	Man Singh, Bhoo
Agarwala, Lala Girdharilal.	Misra, Mr. B. N.
Ahmed, Mr. K.	Nag, Mr. G. C.
Ayyar, Mr. T. V. Seshagiri.	Neogy, Mr. K. C.
Bagde, Mr. K. G.	Rangachariar, Mr. T.
Bajpai, Mr. S. P.	Reddi, Mr. M. K.
Basu, Mr. J. N.	Saivadhikary, Sir Deva Prasad.
Bhargava, Pandit J. L.	Sen, Mr. N. K.
Chaudhuri, Mr. J.	Shahani, Mr. S. C.
Gulab Singh, Sardar.	Singh, Babu B. P.
Hussanally, Mr. W. M.	Sinha, Babu Ambica Prasad.
Iswar Saran, Munshi.	Sinha, Babu L. P.
Jamnadas Dwarkadas, Mr.	Srinivasa Rao, Mr. P. V.
Jatkar, Mr. B. H. R.	Subrahmanayam, Mr. C. S.
Joshi, Mr. N. M.	Venkatapatiraju, Mr. B.
Lakshmi Narayan Lal, Mr.	Vishindav, Mr. H.

NOES—41.

Abdul Rahim Khan, Mr.	Hullah, Mr. J.
Abdulla, Mr. S. M.	Ibrahimullah Khan, Raja Mohd.
Ahsan Khan, Mr. M.	Jones, the Honourable Mr. C. A.
Aiyar, Mr. A. V. V.	Ley, Mr. A. H.
Allen, Mr. B. C.	Mitter, Mr. K. N.
Barua, Mr. D. C.	Moncrieff Smith, Sir Henry.
Blackett, Sir Basil.	Muhammad Hussain, Mr. T.
Bradley-Birt, Mr. F. B.	Muhammad Ismail, Mr. S.
Bray, Mr. Denys.	Mukherjee, Mr. J. N.
Burdon, Mr. E.	Nabi Hadi, Mr. S. M.
Cabell, Mr. W. H. L.	Percival, Mr. P. E.
Chatterjee, Mr. A. C.	Ramayya Pantulu, Mr. J.
Cotelingam, Mr. J. P.	Samarth, Mr. N. M.
Crookshank, Sir Sydney.	Sarfaz Hussain Khan, Mr.
Dalal, Sardar B. A.	Singh, Mr. S. N.
Faridoonji, Mr. R.	Sircar, Mr. N. C.
Gidney, Lieut.-Col. H. A. J.	Stanyon, Col. Sir Henry.
Haigh, Mr. P. B.	Tonkinson, Mr. H.
Hailey, the Honourable Sir Malcolm.	Webb, Sir Montagu.
Hindley, Mr. C. D. M.	Zahiruddin Ahmed, Mr.
Holme, Mr. H. E.	

The motion was negatived

Rao Bahadur P. V. Srinivasa Rao (Guntur *cum* Nellore: Non-Muhamadan Rural): The amendment which I have the honour to move is as follows:

"In clause 21 in sub-section (1) of proposed section 122:

Omit clause (a), *viz.*, 'not of good moral character'."

The Honourable House is aware that the Lowndes Committee, which consisted of members upon whom much encomium has been lavished by this House, have deliberately held that it is a mistake to define the grounds of fitness. Anyhow the House has decided by a majority of one vote that it is necessary to define the same. Now the question for the consideration of the Honourable House is whether this condition should be retained, namely, "not of good moral character." Government either in their desire to meet the wishes of the Honourable Members, or for other reasons, have generously offered to drop the word "moral." It seems to me, Sir, that this makes no difference whatever. I cannot understand character divorced from moral principles. Then taking the illustration of my learned friend, Mr. Rangachariar . . .

Sir Deva Prasad Sarvadhikary: Not his own illustration.

Rao Bahadur P. V. Srinivasa Rao: The illustration quoted by him,—of a zamindar keeping a concubine but having great influence over his tenants. Suppose he offers to be a surety for one of his tenants against whom proceedings are instituted. I believe there are some zamindars who think they would not deserve the name of zamindar unless they kept one or two women. Would they come under the category of persons of good character according to the view propounded from Government Benches? It seems to me that though the word "moral" is dropped, the substance is there. It would not make any change whatever. And it seems to me that this clause cannot commend itself to the Honourable House. What is the effect of having a proviso like this? Any person who wants to be a surety would have to allow his character to be inquired into by a Magistrate. I do not think any man of self-respect would allow his character to be impeached or challenged by the police or any Magistrate who presides over the court. If the Magistrate has a dislike against the man, he will say, he is not of good character and he cannot accept his security. The words are so comprehensive and elastic that they will include everything, and any person may be rejected as not being a fit person on one ground or another, and it would be absolutely impossible for any person against whom proceedings are instituted to get a surety. It will strike any one that the object is practically to deprive these persons from getting sureties. Judging from the practical point of view, I suppose it will be conceded that every opportunity should be given to persons bound over to be of good behaviour, and even under the existing law it is difficult to procure sureties for good behaviour. I think we must encourage people to come forward to give surety, because there is always the prospect of a good, healthy, influence being wielded over the persons bound over. Now, this new section will frustrate the very object of bad characters or habitual offenders being reformed into really good men, by preventing respectable persons from coming forward and standing as sureties for their good behaviour. Therefore, it seems to me that by retaining this clause you will practically deprive every person against whom proceedings are instituted from being able to get respectable sureties.

[Rao Bahadur P. V. Srinivasa Rao.]

For these reasons, Sir, I have no doubt that the Honourable House will accept my amendment to omit clause (a) in sub-section (1) of proposed clause 122.

Mr. H. Tonkinson: Sir, the Honourable Member proposes to omit clause (a), the first of the conditions which it is proposed to specify to guide Magistrates in their action as regards the rejection or the acceptance of a surety. Now, Sir, I would submit that, although, as regards clauses (b) and (c), there have been very considerable differences of opinion in the different High Courts, as regards clause (a) there is practically no difference of opinion, that is, the question as to whether a man is of a good character or not is generally accepted as one of the points which should be considered by the Magistrate. The Honourable the Leader of the House read out the instructions given by the Lower Burma Chief Court to the Courts in Burma. Good character was included amongst them. The Judicial Commissioner in Sind has held that the character and status of the sureties required may suitably be specified. The Bombay Courts have done the same. The Allahabad decisions are generally on the lines of clause (c), but they have definitely held that it is a material point in the inquiry as to whether a man has had a previous conviction, and so on. There is, Sir, I think not the least doubt whatsoever that this is a criterion which should be included. We are quite prepared, as we have said already, to omit the word "moral" and, if that would meet the wishes of the House, we would accept that amendment. (*Cries of "No, no."*) If, however, this clause is cut out from section 122, I would submit, Sir, that then we should have a contradiction between section 122 and section 112 of the Code. Under section 112 it is definitely stated that when the Magistrate makes an order in writing setting forth the substance of the information received, he shall also state the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of securities, if any, required. The omission, Sir, of this clause will mean that we shall have a definite contradiction between section 122 and section 112, because, Sir, if that clause is omitted, then the Magistrate in refusing to accept security may follow only clauses (f) and (c).

Rao Bahadur T. Rangachariar: Character there has a different meaning altogether.

Mr. Harchandrai Vishindas: That word existed in the old Code.

Mr. T. V. Seshagiri Ayyar: May I say a word? I am sorry the Government should think of opposing this amendment also. If you omit the word 'moral' and still retain the word 'good', I do not think you are improving the position of the accused. On the other hand, as has been pointed out by Sir Henry Stanvon, a good Magistrate will find it very difficult to come to a conclusion whether a man is of good character or of good moral character, and a bad Magistrate would take it into his head to make it impossible for the accused to give security. Already the House has empowered the Magistrate to reject a security which has once been accepted. Supposing a man has been speaking at a political meeting, and the Magistrate comes to the conclusion that this man is on that ground a bad character and that therefore the security offered by him should be cancelled. What would be the position of the accused? I do not think the Government is facilitating the work of the Assembly by speaking against the amendment

which has just been moved. Sir, it becomes very difficult for us, if we find no spirit of "give and take" in a matter like this, to make any advances to Government. I thought this was one of the occasions when the Government may go out of its way to accept an amendment. By omitting the word 'moral' and retaining the word 'good' you are not improving matters at all. On the other hand, you are making the position of the accused more difficult.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, I have merely to point out that the Government are doing something very bad in omitting the word 'moral' in the clause providing for a surety to be of good moral character. The ideas of some of the people with regard to 'good' and 'moral' may be not a little confounded, if the Government come forward to advisedly drop the word 'moral.' The position of the Government here is anomalous, and I think based on ignorance as to the meaning of the two terms, good and moral. No one in human society can be good without being moral. ("Hear, hear" from Government Bench.) You may cry "Hear, hear" but in doing so you really show that at least you do not understand the terms. If you analyse the word 'moral,' you see that in it reference is clearly made to the relations subsisting between one man and another which to be true must needs be good. Separating social relations from the dictates of God regarding goodness should be deemed incorrect and unwise. I would request the Government, in spite of their having assumed in this matter airs of superiority, to apply their minds to the ideas involved in the two terms and to make the position they assume in their regard more logical and consistent. Apart from the objections that have been raised by Mr. Seshagiri Ayyar, which are indeed valid, it would, as I say, on ethical-political grounds be advisable on the part of Government not to go in for a course of conduct of such a dubious nature.

Sir Montagu Webb (Bombay: European): Sir, I do not understand quite clearly whether the Honourable the Mover has accepted the suggestion of Government that the word 'moral' should be omitted; but if he has not, I would beg your permission to move definitely a further amendment that the word "moral" be omitted from clause (a).

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, I had no intention of speaking upon this motion but . . .

Mr. Deputy President: The amendment moved is:

"That in clause 21 in sub-section (1) of proposed section 122, clause (a) be omitted to which a further amendment has been moved that the word 'moral' be omitted."

Mr. N. M. Samarth (Bombay: Nominated Non-Official): The amendment is that the clause be omitted; the amendment to the amendment is that the clause be not omitted except with the word 'moral,' which may be omitted. Such an amendment, I submit, is not in order.

Mr. Deputy President: Amendment moved:

"In clause 21, in sub-clause (1) of proposed section 122, clause (a) be omitted."

Mr. W. M. Hussanally: As I said, I had no intention of speaking upon this motion. But with regard to the remark that fell from Mr. Tonkinson as to the inconsistency in section 122 (as it is proposed to be amended) and section 112, I must say I cannot see that inconsistency at all. Mr. Tonkinson was of opinion that if the clause were omitted from section 122 it would become inconsistent with the words "number" and "character" in section

[Mr. W. M. Hussanally.]

112. I do not think that the word 'character' in section 112 bears the same meaning as in the new clause in section 112. "Character" in section 112 means only 'kind' and nothing further; whereas in section 122 it refers to moral character, and I think, Sir, that so far as the inquiry into the moral character of a person is concerned, it will be very difficult for Magistrates to hold an inquiry and to come to any satisfactory decision in the matter; because moral character is such a vague term that any inquiry into that matter will result in nothing; and as has been pointed out by my friend, Mr. Srinivasa Rao, even if a person has spoken a lie he becomes a man of bad moral character. Therefore if the character of a person is to be inquired into, the section ought to be recast and made more definite. As the section stands I think there is no go but to delete it.

Mr. P. E. Percival (Bombay: Nominated Official): I only wish to point out, Sir, that, if we omit this clause, the Magistrate would not be able to refuse any surety however notorious he might be. It seems to me that that would be the effect, because you are tying down the Magistrate strictly to the remaining clauses, namely, clauses (b) and (c). Consequently the Magistrate could not refuse a man who had been convicted of a serious offence involving moral turpitude. Even Mr. Agnihotri agrees, that a man who has been convicted of an offence involving moral turpitude should not be allowed to stand as surety. But, if you cut out this clause altogether, a man who has been convicted of any offence whatsoever could not be refused by a Magistrate.

Mr. H. E. Holme (United Provinces: Nominated Official): Sir, it seems to me to be assumed that in every case an inquiry would be made as a matter of course into the character of the surety and unless that inquiry issues in a satisfactory result the surety will be rejected; whereas it would seem that as a matter of course the surety would be accepted unless there is some reason for objection to him, in which case an inquiry will have to be made, and the Magistrate would, I think, not take upon himself an additional burden especially when he is heavily over-worked by making such an inquiry unless there is some reason for it. At present it appears that the usual course is to make some inquiry or have some inquiry made into the qualifications of the surety before the surety is accepted, and to give power to reject him later will rather tend to result in the surety being accepted as a matter of course at once, unless some reason is shown to the contrary.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, in addition to what Mr. Hussanally has said in reply to Mr. Tonkinson, there is also this consideration, that this word "character" in section 112 existed in the old Code also side by side with section 122 as it then existed, whereas in section 122 the word "character" did not appear. So, the absence of the word "character" would not create the difficulty or inconvenience which Mr. Tonkinson has pointed out. I quite agree with Mr. Hussanally there. Mr. Percival said that it would be absurd that a Magistrate should not be in a position to refuse security from a man who has been previously convicted. To begin with, it is quite one thing to say that a man should be refused as security because he has been previously convicted and quite another thing to say that a man who is of a bad moral character should be refused. To overcome that difficulty the more logical and more consistent course is to make a provision that "if any person has been previously

convicted, he should be refused " without saying anything about his being a man of bad moral character. But I do not see any force of reasoning in refusing security of a person who has been previously convicted. As Sir Henry Stanyon pertinently pointed out what is the object of taking a security? The object of taking a security is that in the event of the accused person violating his bond and not observing the terms upon which he has been let off, the security should pay up the amount. That is the only object. What have you got to do with his moral character or his having been previously convicted? What have you got to do with his having control over the man or not? The only criterion, the only principle upon which you are taking security is that the accused will be of good behaviour during that period. If he is not of good behaviour, then his security forfeits the money. As Sir Henry Stanyon pointed out, in very many cases there would be men of bad character who would be qualified to stand as security for their friends, because there will be a kind of obligation upon the security to see that the accused person does not go astray so that he may save his money. Further, I think—this is a point that has been laid stress upon by previous speakers, but I think nothing will be lost by my repeating it—you would be making it very hard for Magistrates to find out whether a man's character is really such as can come within the category of the provisions of the Bill or not. There are various and various kinds of bad characters. There may be some who might think that a man who has done a particular wrong or who has been very bad to his neighbour is an immoral man. Another man may think that in his relations with other men the proposed security does not possess the requisite qualifications. When such considerations can arise, I think, Government are committing a mistake by trying to maintain the position they have taken of retaining this clause of the Bill. I think it is not in the interests of legislation, if it is not in the interests of the subjects or the people that this clause should be retained.

Mr. T. V. Seshagiri Ayyar and Mr. J. Chaudhuri (at the same time): I move that the question be now put.

Sir Henry Moncrieff Smith: Sir, I want to refer to one point in regard to the remarks which fell from my Honourable friend, Mr. Hussanally. He said that even omitting the word " moral," if we have the word " good character " in this clause, the Courts will be in doubt as to what " good character " means. Now, I think that argument might tend to mislead the House. I doubt whether my Honourable friend had in his mind the Evidence Act, because the words " of good character " are used in the Evidence Act, and they have never caused any difficulty there. I have never heard of any suggestion that they should be amended. Section 53 of the Evidence Act says:

" In criminal proceedings, the fact that the person accused is of a good character is relevant."

There is the Evidence Act laying down definitely that a certain class of evidence is relevant. What is the good of telling the Courts that it is relevant if the Courts do not know what it means? The course of the debate has, I think, shown that a certain section of the House is of opinion that the character of the surety ought not to be taken into consideration at all. Certain Members think that if he is a wealthy man and lives on the spot, it does not matter what sort of character he may have, and the Magistrate is not to be justified in rejecting him. That is a view which will not

[Sir Henry Moncrieff Smith.]

commend itself to any of the High Courts. I think the House is overlooking the fact that the High Courts have practically unanimously laid down that character is one of the grounds which may be considered when the Magistrate is making an inquiry into the surety's fitness. It has been done over and over again. If you take up any commentary you will find the rulings. Sohoni's commentary is to the following effect:

"The generally accepted view seems to be that the Magistrate is at liberty to take into consideration the 'moral unfitness' of the person as well (that is, as well as the financial position)."

The Calcutta High Court in a case in which the surety had been rejected on several grounds brushed aside some of the grounds. As regards the ground that the surety had three brothers in jail, they said, "No, that does not affect his character. We take the man as he is." The other ground that he did not live close by—they brushed that aside also, but the fact that the sureties were reported to be of bad character—the Court found that to be sufficient ground for a Magistrate to reject a surety. I would ask the House to consider most seriously whether by rejecting this clause altogether, throwing out clause (a) of the Bill altogether, they are going to prevent Magistrates from rejecting a surety though he may be a bad character. We are, as far as I understand, discussing whether clause (a) should stand. If it stands, then Government are quite prepared to accede to the amendment moved by my Honourable friend opposite that the word "moral" should be omitted.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor; Non-Muhammadan): We started this morning with the precept that we ought to cut short the discussion and that we should proceed with the amendments as quickly as we can. I am afraid the blame for prolonging the discussion does not rest on one side of the House or on one section of the House, but it rests on all sides, on all sections of the House. Character, as has been several times pointed out, is an element in testing sureties that are submitted to the Court. Whether in civil matters or in criminal matters character has always been considered, and no Magistrate or Judge worth his position ever ignores the character of person who is offered as surety. Of course, the primary consideration is that he is solvent. Therefore, having been unable to carry the amendment which my Honourable friend, Mr. Rangachariar, suggested, we are now dealing with the details of the clause of the Bill. Government has made a fair offer that they would omit the word "moral" which lends itself to all sorts of misapprehensions. I think it is advisable to accept that small concession to omit the word "moral" and have "good character" only in the clause. That will save us a lot of trouble and will also be in conformity with the decisions of the Courts. We need not stand up for persons who are considered not to possess character, but with regard to "moral" there is the difficulty of interpretation of the term, and therefore on that ground the word "moral" is offered to be omitted, and I think we will do well to accept that offer and close with it as quickly as we can.

Mr. W. M. Hussanally: May I ask if I would be in order if I suggest that the words "a convicted person" be substituted for clause (a), and ask if that is acceptable to the Government Benches?

Mr. Deputy President: The question is:

"That in clause 21 in sub-section (1) of proposed section 122, clause (a) be omitted."

4 P.M. The Assembly then divided as follows:

AYES—38.

Abdul Quadir, Maulvi.
 Abdulla, Mr. S. M.
 Agarwala, Lala Girdharilal.
 Ahmed, Mr. K.
 Akram Hussain, Prince A. M. M.
 Asad Ali, Mir.
 Asjad-ul-lah, Maulvi N. yan.
 Ayvar, Mr. T. V. Seshagiri.
 Bajpai, Mr. S. P.
 Barua, Mr. D. C.
 Basu, Mr. J. N.
 Bhargava, Pandit J. L.
 Chaudhuri, Mr. J.
 Gulab Singh, Sardar.
 Hussanally, Mr. W. M.
 Iswar Saran, Munshi.
 Jannudas Dwarkadas, Mr.
 Jatkari, Mr. B. H. R.
 Joshi, Mr. N. M.

Lakshmi Narayan Lal, Mr.
 Man Singh, Bhai.
 Misra, Mr. B. N.
 Mukherjee, Mr. J. N.
 Nag, Mr. G. C.
 Neogy, Mr. K. C.
 Rangachariar, Mr. T.
 Reddi, Mr. M. K.
 Sarfaraz Hussain Khan, Mr.
 Sen, Mr. N. K.
 Shahani, Mr. S. C.
 Singh, Babu B. P.
 Sinha, Babu Ambica Prasad.
 Sinha, Babu L. P.
 Sircar, Mr. N. C.
 Srinivasa Rao, Mr. P. V.
 Subrahmanayam, Mr. C. S.
 Venkatapatiraju, Mr. B.
 Vishindas, Mr. H.

NOES—37.

Abdul Rahim Khan, Mr.
 Abdul Rahman, Munshi.
 Ahsan Khan, Mr. M.
 Aiyar, Mr. A. V. V.
 Allen, Mr. B. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Dalal, Sardar B. A.
 Davies, Mr. R. W.
 Faridoonji, Mr. R.
 Gidney, Lieut. Col. H. A. J.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hundley, Mr. C. D. M.

Holme, Mr. H. E.
 Hullah, Mr. J.
 Ikramullah Khan, Raja Mohd.
 Innes, the Honourable Mr. C. A.
 Ley, Mr. A. H.
 Mitter, Mr. K. N.
 Mocgriff Smith, Sir Henry.
 Muhammad Hussain, Mr. T.
 Muhammad Ismail, Mr. S.
 Nabi Hadi, Mr. S. M.
 Percival, Mr. P. E.
 Ramayya Pantulu, Mr. J.
 Samarth, Mr. N. M.
 Sarvadhikary, Sir Deva Prasad.
 Singh, Mr. S. N.
 Stanyon, Col. Sir Henry.
 Tonkinson, Mr. H.
 Webb, Sir Montagu.

The motion was adopted.

Mr. W. M. Hussanally: On a point of order, Sir, may I at this stage propose An amendment in place of clause (a), with reference to a convicted person being accepted as surety

Rao Bahadur T. Rangachariar: I object to his coming forward with a new amendment.

Mr. Deputy President: I rule it out of order. I want to know if Mr. Srinivasa Rao will move his amendment to (b) of clause 65.

Rao Bahadur T. Rangachariar: He does not move it.

The Honourable Sir Malcolm Hailey: Then I would ask your permission, Sir, to move the omission of clauses (b) and (c), that being the amendment put forward by Mr. Srinivasa Rao.

(Voices: " We did not catch properly what the Honourable Member said. ")

The Honourable Sir Malcolm Hailey: I am asking the permission of the Chair to move the omission of clauses (b) and (c). I now formally move the following amendment:

"In clause 21 in section 122:

Omit the words 'as being' and clauses (b) and (c)."

Mr. Deputy President: The question is that the amendment be made.

The motion was adopted.

Mr. K. Ahmed: I move, Sir:

"That in clause 21 in proposed section 122, sub-section(1), in the proviso for the words 'cause such inquiry to be held and a report to be made thereon by the Magistrate subordinate to him' substitute the words 'accept a certificate of fitness from a pleader practising in the court of the Magistrate or of some superior court, or from any respectable inhabitant of the locality'."

The reason why I have been impressed to move this amendment is that Magistrates from time to time, according to the case of the prosecution, have held that in certain villages there is no respectable person because all of them are low-class Hindus, low-class Muhammadan cultivators or probably they are a class of people whom the Sub-Inspector will not be kind enough to acknowledge to be respectable, and who are very often being prosecuted under section 110 and sent to jail. That is the reason why I have suggested the words noted above in substitution for the words "cause such inquiry to be held and a report made thereon by the Magistrate subordinate to him" as desirable.

And this, I submit, is a sound principle, which should be accepted by this House, because the poor man who rightly or wrongly by the decision of Court has been convicted and bound over for a certain amount to be of good behaviour for a year or two or three years, certainly, Sir, has got to furnish surety. The principle is that some substantial security which is forthcoming should be furnished within the time fixed. After the poor man has arranged everything to get the surety in compliance with the law, the police will tell the Magistrate some thing and the Magistrate will say 'Look here, Sir, this man is no good, because there was a case against him,' because some person went there and lodged information at the police station. There is entry of the information in the diary—I do not know how many kinds of diaries are kept, but I may say according to the Procedure Code and for the satisfaction of this House and under the provision of law there are only two kinds of diaries kept in every police station. But they bring a certain entry which is not a proved entry; it is only a matter of complaint which is not inquired into and reported or a charge sheet of it submitted, it is only an *ex parte* entry which is found in the police diary and the Magistrate takes the word of the police as gospel truth and rejects the surety, which is an insult to the educated people of this country when they stand surety for their servants, etc. It is an insult to the morality, nay of civilization, that they should insist on keeping the man in the lock up without accepting the surety offered. All this has been put under section 110 and the wrong end of the stick has been caught hold of, leaving aside the principle of law, forgetting that a man in compliance with the order of the Magistrate under section 110 has furnished the security. This has been abused in the past and there is no way of getting out of it, because the

police will throw some blue light from his magic lantern and the Magistrate will take that blue light as the beacon light and that is the only light that reflects on the so-called justice according to him against 99 persons out of 100 and that is how, Sir, there is miscarriage of justice in this country. People having come to the Court and being ready and willing to give security cannot get out of the clutches of the police, and it is very obvious from the decisions of Judges that this engine of oppression should be removed. Sir, in this connection I ought to read the opinions of some of the distinguished bodies in India. I should have handed over this to my Honourable friend Sir Henry Moncrieff Smith. But he has got a copy, I know. It is not quite relevant to the point, but the substance of it will cover exactly what he wants probably for the time being to fit in this amendment.

Sir, I will read from page 123 of the opinions of various distinguished bodies recorded in 1918 on the Criminal Procedure Code Amendment Bill, the comments of the Bar of the Calcutta High Court on this subject:

"We think it is absolutely necessary that the question of the grounds of fitness of sureties should be determined by the Code, having regard to the great diversity of judicial opinion on the matter. The Allahabad rulings have generally adopted ability of control as the test. The Calcutta decisions, while dissenting from this view, are in conflict *inter se*, some accepting the test of property qualification and others regarding the question as one to be determined on the facts of each case. We would refer to Abdul Karim *versus* Emp. 44 Cal. 731, as exemplifying the conflict between Calcutta cases, and indicating the necessity of settling the question once for all."

Sir, this is relevant to the amendment I wish to make, namely the substitution for the words—"cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him," of the words:

"accept a certificate of fitness from a pleader practising in the Court of the Magistrate or of some superior court, or from any respectable inhabitant of the locality."

Sir, this amendment will bring the solution for all the difficulties and it is good for the Government and for the country and the people at large, and is necessary to serve the ends of justice; and that is why I have brought it before you for your kind acceptance. Such difficulties are against good polices and it is against the public interest; and that the Legislature should undertake to legislate where the conditions cannot be fulfilled. Therefore I think I have satisfied you for the substitution of these words. You will find, it is not difficult at all, because if a man is defended by a pleader or lawyer of a Magistrate's court or a higher court, he is supposed to know his client well; he has got correspondence from the village where he lives. The man has been writing letters to his pleader and his pleader's clerk. The pleader knows the position of the man and his certificate is enough. If you think the certificate of a Bachelor of Law who is practising at a court is not enough, I ask you to exercise your common sense and see how and where the poor ryot would stand when he comes for justice. There must be some way of providing for his case; you do not want to keep him in the lock-up. It is against public policy. With due respect I ask the Government to be good enough to accept this amendment and bring a solution of these difficulties.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban):
I move that the question be now put.

The motion was adopted.

Mr. Deputy President: Amendment moved :

That in clause 21 in the proviso to sub-section (1) of the proposed new section 122 for the words from "cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him" substitute the words "accept a certificate of fitness from a pleader practising in the Court of the Magistrate or of some superior Court, or from any respectable inhabitant of the locality."

The question is that that amendment be made.

Mr. Harchandrai Vishindas: Sir, I have to move an amendment to this.

(Several Honourable Members moved that the question be now put.)

The amendment moved was negatived.

Rai Bahadur Pandit J. L. Bhurgava (Ambala Division: Non-Muhammadan): Sir, with your permission, I beg to suggest an amendment which is of a non-controversial nature, namely, that in the proviso to sub-section (1) of section 122 the words "or solemn affirmation" be added after the word "oath."

(An Honourable Member: "Oath includes solemn affirmation?")

Sir Henry Moncrieff Smith: I object to the moving of the amendment.

(Mr. Deputy President then called upon Mr. Pantulu to move his amendment.)

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I propose :

"That in clause 21, in sub-section (2) of proposed new section 122, between the word 'inquiry' and the words 'the Magistrate', the following words, namely :

'the person on whose behalf the surety is offered or has been previously accepted shall be given an opportunity of proving the fitness of the surety and' be inserted."

The clause to which I am referring reads thus :

"In every such inquiry the Magistrate holding the same shall record the substance of the evidence adduced before him."

The inquiry which is referred to here is the inquiry which a Magistrate makes for the purpose of finding out whether he should reject a surety already accepted, and this inquiry will evidently be based upon the evidence adduced by the police. That would be a one-sided inquiry and there is nothing in the section, as worded here, to prevent a decision being arrived at without the person on whose behalf the surety has been offered or accepted having an opportunity of saying what he has to say. It would be very unfair that a surety who has been once accepted, should be rejected behind the back of the person who offered that surety and simply on the one-sided inquiry that is made and the evidence adduced by the police. It is only fair that, when you reject a surety who has been already accepted, that you should give the party on whose behalf the surety was once accepted an opportunity of saying that he is still fit to be accepted and that the reasons given by the police are not sound.

I think this is a very reasonable proposition and I hope the Government will see their way to accept this amendment.

Sir Henry Moncrieff Smith: Sir, I may say at once that the Government has no objection whatever to the principle of this amendment. I do not

myself quite like the drafting. I would rather not weld it on to the section as it is at present. There is no reason whatever why notice should not be given to the person most affected that is, the person offering surety and why he should not be given an opportunity of showing cause but I think it would be better if instead of introducing the words into the clause as it stands we substitute a new sub-section (2) in the proposed section 122 as it stands in the Bill, and I would move, Sir, and I do move accordingly, that for sub-section (2) of the proposed section 122, the following be substituted:

"Such Magistrate shall before holding the inquiry give reasonable notice to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him."

The amendment I propose lays it down that the Magistrate shall give reasonable notice to the person affected. It is quite unnecessary, as in any other cases, to lay down that the man should be given an opportunity for giving evidence. He is bound to have that. If any Magistrate holds an *ex parte* inquiry in this case, the House has to remember that we are providing an appeal in every case, and the Appellate Court would immediately upset any order rejecting a surety if the Magistrate had made an *ex parte* inquiry without giving notice to the person affected. I would therefore commend this redraft to the House.

Mr. T. V. Seshagiri Ayyar: What is the amendment, will you please read it out?

Sir Henry Moncrieff Smith: It is to substitute for sub-section (2) in the Bill these words, which embody what Mr. Pantulu desires:

"(2) Such Magistrate shall before holding the inquiry give reasonable notice to the person by whom the surety was offered and shall, in making the inquiry, record the substance of the evidence adduced before him."

Mr. T. V. Seshagiri Ayyar: What about the surety?

Mr. W. M. Hussanally: Notice should be given to both the surety and the person affected.

Mr. T. V. Seshagiri Ayyar: If you use the words 'persons affected,' that includes the accused as well as the surety.

Sir Henry Moncrieff Smith: The original amendment by Mr. Pantulu used the words "person on whose behalf surety is offered." I used the words "the person affected" as a short way of describing the person on whose behalf surety was offered.

Mr. T. V. Seshagiri Ayyar: Why not the surety also?

Sir Henry Moncrieff Smith: If the person affected is given notice, surely the surety himself will come forward if he is really anxious to give security.

Mr. J. Ramayya Pantulu: Sir, the amendment proposed by Government provides for notice being given to the person on whose behalf surety has been accepted, but it does not say that he can show cause why the surety should not be rejected, and, therefore, to attain that object I think the wording of my amendment is preferable; but in order to minimise discussion I would accept the amendment proposed by Government provided they add the words "on either side" at the end of their amendment—that is, "record the substance of the evidence adduced before them on either side." That would mean that the party on whose behalf a surety has once been accepted will have the right to adduce evidence.

Sir Henry Moncrieff Smith: Sir, I have no objection at all to meeting my friend, Mr. Seshagiri Ayyar. The amendment will then read:

"Such Magistrate shall before holding the inquiry give reasonable notice to the surety and to the person on whose behalf such surety is offered, and shall in making the inquiry, etc."

Mr. T. V. Seshagiri Ayyar: Yes, yes.

Mr. J. Ramayya Pantulu: Then I accept the amendment, Sir, that has just been read out.

Mr. Deputy President: Has Mr. Pantulu the leave of the House to withdraw his amendment.

(Leave was given.)

Mr. Deputy President: The question is:

"That in Clause 21 for sub-section (2) of the proposed section 122, the following be substituted, namely:

"(2) Such Magistrate shall before holding the inquiry give reasonable notice to the surety and to the person by whom the surety was offered, and shall in making the inquiry record the substance of the evidence adduced before him."

The motion was adopted.

Mr. Deputy President: The question is that clause 21 stand part of the Bill.

The motion was adopted.

Bhai Man Singh (East Punjab: Sikh): The amendment that stands in my name is:

"That in clause 22 for sub-clause (2) substitute the following:

"(2) In sub-section (5) for the words 'for keeping the peace' the words 'under this section' shall be substituted and sub-section (6) shall be omitted."

The substance of my amendment, Sir, is that whosoever is required to furnish security under this chapter, whether he is required to furnish security for keeping peace or for being of good behaviour or anything of the sort, if he fails to furnish security and is ordered to be imprisoned he should be given simple imprisonment in all cases. The Bill as it stands makes an exception in the case of habitual offenders, those who are required to be bound over under section 110. Under the present Bill those people can be given rigorous imprisonment, while all others are to get simple imprisonment, I do see that as regards persons who are bound over under section 110 their moral character is surely more to be deprecated than that of those who are bound over under section 107, section 108 or section 109. But all the same we have been talking over these sections for so many days; and we have been saying always that these provisions are not punitive but preventive. I need not take the time of the House by quoting any authorities in support of this fact. It has been held very often that these sections are preventive and not punitive. There seems to be absolutely no reason why if we want to award imprisonment and send a man to jail we should give him rigorous imprisonment under any circumstances if the action you are taking against him is simply preventive, simply meant to keep him away from committing any offence. The man could have just come and offered security and then he would

have remained out altogether. Why, if he is sent to jail, should he be required to be put to hard labour and given rigorous imprisonment? I think the proposition that I am putting before the House is so very clear that I would request the Government to accept it and I hope that the Honourable Members will see the reasonableness of my request.

The Honourable Sir Malcolm Halley: I am sorry that I do not see the sweet reasonableness of this proposal. How does the law stand at present? For failing to give security for keeping the peace—107—the alternative is simple imprisonment. Under sections 108 and 109 and 110, the Magistrate may give rigorous or simple imprisonment at his discretion. What do we now propose? We propose to keep 107 as before, namely, the imprisonment will be simple. As regards 108 and 109 we now propose that instead of the Magistrate having any discretion in the matter, the imprisonment must be simple. For my own part, I fear that it will create a good deal of astonishment in the country when it learns that a man who can find no security under section 109 receives simple imprisonment. It seems to me myself strange that he should not be put to any form of labour. However, that is not the immediate point; it is the proposal of the Bill and I forbear to argue against it. The immediate point is that of Bhai Man Singh, who demands, as a universal rule, that imprisonment shall be simple imprisonment under all the punitive clauses. The difference between us is, then, that he would have only simple imprisonment under section 110. The list of offences which qualify a man for an order under section 110 is known to the House; they have been read to it more than once. I need not enlarge on the category, the habitual robber, the habitual forger, the habitual kidnapper and the like. If such a man cannot find security then he must thoroughly fill the picture as a bad character; he has got no friends; nobody will stand up for him. Yet it is proposed by Mr. Man Singh that a man of this type, who may have been convicted several times over for these serious offences, shall when he is in jail not be put to any form of labour. It seems to me an unkindness to the taxpayer that we should keep a man of this type in jail without demanding that he should contribute by labour of any kind to pay for his subsistence. I quite admit that the object of these sections is preventive, and not punitive; but if a man is adjudged a bad or dangerous character and can find no surety, it seems to me not unreasonable that when in default of security he is committed to prison under section 110, the Magistrate should have discretion to give him either simple or rigorous imprisonment.

Mr. B. Venkatapatiraju: Sir, I do not see any point in the arguments advanced by the Honourable Leader of the House when he says that we are only following the old law. I can understand that in countries where Indians are employed as coolies, for want of labour they would give rigorous imprisonment so that they can take work. But there is no such dearth of labour in India for the Government to utilise this section of people for labour. Here, a person has not committed any offence. If he is convicted of an offence, he has already suffered punishment for it. We are here only providing for preventing him from doing further mischief. With that object in view why should you give him rigorous imprisonment? It is only a preventive provision for the purpose of keeping him out of danger for the benefit of society. That is the only thing the Government should do. The only excuse for the Government is, "Why should we maintain him in jail without asking him

[Mr. B. Venkatapatiraju.]

to do some work"? I do not know why Government should think of securing some work out of him on that ground. The only ground for which he should suffer rigorous imprisonment is for any particular offence that he has committed. Otherwise I do not think any discretion need be given to the Magistrate. I therefore strongly support the amendment moved by Mr. Man Singh.

Mr. W. M. Hussanally: Sir, I should like to say a few words in support of this amendment. Ordinarily I know that under section 123 the imprisonment to be awarded in lieu of failure to find surety may be either simple or rigorous, but in the province from which I come, Sind, I think I shall not be far wrong if I say that imprisonment for failure to give security for keeping good behaviour is almost invariably rigorous and I think that in the interests of society it is not right that such persons should be condemned to rigorous imprisonment, because I think that people going to jail specially to suffer rigorous imprisonment come out more hardened criminals than when they enter the jail. I think the object being to keep them away from mischief, as my friend, Mr. Raju, has said, the ends of justice would be met if they are given only simple imprisonment, and they should be kept apart from ordinary criminals, so that when they come out of the jail they come out reformed men and not made into hardened criminals. On that ground and on that ground alone I will support this amendment.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I think there seems to be some misapprehension in the minds of the last two speakers as regards the effect of an order of rigorous imprisonment. To deal first with Mr. Hussanally. He suggests that if a man who has been ordered to find security to be of good behaviour is unable to do so and is sent to jail and caused to undergo rigorous imprisonment, his morals will be contaminated and he will come out of jail a worse man than when he went in, whereas if he only has to undergo simple imprisonment this is not the case (*Mr. W. M. Hussanally*: "If he is kept apart") if he is kept apart from those who are undergoing simple imprisonment. In the first place, you must remember the class of people who normally go to jail under section 110. I need not read again the list. It ranges from a forger to a desperate and dangerous character, and I would suggest to the House that it will not take the argument seriously that people of this class who are unable to find anybody to stand security for them will have their morals contaminated by going to jail and doing hard labour, whereas they will be saved that, if they undergo simple imprisonment. Secondly, let us consider what simple imprisonment means. It means that the person is absolutely unable to do any work whatever and there he sits from day to day in complete idleness. There must be many Members of this Honourable House who have had opportunities of inspecting jails in one capacity or another, and surely they will agree that the lot of the man undergoing simple imprisonment is in many ways far worse than that of the man who undergoes rigorous imprisonment. I submit that for men of this class rigorous imprisonment is less of a hardship than simple imprisonment.

Then with regard to Mr. Raju's argument, he says that in this country there is no scarcity of labour, and therefore simple imprisonment should be applied. Well, I submit that even if there is no scarcity of labour, the finances of this country are not at present in such an affluent state that we can afford to keep in jail forgers,

habitual offenders and desperate and dangerous characters entirely at the public expense and not allowed to do even a hand's turn to contribute towards the cost of their upkeep. For these practical reasons I trust the House will throw out this amendment.

Mr. Deputy President: The question is:

"That in clause 22 for sub-clause (2) substitute the following:

'In sub-section (5) for the words 'for keeping the peace' the words 'under this section' shall be substituted and sub-section (6) shall be omitted'."

(Cries of 'Noes' and 'Ayes'.)

Mr. Deputy President: Those who are in favour of the motion will please stand up.

Rao Bahadur T. Rangachariar: I object to that procedure, Sir. It is only to enable you to decide whether the claim for a division is frivolous that this procedure is adopted. If a vote is to be taken by standing, then all Members will have to be sent for. The object of a division is to give notice to others who are absent. I think, Sir, the procedure you are adopting will be setting up a bad precedent.

Mr. Jamnadas Dwarkadas: May I point out, that instead of asking those who are in favour of the amendment to stand up, if you just ask those who want a division to stand up, probably it would make a good deal of difference. That I think was your intention, Sir.

Mr. Deputy President: Those who are for a division will please stand up.

(Two or three members stood up.)

Mr. Deputy President: Division is refused.

The amendment was negatived.

Mr. Deputy President: The question is that clause 22 do stand part of the Bill.

The motion was adopted.

Rao Bahadur T. Rangachariar: I beg to move:

"That in clause 23 (iii) substitute the following for proposed sub-section (5):

"5. If any condition upon which any person has been discharged is not fulfilled, the District Magistrate or the Chief Presidency Magistrate by whom the order of discharge has been made or his successor, may, after notice and inquiry, cancel the same."

The object of this amendment is very simple. Honourable Members will find that the District Magistrate or the Chief Presidency Magistrate has got power under section 124 to release a man who has given security, and clause 5 provides:

"If any condition upon which any such person has been discharged is in the opinion of the District Magistrate or Chief Presidency Magistrate not fulfilled, he may cancel the same."

Of course I take it that the Government intend it should be after inquiry and notice, although it is not clear. If a man has been let off on condition, to know whether that condition has been broken or not it should be only after inquiry and notice. I want to make that point clear in my amendment, so that the action may not be taken against him behind his back on mere *ex parte* or police report. That is the object of this amendment and I hope the House will accept it. I move it, Sir.

Sir Henry Moncrieff Smith: Here again the Government is prepared to accept the principle of my Honourable friend's amendment, but we have to go a little further into the matter than he has gone. Mr. Rangachariar merely provides for notice and inquiry. I want the House to understand clearly what stage we have arrived at in the proceedings. The present law does not provide for a conditional discharge to be made when a man has failed to find security. We are dealing with the case of a man who has failed to find security and is accordingly in jail. Now, we are proposing in the Bill to enable the Magistrate to discharge a man on conditions which will be prescribed by the Local Government. The reason why this was provided is very clearly explained in the Statement of Objects and Reasons. As the House knows, there are many numerous Reformatory settlements, many of which are run by that estimable body, the Salvation Army. They have been very freely used for the purpose of reforming our criminals. At present they are mainly used for the gipsies, the criminal tribes who wander about, and it seemed to us that they were a very suitable place in which also to enable habitual offenders to have a chance of reformation. They can learn a trade and when the period for which they are bound over expires they can go out and earn their own living in an honest manner. Now these people have been treated leniently already, the Magistrate has sent them to a reformatory settlement. While there, they commit a breach of the conditions on which they have been discharged. A notice therefore to a person of that class is not enough, and I am suggesting an amendment to the House which lays down that if the man is not already before the Magistrate, the Magistrate shall have power then to issue a warrant to have him brought before him. I quite agree, I think we are all prepared to agree, that the Magistrate should give him an opportunity of showing cause why the order of discharge should not be cancelled, but there can be no question of dilatory proceedings,—of issuing a summons to the man. You have got to remember that this man probably may have run away, may have absconded; at all events, a notice to him that he is going to be put back into jail will simply be an invitation to him to abscond. Therefore, unless the Magistrate has power to issue a warrant, you are leaving a dangerous criminal, an habitual criminal, at large in the country. The House should remember that if the Magistrate finds that a condition has been broken, after this inquiry that Mr. Rangachariar and I both provide for, if he finds that a condition has been broken, the man has to go back to jail. He is going back to jail, and therefore if the Magistrate is of opinion that the condition has been broken, the first step should certainly be that he should issue a warrant. Therefore, Sir, I am accepting the principle of Mr. Rangachariar's amendment but would take out the word 'notice,' which is vague and which might be argued to indicate a summons only, and I am proposing an amendment which would provide a definite procedure for the Magistrate and also provide for several cases which Mr. Rangachariar's amendment does not provide for. For the proposed new sub-section (5), Sir, I would move that the following be substituted, namely:

"If any condition upon which any person has been discharged is in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or his successor not fulfilled, he may issue a warrant for the arrest of such person, and when such person is brought before him, he may, after such inquiry as he thinks fit, cancel the order discharging such person:

Provided that if at any time after the expiration of fifteen days from the date of the issue of the warrant the Magistrate has reason to believe that such person has absconded or is concealing himself so that the warrant cannot be executed, he may cancel the order forthwith."

The proviso is more or less on the lines of section 88 of the Code which deals with proclaimed offenders. This is the case of an habitual offender; he has been found to be an habitual offender. He has had an opportunity of coming up in revision, he may have an opportunity of appeal. The order stands,—the Magistrate's order that this man is an habitual offender; therefore if after fifteen days the police are not able to find him and the Magistrate has reason to believe that he is concealing himself or absconding, the Magistrate is enabled to cancel the order forthwith; and then the following sub-clauses of this clause come into operation—'any police officer may arrest without warrant.' I may warn the House that if they accept my amendment in this form, I shall have to propose merely consequential amendments to the next sub-section, sub-section (6), and its various paragraphs, which are partly occasioned, as I say, by this amendment and partly by a subsequent amendment of Mr. Rangachariar.

Mr. Deputy President: The further amendment moved is:

"That in sub-clause (3) of clause 23 (1), for the proposed new sub-section (5), the following be substituted, namely: 'If any condition upon which any such person has been discharged is in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or his successor not fulfilled, he may issue a warrant for the arrest of such person, and when such person is brought before him, he may after such inquiry as he thinks fit cancel the order discharging such person:

Provided that if at any time after the expiry of fifteen days from the date of the issue of the warrant the Magistrate has reason to believe that any such person has absconded or is concealing himself so that the warrant cannot be executed, he may cancel the order forthwith.'

Rao Bahadur T. Rangachariar: Sir, I have no technical objection to the amendment to my amendment moved by Sir Henry Moncrieff Smith; that is, I do not object to his moving this amendment without notice. But I am sorry that I am unable to accept it on its merits. It is certainly not a reasonable course to adopt in a case like this. The position is, that a man accepts a condition offered to him quite voluntarily and the District Magistrate lets him out. Now, by the amendment proposed by my Honourable friend, first of all the District Magistrate has to form an opinion that the man has broken the conditions; that is, he has to prejudge the question which he is to inquire into and decide. That is the first objection I have to the wording of my Honourable friend. In my amendment, the Magistrate has to come to a conclusion after notice and inquiry that the condition has been broken, and then only he can say—"you have not fulfilled the condition and therefore the conditional discharge must be cancelled."

Then the next thing is that the Magistrate may issue a warrant for the arrest of such person at once. Of course, if the condition is broken, he must go back to jail. But then come the words "after such inquiry as he thinks fit," which leave it open to the Magistrate to do it in any manner he likes. First of all you commit him to an "opinion" and then the inquiry may be "such as he thinks fit," which may be in a very summary manner.

This amendment therefore is open to these objections. A man may be condemned without being heard and sent back to jail. But it is very unlikely that a man will break a condition which he has voluntarily accepted, and I think the Government is rather over-nervous in dealing with cases of this nature. That is the remark which I wish to emphasise in this connection. What I mean is that they want to tighten their hold on a

[Rao Bahadur T. Rangachariar.]

man who has not yet been convicted of an offence and who is merely bound over because they suspect he will give trouble; they want to bind him round and round, and although he accepts a condition they do not want to allow him to go. That appears to me to be the object of this amendment and I therefore oppose it and stick to my own amendment.

Mr. Deputy President: The question is

"That in clause 23 (iii) substitute the following for proposed sub-section (5)

(5) If any condition upon which any person has been discharged is not fulfilled, the District Magistrate or the Chief Presidency Magistrate, by whom the order of discharge has been made or his successor may after notice and inquiry, cancel the same."

To which a further amendment has been moved that in clause 23 (iii) the following be substituted for proposed sub-section (5)

(5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or his successor not fulfilled he may issue a warrant for the arrest of such person and when such person is brought before him he may, after such inquiry as he thinks fit, cancel the order discharging such person.

Provided that if at any time after the expiry of fifteen days from the date of the issue of the warrant the Magistrate has reason to believe that any such person has absconded or is concealing himself so that the warrant cannot be executed, he may cancel the order forthwith.

The question is that that amendment be made.

5 P.M. The Assembly then divided as follows.

AYES—30

Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Blackett, Sir Basil
Bradley Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney
Dalal, Sarfaraz B. A.
Faridoonji, Mr. R.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm
Hindley, Mr. C. D. M.

Holme, Mr. H. E.
Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Lay, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry
Muhammad Hussain, Mr. F.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Singh, Mr. S. N.
Sircar, Mr. N. C.
Tonkins, Mr. H.
Webb, Sir Montagu
Zahauddin Ahmed, Mr.

NOES—33

Abdul Quadir, Maulvi
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal
Ahmed, Mr. K.
Asjad ul lah, Maulvi Miyan
Ayyar, Mr. T. V. Seahagiri
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Gulab Singh, Sardar
Iswar Saran, Munshi
Jannadas Dwarakadas, Mr.
Johar, Mr. B. H. R.
Joshi, Mr. N. M.

Lakshmi Narayan Lal, Mr.
Man Singh Bhak.
Mishra, Mr. B. N.
Nig, Mr. G. C.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sen, Mr. N. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Srinivasa Rao, Mr. P. V.
Subrahmanyan, Mr. C. S.
Venkateswara Rao, Mr. B.
Vishandas, Mr. H.

The motion was negatived.

Mr. Deputy President: I may remind the House that the original amendment of Mr. Rangachariar is still before the House.

Several Honourable Members: The question may now be put.

The Honourable Sir Malcolm Halley: Before the question is put, I ask an opportunity to state our strong objections to the amendment moved by Mr. Rangachariar. We offered him what looked like a very good alternative, drafted with great skill, with all the proper safeguards inserted, and not unreasonable in itself. It made full provision for the particular class of case he has in view. But he and his friends would not have it. Now where do we stand? Everybody knows the class of person to whom a conditional release is given: possibly a member of a criminal tribe, often a member of a wandering tribe. He is sent to a settlement for the purpose of reclamation. Now how does Mr. Rangachariar propose to treat this evasive sort of gentleman? The Magistrate has to send first of all a notice to him. If Mr. Rangachariar can tell us where to find a wandering criminal or a habitual absconder, he is cleverer than our Magistrates or police are often able to show themselves. To proceed. He says nothing as to what is to happen if the notice is not served, or the man does not obey it. He insists on notice; according to him no warrant is ever to issue. Again; a few minutes ago he objected strongly to Sir Henry Moncrieff Smith's wording "such inquiry as he thinks fit." And what is his own wording? Here see this new upholder of the Magistrate's full discretion comes out again. When Sir Henry Moncrieff Smith proposed to put in the words "such inquiry as he thinks fit," Mr. Rangachariar thought them hopelessly inadequate. What are his own words. "Notice and inquiry." Nothing else. So much for his consistency.

I put it that this is a rugged amendment. It does not provide for the circumstances; it inserts insufficient safeguards; it allows you to go on issuing notice after notice to an absconder, and in the end it allows the Magistrate to dispose of the case after an inquiry of a nature which Mr. Rangachariar himself has more than once pronounced to be insufficient.

Rao Bahadur T. Rangachariar: May I be permitted to offer an explanation as a special case?

Sir Henry Moncrieff Smith: Mr. Rangachariar has spoken twice already.

Mr. Deputy President: If it is a personal explanation, I will allow it.

Rao Bahadur T. Rangachariar: At any rate the personal explanation is as regards why I distrusted the Magistrate in this case was . . .

Mr. Deputy President: That is not a personal explanation.

Amendment moved:

"That in clause 23 (iii) substitute the following for proposed sub-section (5):

(5) If any condition upon which any person has been discharged is not fulfilled, the District Magistrate or the Chief Presidency Magistrate, by whom the order of discharge has been made or his successor, may, after notice and inquiry, cancel the same."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—30.

Abdul Quadir, Maulvi.
 Abdulla, Mr. S. M.
 Agarwala, Lala Girdharilal.
 Ahmed, Mr. K.
 Asjad-ul-lah, Maulvi Miyan.
 Ayyar, Mr. T. V. Seshagiri.
 Bagde, Mr. K. G.
 Bajpai, Mr. S. P.
 Basu, Mr. J. N.
 Bhargava, Pandit J. L.
 Chaudhuri, Mr. J.
 Gulab Singh, Sardar.
 Iswar Saran, Munshi.
 Jatkar, Mr. B. H. R.
 Lakshmi Narayan Lal, Mr.

Man Singh, Bhai.
 Misra, Mr. B. N.
 Nag, Mr. G. C.
 Neogy, Mr. K. C.
 Rangachariar, Mr. T.
 Reddi, Mr. M. K.
 Sen, Mr. N. K.
 Shahani, Mr. S. C.
 Singh, Babu B. P.
 Sinha, Babu Ambica Prasad.
 Sinha, Babu L. P.
 Srinivasa Rao, Mr. P. V.
 Subrahmanayam, Mr. C. S.
 Venkatapatiraju, Mr. B.
 Vishindas, Mr. H.

NOES—31.

Abdul Rahim Khan, Mr.
 Allen, Mr. B. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Dalal, Sardar B. A.
 Faridoonji, Mr. R.
 Gidney, Lieut.-Col. H. A. J.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.

Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.
 Jamnadas Dwarkadas, Mr.
 Lev, Mr. A. H.
 Mitter, Mr. K. N.
 Moncrieff Smith, Sir Henry.
 Muhammad Hussain, Mr. T.
 Muhammad Ismail, Mr. S.
 Percival, Mr. P. E.
 Samarth, Mr. N. M.
 Singh, Mr. S. N.
 Sircar, Mr. N. C.
 Tonkinson, Mr. H.
 Webb, Sir Montagu.
 Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 24th January, 1923.

LEGISLATIVE ASSEMBLY.

Wednesday, 24th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to acquaint the House of the unavoidable absence of Mr. President from to-day's meeting.

Mr. Deputy President then took the Chair.

POLICY OF HIS MAJESTY'S GOVERNMENT WITH REFERENCE TO THE GOVERNMENT OF INDIA ACT.

The Honourable Sir Malcolm Halley (Home Member): Sir, I have to lay on the table a copy of a despatch from His Majesty's Secretary of State for India, Public No. 62, dated the 2nd November, 1922, regarding the policy of His Majesty's Government with reference to the Government of India Act.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Are copies available to the Members?

The Honourable Sir Malcolm Halley: Certainly.

INDIA OFFICE, LONDON.

2nd November 1922.

Public,
No. 62.

TO HIS EXCELLENCY THE RIGHT HONOURABLE THE GOVERNOR GENERAL OF INDIA
IN COUNCIL.

MY LORD,

More than a year has elapsed since Your Excellency's Government forwarded to my predecessor the report of a debate which took place in the Legislative Assembly in September of last year, as a result of which a motion was carried recommending that the Secretary of State should be informed that the Assembly was of opinion that the progress made by India on the path to responsible government warrants a re-examination or revision of the constitution at an earlier date than 1929. On the 28th February last my predecessor stated, in reply to a question put to him in the House of Commons, that he intended to address a Despatch to Your Excellency's Government in reply to this motion, which would follow generally the lines of his speech in the course of the debate on the address a fortnight earlier. Circumstances, however, prevented the fulfilment of this intention, and since it has fallen to myself to make the reply which it is desirable that the Assembly should

[Sir Malcolm Hailey.]

receive, I do not imagine that Your Excellency's Government will have expected that I should address myself to so large and important a question without mature consideration, even though some further delay was involved.

2. The result of my consideration is that I have little to add to, and nothing to qualify in, the statement of the case made by my predecessor in the concluding portions of his speech in the House of Commons on the 14th February last. The policy deliberately adopted by Parliament in enacting the Act of 1919, and recently reaffirmed by the present head of His Majesty's Government, was to provide an instalment of self-government, but at the same time to make further progress in that direction dependent upon experience of the practical results achieved in the working of the new constitution as a whole. It would have been a matter for surprise had any speaker in the Indian debate of September of last year attempted to prove as the result of six months' experience of a new constitution that its possibilities were exhausted and that nothing remained to be learned from further experience of its operation. No such attempt was made, and the arguments used in support of the motion consequently lose some of their cogency in my view, for three reasons. In the first place, they assumed that progress is impossible under the existing constitution, and can be achieved only by further amendment of the Government of India Act. This assumption I believe to be fundamentally erroneous.

3. The outstanding feature of the change made by the Act of 1919 was that it provided British India with a progressive constitution in place of an inelastic system of government, and that consequently there is room within the structure of that constitution for the Legislatures to develop and establish for themselves a position in conformity with the spirit of the Act.

4. In the second place, however great the merits shown by the Legislatures as a whole and by individual members (and I am far from wishing to underrate them), the fact remains that the merits and capabilities of the electorate have not yet been tested by time and experience. The foundation of all constitutional development must be the presence of a vigorous and instructed body of public opinion operating not only in the Legislatures, but—what is even more important—in the constituencies. Until this foundation has been firmly laid, progress would not be assisted, and might indeed be retarded, if fresh responsibilities were added to those with which the electors have so recently been entrusted.

5. Thirdly, the new constitutional machinery has to be tested in its working as a whole. Changes have been made as the result of the Act of 1919 in the composition, powers, and responsibilities not only of the Legislatures, but also of the executive Governments. No estimate of the success of the new system could pretend to completeness which was not based upon proof of the capacity of these bodies, as now constituted, to administer the duties entrusted to them—duties which, from the point of view of the public welfare, are at least as important as those of the Legislatures; and trustworthy proof of such capacity can only be established by experience of the extent to which the increased association of Indians in the sphere of executive responsibility has justified itself in practice.

6. I would add that, even were these reasons for patience less cogent, an opinion based upon six months' experience of its working that a new constitution, in the elaboration of which over two years were occupied, stands in need of revision, is hardly likely to commend itself to Parliament, since it is clear that sufficient time has not elapsed to enable the new machinery to be adequately tested. It would, in fact, be without precedent if a constitution, deliberately framed to provide a basis for development in whatever directions experience may indicate, were to be brought under review within a few months of its inauguration; and indeed any such process could hardly fail to deprive the constitution of a large element of its value, by determining prematurely the precise directions in which further progress is to be made.

7. I shall be glad if Your Excellency's Government will cause copies of this Despatch to be laid on the Table of both Chambers of the Indian Legislature.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble Servant,

(Signed) PEEL.

THE WORKMEN'S COMPENSATION BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I present the Report of the Joint Committee on the Bill to define the liability of employers in certain cases of suits for damages brought against them by workmen and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

NICKEL FOUR-ANNA AND EIGHT-ANNA PIECES.

Mr. Khagendra Nath Mitra (Bengal: Nominated Official): Sir, I wish to ask a question of which I had given private notice to the Honourable Member concerned.

Is the Government aware that there has been for the past few days a rumour in the city of Delhi that the nickel four-anna pieces are going to be withdrawn from circulation? If so, will the Government be pleased to say if it is a fact? Is the Government aware that much inconvenience has been caused to the business men as well as to the private citizens by the refusal on the part of people in many cases to accept these coins?

The Honourable Sir Basil Blackett (Finance Member): I am much obliged to the Honourable Member for giving me an opportunity of stiding this idle rumour. The Government of India understand there has been such a rumour in the local bazar for a few days; it is entirely unfounded; the local authorities took whatever action was possible and the rumour has since been dying out. I am informed that the nickel four-anna pieces are now being freely accepted. It is not true that these coins are about to be withdrawn from circulation. Similar rumours have been current for a few days in various parts of the country at different times and they have been repeatedly contradicted. I may add that the local Commissioner is going to be asked to put up a notice in prominent places in the city of Delhi with a view to stopping this inconvenience.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): There is also a similar rumour in regard to the eight-anna nickel pieces?

The Honourable Sir Basil Blackett: The same remarks apply.

LASCARS IN THE GREAT WAR.

**Letter from the Assistant Secretary to the Government of India, Department of Commerce, to Mr. K. Ahmed, No. 323, dated the 11th January 1923.*

As you will remember you asked in the Legislative Assembly on the 7th September last for information on the following points:

- (i) The number of Indian Seamen and Lascars working as Serangⁱⁿ, deck crews, firemen and butlers in steamship companies and in merchant vessels, etc., in Indian Waters and abroad;
- (ii) The number of Indian Seamen and Lascars killed by enemy action during the Great War; and
- (iii) The number of Indian Seamen and Lascars captured and imprisoned in foreign countries.

* Vide pp. 1349 and 1352 ante. .

[Mr. C. A. Innes.]

I am afraid that we are not in a position to give you exact figures in all cases; for instance the Government of Bombay, who were consulted, have informed us that information as to the number of Indian Seamen and Lascars shipped from Karachi and other Ports (excepting Bombay) in that Presidency is not available. However I give below what information we have been able to collect and hope that it will serve your purpose :

*(i) Numbers shipped from

Bombay	...	...	...	...	29,000
Calcutta	...	...	...	...	39,207

(These figures are for 1921-22.)

(ii) 3,427 (this includes 33 who died from exposure while on war service, but excludes 47 who died while interned in Germany).

(iii) 1,200 (I have assumed that you refer to Enemy countries and not all foreign countries).

RESOLUTION RE EXAMINATION FOR THE I. C. S.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, the Resolution that stands against my name and which I propose to move reads as follows :

" This Assembly recommends to the Governor General in Council that the present system of conducting Simultaneous Examinations for the recruitment to the Indian Civil Service be changed and that a different method of conducting the Simultaneous Examinations so as to give a fair chance to candidates belonging to different communities and different provinces be devised, if necessary, by having a limited form of competition."

Sir, in moving this Resolution. I wish to attack it or deal with it on very broad lines. It is not my desire to interfere at all with the efficiency or the traditions that are attached to the honourable service well known to us all as the Indian Civil Service; but I move this Resolution standing as I do as a representative of one of the minority communities in India and as such I believe I have every right to place before this Honourable House the views of one of the minority communities, leaving representatives of other minority communities to voice their views. In attacking this subject I do so with great diffidence because I represent a community unfortunately, which, for educational purposes, runs a very bad second so far as other minority communities in India are concerned. Why that is so I am not prepared to argue out just now, but let that pass. India as we know—I would call it the continent of India—is a mass of heterogeneous classes and races, talking different languages, with different ideas, and different creeds. There is no doubt that the cementing influence here is the British element. Take that away and I think very few will deny or disagree with me that we are likely to crumble like a pack of cards. The idea is no doubt to Indianise the Services, and being an Indian and a citizen of this country I join with them that the idea is to Indianise the Services. Minorities of course claim a place in that. The Indianisation of the Services really means the replacement of the Englishmen by the various communities of India. There is no doubt that the Indian Civil Service which is manned largely by Europeans will in time be replaced by Indians. The cry now is that this Service together with other superior Services is manned by Englishmen to a disproportionate extent compared with the rest of India. How true that is, how necessary it is, it is not my purpose to argue now. But the fact remains that Indians look forward to Indianising the Services entirely in time. Their ideal is to replace Englishmen with recruitment from among their own

men, that is, Indians. But when dealing with the recruitment of the Services, the Public Services Commission which sat in 1913, and submitted its Report, apprehended such an eventuality, namely the replacement of Europeans by Indians. Now it is very extraordinary how prophetic or ultra-prophetic has been the safeguard, because if I understand rightly, since the simultaneous examinations have been in practice one province in India has been able to monopolise,—be it said to their credit no doubt,—at least 50 per cent. of the appointments in the I. C. S., and taking that as your criterion, and accepting that as a criterion for the future, it seems as if it is quite legitimate to apprehend that within a few years' time Englishmen will be replaced mainly by one community, or by the community mainly occupying one province. I understand I am right in saying that the struggle just now is between East and South *versus* North-West of India. I do not say that in disparagement of the communities that have succeeded, but there is no doubt that it is going to be the ultimate position unless some safeguards are put into operation in time. I ask this Honourable House to see or to visualise the Punjab being administered by no one else but by people from the south and *vice versa*. I take the same position from East to West, Bengal and Bombay. As I say, India is a continent with a number of communities, each wanting to attain the maximum of speed in regard to communal benefits from the Reform Scheme. The major communities in India are protected and are able to look after themselves, while the minor communities, I regret to say, are being neglected, and it is to protect these minor communities that I, as a representative of the Domiciled Community in India, move this Resolution. In doing so, I think I am in good company when I quote, with your permission, Sir, an extract from the Report of the Public Services Commission from page 172.

"Safeguards and Reservations.—These safeguards and reservations are two in number. First two candidates should be nominated each year by the Secretary of State, on the advice of the Government of India, from amongst graduates of the various Universities, and of an age similar to that of the competitors at the examination. Such nominees who should be termed 'King-Emperor's cadets', should rank as probationers below the other successful candidates of their year, pending the result of the final examination. Otherwise, they should be on an equal footing in all respects. This would make it possible to give representation to young men of good family, who had shown literary attainments of a higher order, but who were not intellectually quite in the front rank. Members of the domiciled community and Burmans might also benefit under this provision."

The Report further goes on to say:

"The Committee itself should be made up so far as may be of persons in touch with educational interests, and should consist of the vice-chancellor of the university concerned, the director of public instruction of the Province chiefly interested, and three other members to be nominated by the syndicate of the university whose area is in question. Should it be found that the candidates successful at the examination are coming too markedly from one particular area, we think that the best remedy would be to hold the examination by groups of areas in rotation. But we deprecate any such arrangement unless experience shows that it is absolutely necessary. Subject to these qualifications the examination should be conducted by the civil service commissioners, who, after consultation with the educational authorities in India, should devise a scheme having the same relation to the Indian educational courses, as the examination in England will, under our scheme, bear to the education given in the British secondary schools. To give effect to these recommendations, we recognise that it will be necessary to amend the Statute of 1858, and we advise that legislation be undertaken accordingly."

Well, Sir, these were the safeguards recommended by the Public Services Commission and to avoid a swamping of these coveted posts by any one particular community, I have brought forward this Resolution

[Lieut.-Colonel H. A. J. Gidney.]

feeling as I do that those who represent the minor communities will support it. It is up to the Government to suggest which will be the most feasible and the most easy method by which the minor communities could be safeguarded and represented. Personally, I think the easiest solution will be to leave the examinations as they are, and to make certain safeguards and reservations by nominating from among those candidates who have passed the examination, representatives from the various communities. This would give all communities a fair chance; there is no doubt that it will create a feeling of harmony, and this House will be putting into execution one of its primary and most important duties, namely the protection of the minor communities in India. If this House refuses to accept this Resolution, I make bold to say that it will be failing in its duty to discharge one of its most important duties. (Voices: "Hear, hear.") I see some Members from Bombay say "Hear, hear." I trust it is meant.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Ironically.

Lieut.-Colonel H. A. J. Gidney: Sir, I wish to put forward this Resolution and I will ask the House to give it its support and so protect the minor communities in the Motherland of India.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadan Rural): Sir, I beg to move the amendment which stands in my name to the Resolution which has just been moved, and after the amendment has been made the Resolution will read thus:

"This Assembly recommends to the Governor General in Council that the present system of conducting simultaneous examinations for the recruitment to the Indian Civil Service be modified so as to provide for a fair representation of suitable candidates of different castes and communities residing in British India."

Sir, I am one of those who stand and very strongly too, for the Indianisation of the services. Government might say that 'look here, you Indians want Indianisation of the services and then want communal representation.' Sir, I am the last person to have claimed communal representation, but since communal representation has been granted by Government partially, I submit that it is very unfair to other communities if it is not extended to them. One happy expression has been used that the Hindus belong not to a minority community but to a majority community. I submit with the greatest respect that it is quite wrong. The meaning of minority and majority can be ascertained from their methods of living, their methods of interlining and inter-marrriages. So far as these are concerned, I would say that Hindus are divided into a very large number of castes and creeds, and they can neither interline nor inter-marry.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): They will.

Lala Girdharilal Agarwala: Dr. Gour says they will, but when his Civil Marriage Bill is passed, and not before that. (A Voice: "Not even then.") Now take for example the broad divisions among Hindus, Brahmmins, Kshatriyas, Vaisyas and Sudras. Then, again, all these are divided into a very large number of sub-castes who would neither intermarry nor interline. I might say, for example, my own caste—the Vaisya community—is divided into several sub-castes—Agarwalas, Khandelwals, Oswals, Bajshahis and so forth. If the principle of communal representation is worked out in such a way that so many posts are given to, say Muhammadans—I hope I shall be excused for using that expression—and so many for Hindus, then they

might say that Hindus mean 70 per cent. and Muhammadans mean 80 per cent. I would say that that calculation is quite wrong and quite misleading. The word "Hindus" may be applied to a large number of persons who are really Hindus, but when we come to the deeper question of inter-marriage and inter-dining, we find they are a combination of several castes and communities, and that is the reason why I have put down the word "different castes and communities residing in British India," so that, if the principle of communal representation is once accepted, I would say that it should be worked out fairly and squarely and, on the other hand, I am quite prepared to drop this question of communal representation altogether if that principle is eliminated from India. I am sure the time will come when the principle will be abandoned but, as matters now stand, I think that one community should not be allowed to have an undue share of Government posts or the like at the expense of other communities. Surely, I don't say that the minorities should not be protected. At the same time, the question is "what do you mean by minorities?"

With these few remarks I move my amendment.

Dr. H. S. Gour: Sir, the Honourable Mover of this Resolution has appealed to the representatives of the minor communities of India to support him. I am a representative of one of those communities whose support the Honourable Mover of this Resolution has asked for. But I am sorry to say that, far from supporting his Resolution, I strongly oppose it. Does the Honourable Mover of the Resolution realise the full effect of the Resolution if accepted by the House? Does he know that his community in this country represents only 100,000 souls? What is the proportion of that community to the rest of the population of India? Well, Sir, if you examine the question, you will find that my Honourable friend, the Mover's community will stand in the proportion of 1 to 3,150. The result would be that my friend's community will get the third of a post in the Civil Service out of a cadre of 1,250. Is that the proportion that my friend wants? Is that the proportion which my friend desires his community should have in the public services of this country? He has spoken at very great length upon the value and utility of communal representation. My friend, Mr. Girdhari Lal Agarwala, with a sub-conscious humour, gets up and says the communities in India are so numerous that it will require not one but many Royal Commissions to categorise them, and then will begin a struggle between one community and another, between sub-communities among themselves and I think the time of the public services will be devoted mainly to deciding the disputes between these contending communities. Is this what my friend, Mr. Agarwala, wants the public services in this country to do? He has, Sir, referred to the present policy of the Government of India. I am glad he has done so. No one on this side of the House deprecates that policy more than I do. The High Courts of India—the High Court which is the palladium of public justice is recruited as if it were a representative institution, and what is the result? Let any practitioner in the High Court tell you what the result is. The public services throughout India have been more or less recruited upon a communal basis. I hope, Sir, that, if this debate leads to any good result, it may lead to this that this policy will be reversed in the future. We do not want people because they belong to a particular community—we want a public servant because he is efficient and capable for the discharge of the duties entrusted to him, and that should be, and I hope will be, the sole criterion for recruitment to the public services in this country.

[Dr. H. S. Gour.]

We have been told by the last speaker that communal representation is recognised by the Government in the constitution of this House. There again, I deprecate communal representation. I am sorry, Sir, that communal representation was ever introduced in the first constitution given to this country and the sooner it is eliminated the better for the ultimate good of this great land. I think, Sir, I have shown that communal representation will not only serve no good purpose but would be positively mischievous and I therefore strongly oppose this Resolution.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, I have great pleasure in supporting the Resolution moved by my Honourable friend, Colonel Gidney. I was surprised to hear the eloquent speech of my Honourable friend, Dr. Gour. It is surprising that on the one hand we criticise the prevailing system and with one voice ask that communal representation should be given to us and claim that the present system is leaving us discontented and dissatisfied, and on the other hand we come forward and oppose this Resolution for extending the principle of communal representation still further. When we have communal representation in this Honourable Assembly, why should we object to its application to the Services. If the present system is accepted, let us compete with the British Civilian as they are.* But if we are **not** satisfied with it, then I think it is the right of everybody to come forward and claim representation. I think it shows great courage on the part of my Honourable friend, Colonel Gidney, that he should come forward on behalf of a very small community and show that it would be in the interests of India at large that the principle of communal representation should be accepted. Now, Sir, I will draw your kind attention to the fact, which everybody knows, that the present system of recruitment to the Civil Service stands condemned. What are the general defects which are to be found in the Civilian recruited according to the present system? I do not want to be personal, but it goes without saying that the present system is bad on the following grounds. The first thing is that when the young Civilian comes to this country, he is **rather** closed to the people, because he is not in touch with them. Those days are gone when the Civilians were advanced and this country was backward. Now the country has got a sort of general awakening and everybody understands his interests. When we come to judge our own interests I think it is only fair that communal representation should be respected in spirit and word and that it should be safeguarded. The case of England is quite different. There you have one nation, one religion and one language. But here, in India, you have got so many different States; I might call them so many small countries. Every province has got its own sentiments and its own interests. That being the case, I think it will be in the interests of the country and in the interests of the British Empire that competition should be held separate in each province. My Honourable friend, Colonel Gidney, did not enlarge on the defects of the present system of competition. At present, the young Civilians who come from England and who compete have different standards of education. For instance, some may take up Mathematics and some may take up Science. But they are not experienced in the difficult problems of humanity. It takes a long time before they study the book of humanity. They are so biased when they come here that they administer the laws in this country but do not temper them to the needs of the governed. That is the difficulty which is felt by everybody and I think Government must be realising it. If the

leaders on both sides really want to have Swaraj I do not want that it should be either the Punjab Raj, or Bengal Raj or Madras Raj; it should be an all-India Raj, and if you want an all-India Raj, it cannot be had unless you respect the interests of the different communities. My Honourable friend, Dr. Gour, insisted that "the survival of the fittest" must be held to be the guiding principle. I think that is wrong. When we claim the same things from the English people, we are perfectly justified on the same grounds in claiming the same privileges from each other. With these remarks, Sir, I have much pleasure in supporting Colonel Gidney's Resolution in spirit and in word.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I rise to oppose the Resolution moved by my friend, Colonel Gidney. I assure the House that when I oppose this Resolution, I should not be understood to be in favour of monopoly, if there is a monopoly, of certain castes. Monopoly of any one community or any race or any caste is to be deprecated and must be put down. But, Sir, in the first place, nobody has yet shown that any one community in India or any one caste in India has got a monopoly of the public offices in this country. (*An Honourable Member*: "They have.") It must be proved first before we are asked to do something to do away with that monopoly. Then, Sir, it has been said by Colonel Gidney that the Resolution which he has moved is in the interests of the minority. I should like to know from Colonel Gidney and the people of that way of thinking what is the connection between a community being a minority in the country and the method of selecting candidates for public offices. Are the candidates selected by votes? Sir, if the candidates were selected by votes of the members in the country, certainly the minorities do require protection. But the candidates are selected by merit, which is decided by examination. Even if 10 candidates from the community to which my Honourable friend has the honour to belong compete, at least a few of them will pass if they have got the merit. Their passing or failure does not depend upon his community being a minority. I therefore feel that the point which my Honourable friend, Colonel Gidney, has made has no relevancy to the question which he has raised. My friend, I think, remarked that his community has the misfortune of being somewhat backward in education. I do not know whether I heard him correctly. (*Lieut.-Colonel H. A. J. Gidney*: "Yes.") He says "Yes." Sir, it is a misfortune that any community in this country should be backward in education, and all those communities which are backward in education should have not only the sympathy but the active support of all the Members of this Assembly. But, Sir, is the measure which my Honourable friend proposes useful in removing that defect from the community? If my Honourable friend had felt the want of education in his community or in other communities, he should have proposed another Resolution asking the Government to give special facilities for education for those communities which are wanting in education, and I am sure the whole House would have sympathised with him. But unfortunately he does not take that course—I do not know why. I have got my own surmise, but I do not wish to speak out that here. Then, Sir, before Colonel Gidney asks this House to decide this question in his favour it would have been better if he had told the House what the object is with which these officers are appointed by the Government. What is the duty which these officers have to perform? The officers appointed by Government are not appointed to represent certain communities in their offices. These officers are appointed to render certain services for the country and every officer

[Mr. N. M. Joshi.]

is expected to forget his caste, is expected to forget his religion, is expected to forget his race while doing his duty. Therefore, the caste, the race and the religion of an officer has nothing to do with the duties with which he is entrusted. On the contrary, Sir, if I am asked what sort of officer Government should appoint, I say the highest qualification for an officer to be appointed is that he has the capacity to forget his religion, he has the capacity to forget his race, he has the capacity to forget his caste and such other considerations. Somebody asks me whether they do actually. Sir, it is a great pity if they do not. My point is this. The man to be appointed must have qualifications for the work, and one of the qualifications is that the man must not have a strong bias for his caste and must be able to forget all these considerations while doing his duty. If you once bring in this consideration in making appointments, then I am sure the conflict of caste, religion and race will never pass away from this country. Unfortunately, if we accept the principle which Colonel Gidney has enunciated, we shall be perpetuating these distinctions instead of trying to remove them. I feel therefore that this House will be well advised in not accepting this motion. Sir if Colonel Gidney had thought sufficiently over this question, he would have found that the whole proposal is impossible to work out. How are the numerous and innumerable communities in India to be represented in the Government service? Moreover has he mentioned all the circumstances by which people are divided in this country? He only mentioned a few. Did he mention that the whole world, not only India, is divided into poor, middle class and rich people? (Mr. N. M. Samarth: "Depressed class.") If the officers of Government are swayed by any consideration more than any other, I feel they are swayed by the considerations of the economic class to which they belong. A man belonging to the higher class finds it difficult to understand the difficulties of a man belonging to the working class whatever be the caste of the working class.

Suppose now you have got a gentleman belonging to the community to which my Honourable friend, Colonel Gidney, belongs and he is a great employer; there is another gentleman belonging to the community of my Honourable friend who is one of the working classes. If the former becomes a Government officer, will he sympathise with the latter if he comes into conflict with his capitalistic master simply because the servant belongs to his community? Therefore if Colonel Gidney will go deep into the matter he will find that the system which he proposes will fail if that system is worked out with thoroughness. In order to show the absurdity of his Resolution I think the Government should appoint a Committee to make thorough-going proposals to give effect to the principle which he has enunciated. If the minority communities, if the backward communities were to take their proper place in the public services of this country, the best remedy for them is to ask the Government to give them special facilities for education and for training. That is the only way in which their present grievances will be removed, and I am quite sure that the whole House will support them in their demand if they make a demand for special facilities. I hope therefore that this House will not accept the Resolution moved by my Honourable friend, Colonel Gidney.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): If I had been a member of the Anglo-Indian community I would have at once proposed a vote of censure on the President of

that body. The President in his zeal and in his anxiety for his community, perhaps encouraged by those who do not like to come out into the open, has initiated a discussion which is unfortunate, which is extremely to be regretted. Colonel Gidney has given us a peep into his own mentality. He has told us that the various communities are using the Reform Scheme for the advancement of their communal interests. That may be Colonel Gidney's point of view, but the point of view of the rest of us is that we are trying to use the Reform Scheme as far as possible for the advancement of the interests of the country as a whole. But that is not all. Colonel Gidney, finding the difficulty of his position, has clearly said, "Oh! If you cannot devise means by which all these various minor and backward communities cannot be fully represented, resort to nomination." He has really "let the cat out of the bag." There are some people who are in constant horror of competition. They prefer the back door to the open door. I say, Sir, once again with the kindest of feelings for my Honourable and gallant friend that when he goes home this evening and in his mind tries to reflect on his heroic performance to-day he will feel that he has really done a positive disservice to the community to which he belongs. Let me pause for a second and let me tell Colonel Gidney that this is a game at which two can play. This is not a game which Colonel Gidney can play alone. Accept the principle of representation for the moment. How much representation are you going to give.—I will take the Anglo-Indian community to it? In proportion to what? To numbers, to education, to the taxes that they pay, to the stake that they have in the country? I should be sorry in spite of the provocation offered by Colonel Gidney to the whole House, I should be sorry to say a word which should be at all unpleasant or unkind either to his community or to any other community. But I shall request him and others of his way of thinking to calmly consider that if they once bring about a discussion of the claims of the various communities, they will be driven to a position from which they will willingly like to extricate themselves. There may be some justification—for which a great deal of responsibility must rest on Government—I say there may be some justification for this principle being adopted as regards certain minor appointments, but when you come to the Civil Service are we going to accept this principle? Do we want a man in place of Sir Henry Moncrieff Smith because he is an Anglo-Indian, or because he is, according to my friend, Mr. Agarwala, a Vaisya, or according to me, a Kayastha, or according to my friend, Mr. Chatterjee, a Brahmin. (*Lala Girdharilal Agarwala*: "I never meant that.") You withdraw your amendment then. In the deep there is a lower deep. My friend Mr. Agarwala's amendment is infinitely worse than the Resolution of Colonel Gidney. If you go into the question of caste, I do not know where we are going to end. Take the Kayastha. There are 11 sub-sections, and then there is my friend, Mr. Samarth. How are you going to decide the claim of each? Mr. Agarwala I never knew was developing into a social reformer. What on earth has interlining and intermarriage got to do with this problem? Simply because you do not dine with the member of another caste, does it follow that you will not be able to discharge your duties thoroughly and honestly? But, Sir, I shall invite the attention of the House to the words of the Resolution itself:

"A different method of conducting the simultaneous examinations so as to give a fair chance to candidates . . ."

That implies that the present method does not give a fair chance to the various communities. Has Colonel Gidney proved it? Here is this

[Munshi Iswar Saran.]

competitive examination. Anybody who has got the brains, anybody who has got the capacity, anybody who is willing to undergo that test, is welcome. How do you say, how do you make out that the present system of conducting simultaneous examinations does not give a fair chance to the members of all the communities? The only logical conclusion is, that having regard to the fact that the members of certain communities wish to depend on favours rather than on merit they would like to make short work of all competitive examinations and would like to get into the Service through the back door. Then it does not stop there. A fair chance is to be given to different communities and to different provinces. Take the Hindu community to which I belong. Suppose Mr. Samarth passes the Civil Service examination . . .

Mr. N. M. Samarth: I am too old now.

Munshi Iswar Saran: Suppose my friend, Mr. Chaudhuri, passes the examination, then I, as a United Provinces man, with less brains than both of them, will say "My community has not been represented and my province has not been represented."

Lieut.-Colonel H. A. J. Gidney: What about appointments to the High Court?

Munshi Iswar Saran: In the High Court, if appointments have been made on communal considerations, the blame is not ours. The blame must attach to those who have made those appointments. Then we are asked to accept a limited form of competition. There are varieties of competition it appears. One is limited and the other is unlimited. The limited form of competition, it is rather difficult to understand. What is this limited competition? Perhaps, it means that you take a few by competition and the rest have to be taken by nomination.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Shoved in.

Munshi Iswar Saran: My friend, Mr. Jamnadas, who is an authority on excellent phraseology, says "Shove them in somehow." The whole fact of the matter is that we cannot accept it. As my friend Mr. Joshi has said, it is the duty and the bounden duty of every Member of this House and of every Indian to see that the communities which are at a disadvantage on account of lack of education and so on should receive every encouragement, but it is the duty of those communities to see that by introducing these novel, may I say mischievous and wicked changes into the system of recruitment for the Civil Service they should do nothing to impair the efficiency of this Service. What will be the result? Not only the Anglo-Indian community or the Agarwala community but the whole of India will suffer. These appointments are made not with a view to give jobs to this or that community. These appointments are made, these examinations are held so that you may get the very best men for the discharge of the work that will be entrusted to them. That is and, I submit, that ought to be the only and the sole criterion for recruitment to this service. I do hope that after a little reflection Colonel Gidney will show his good sense and will earn our thanks if he will withdraw his Resolution. (*Voices:* "No.") Then, Sir, if he does not withdraw this Resolution, it will meet the fate it so richly deserves.

Mr. Deputy President: The amendment moved is :

"This Assembly recommends to the Governor General in Council that the present system of conducting simultaneous examinations for the recruitment to the Indian Civil Service be modified so as to provide for a fair representation of suitable candidates of different castes and communities residing in British India."

The question is that that amendment be made.

The motion was negatived.

Mr. Jamnadas Dwarkadas: I need hardly say that I rise to oppose the Resolution moved by my Honourable friend, Colonel Gidney. I must however, at the outset, remove the misapprehension that it seems to me prevails in the minds of some of the Members with regard to the meaning of the word 'Indianisation.' As I had the honour of moving this Assembly in the matter of Indianisation I may at once point out that by Indianisation I do not mean that Englishmen who are the present incumbents of the Services should be removed bodily and be replaced by Indians. No. Not only that. I do not even mean that in future, although the policy of recruitment in India may be accepted, as it ought to be accepted, the services should go exclusively to Indians and not at all to Europeans. All that we mean by the term Indianisation is that the bar which at present obtains against our countrymen because most of the services go exclusively to Europeans should be removed and that the recruitment in future should take place in India and in India alone. Now that does not exclude the possibility of Europeans competing for these services. If there are men from England coming out in sufficient numbers to appear at these examinations, there should be nothing to prevent them from doing so. If in the examination it is found that the European proves to be a better candidate for the services in open competition, then by all means the post should go to him as well as to the Indians of course on new conditions with regard to salary, etc. To bring down the word Indianisation to a very narrow interpretation is in itself a mistake and if my friend Colonel Gidney's Resolution is based on that mistake, having realised this mistake, I hope he will see his way to withdraw his Resolution. Now, Sir, what is it that he asks to do. I personally look forward to a time when examinations will be conducted in India alone open of course to all candidates that come either from India or from Europe. If simultaneous examinations go on, then some of the posts, he says, must go exclusively to representatives of various communities which are said to be, to use Colonel Gidney's phrase, the minority communities. Now I ask one question. I put one question to those who think with Colonel Gidney. Have we ever approved of the distinction that is made on the ground of race? I do not think any representative of any community, any one who takes the name of Indian has ever approved of this distinction being made on the ground of race. If that is so and if we argue that the racial distinction which is wrong should go and go immediately, is it right that in our own country we should create communal distinctions and then be justified in claiming that racial distinctions should go. Is that the way to contribute to the elimination of racial distinctions that have been perpetuated in this country by those who are in authority?

12 Noon. We shall be strengthening their hands, we shall be giving them a handle, we shall be giving them an argument, for the perpetuation of racial distinction which each of us, I think, in the country has always abhorred. If by claiming communal representation we are going to create feuds and quarrels in this country, so that, they would lead to those in authority continuing the *status quo* and continuing the racial distinction

[Mr. Jamnadas Dwarkadas.]

that has gone on in this country for a long time, I ask those who think with Colonel Gidney, are they serving the country thereby, are they advancing the cause of their communities, are they advancing the cause of their countrymen, and of the country to which I am sure, they feel proud to belong? You are losing the cause altogether by claiming for your communities that which is the right of the country alone, who prevents these communities from sending their candidates to the examinations? Is there any law, is there any clause saying that only the Hindu community will represent itself at the examinations, and that the Anglo-Indian community or the non-Brahmin community is precluded from sending candidates? Is it a sign of strength that, if they are not precluded from sending their candidates to the examinations, is it a sign of strength that they should ask that, even if their candidates do not prove fit, they must be given posts because they must have communal representation? I say, I do not know whether it is doing a service to the community to deny the strength and the capacity of the community. I am not prepared to believe that the community is so weak or helpless that it must have its own men sent, although they prove themselves totally unfit for the service. I, on the contrary, am prepared to believe that if their community sends men to the examinations, then I am sure that in their community they will find men who are able to hold their own with the other advanced communities in this country. To deny that, to deny that capacity in their community is a grave injustice, a distinct disservice to their community. But what are we really coming to? We are claiming self-government for the purpose of advancing rapidly the cause of our country. Are we claiming self-government, are we claiming further reforms for the purpose of giving an opportunity to every community to grab for itself what it can out of these reforms or what it can out of this advancement? (*An Honourable Member*: "What about protection?") Let us not discuss irrelevant subjects here. If you do not understand the meaning of protection which has nothing to do with communal representation, discuss it and fight it out when you come to discuss this question in the Assembly as I am sure the opportunity will come to the Assembly to discuss that subject. Let us not talk irrelevant things and interrupt in an irrelevant manner in order to break down arguments you cannot break down. Well, there is, if I may use another argument, that League of Nations established for the purpose of serving all the nations. At present there is a sad picture of each component part of the League of Nations trying to grasp for itself what it can out of other nations. The picture is sad enough. There is another picture of men like Lord Curzon claiming for their race a superiority which they have not the slightest right to claim. The picture is sad enough. Well, I was about to say the picture is blasphemous enough. Are we going to add to the sadness and to the blasphemy of that picture—those of us who claim self-government for this country, by claiming for our little communities what can be the right of this country alone and of none else? Think of the picture of an India not united under the banner of one God but under the different banners, of all the petty little communal gods claiming communal representation for the so-called advancement of their respective communities, leaving the country in the lurch, and asking it to take care of itself. It would be a fatal day if this Resolution was accepted. It is conceived, if I may say so with all respect to my friend, Colonel Gidney, in a spirit of pettiness and narrowness which does not do credit to a Member of this Assembly. I feel as one who feels that all racial distinctions should go, that all communal differences should go, and that we should all proclaim ourselves believers in

the fatherhood of God and in the brotherhood of man. It would be a fatal thing to do to carry this Resolution and to thus injure the prospects of this country.

Mr. Deputy President: Perhaps it will be to the convenience of the House if I call upon Mr. Shahani to move his amendment at this stage.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, my amendment to the Resolution that has been moved by Lieutenant-Colonel Gidney is:

"That this Assembly recommends to the Governor General in Council that, even if necessary, the present system of conducting simultaneous examinations for recruitment to the Indian Civil Service be so changed as to give a fair chance to *duly qualified* candidates belonging to different communities and different Provinces."

The object with which I move this amendment is that if on account of any extraneous considerations this Resolution comes to find favour with some in this Honourable House, the most objectionable part of the Resolution may be taken away from it. Colonel Gidney, I am sorry to say, has come forward to suggest that capacity and character should not be fully taken into account in the selection of candidates for the Indian Civil Service. He is putting a premium on communal representation; that is to say, he is suggesting that at times even incompetent men, and men of no character, if belonging to communities that are not represented in the Service, may for that reason be taken up.

Lieut.-Colonel H. A. J. Gidney: No, not at all.

Mr. S. C. Shahani: Then I would like very much to understand the meaning of 'limited competition' which he suggests for the Indian Civil Service. Limited competition can only mean this that even if there are candidates of superior capacity and character available, their claims might be ignored on account of their not belonging to communities that are not represented in the Service. What other meaning you could attach to the word I cannot conceive. I am surprised that anyone belonging to this Honourable House should make bold to make a suggestion such as has been made. I have heard 'no', 'not at all' from Lieutenant-Colonel Gidney; but I would like very much to have an explanation from him of what the real meaning of the phrase 'limited competition' is. It can only mean what I have said, and nothing else. If the meaning is the one I am assigning, I trust that Lieutenant-Colonel Gidney's Resolution will be rejected, and summarily too, in this Honourable House. But supposing it is not rejected, supposing it finds favour, for instance, with Government, then I say, it will be desirable for us to effect a compromise to this effect, namely, that considerations of character and capacity *first*, and communal representation next. Never should communal consideration be given precedence over considerations of character and capacity. I have got to say just a few words with regard to what fell from the lips of my Honourable friend, Mr. Joshi. He said that the highest qualifications for the Indian Civil Service should be capacity to forget one's caste, race and religion. I trust he referred merely to the credal part of religion and not to the cultural. So far as I can see, the cultural element of all world religions is the same, and, according to me, the more religious a man is, the more fit is he for the Indian Civil Service. I was surprised not a little when yesterday a distinction was made between 'moral' on the one hand and 'good' on the other; and I must confess I felt depressed when I heard cries of 'Hear, hear' at my stating that no one who was immoral could be really good. I

[Mr. S. C. Shahani.]

have yet to understand that a man who has not been a good husband or a good son can prove to be a good citizen. I have yet to know it.

Do you think that a man who is not a good member of his family will ever really be a good citizen of his country? It is unthinkable. The mistaken concept of goodness without morality has to be corrected, and corrected on ethico-political grounds. It is easy to smile when a suggestion of this kind is made to you: but great or high-placed as you may be, it will, I assure you, do you a lot of good if you will bend your mind to the suggestion, and consider it in the light of the real import of your concept. Your Indian Civil Servants must be altruistic, and must respect the pieties and relationships of life. If they do not respect the obligations which are involved in the position that is assigned to them, I feel sure that they will not be able to administer rightly the affairs of the country. The more we are truly mindful of our castes and races and religions, the more fitted we are to occupy positions of trust and responsibility. Lieutenant-Colonel Gidney's Resolution is calculated to destroy the efficiency of the Indian Civil Service; it is calculated to destroy considerations of a higher nature which should guide us in our selections for the highest of our places of trust and responsibility. I do hope that his Resolution will not be accepted, and that it will receive the treatment which it deserves.

Mr. Deputy President. The amendment moved is:

"That this Assembly recommends to the Governor General in Council that, even if necessary, the present system of conducting simultaneous examinations for the recruitment to the Indian Civil Service be so changed as to give a fair chance to duly qualified candidates belonging to different communities and different provinces."

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural):
Sir, the Honourable Mr. Jamnadas Dwarkadas has made a speech in this House as if a Plato was teaching his disciples. He is a wise man; but sometimes in his wisdom he overlooks facts. Another Member, Dr. Gour, in his usual way has been led by his irrelevancy into talking about matters which were not before the House. In his zeal in opposing the Resolution he has attacked the present system of representation in this reformed Council. I do not think, Sir, that Dr. Gour's remarks can be allowed to pass unchallenged in this House. I would like to know—and I should like to be convinced on this matter—how many of my own community, or how many of the Sikh community, would have been sitting in this House to-day if there had not been communal representation? I would like to know how many non-official Europeans would have been Members of this House if there had not been communal representation. Different communities have different interests in this country. The population of this country is not made-up of one particular community and a single interest. It is made up of different interests, different peoples and different ideals and different languages. Can my friend, or anyone in this House, convince the House that by eliminating communal representation, all the different classes of the people can be adequately represented in this House? It would be a sheer impossibility. This fact has been established; it is realized by all sane people whose opinion is worth having that this fact cannot be ignored; the different communities cannot be represented in the reformed Legislatures without communal representation. But whatever merit Dr. Gour's case might have, he has destroyed it by his exaggeration. My other wise friend, Mr. Jamnadas Dwarkadas, has also

proceeded on the same lines; but surely he must know the fate which exaggeration always meets, even when the suggestion contained therein is more or less wise. I will not dwell on that point at length, but will confine myself to the question which is before the House, and that is about the representation in the Civil Services of India. Do my friends here who advocate the cause of examination speak from experience, and can they say that merely by cramming and passing an examination a man becomes fit to govern the country? Can a man, simply by reading a few books and passing an examination, become a good executive officer? Certainly not. That requires something else. I have seen many men, very well educated people, who, placed in the position of responsibility of an executive officer, have proved greater failures than others who did not know more than the rudiments of reading and writing. Many qualities are required of a man before he can govern a country and occupy a position of responsibility with efficiency. A person who may have passed examinations in law need not necessarily make a good Judge or Chief Justice; in such a position he may be an absolute failure although he may know the law well enough; it is in the application of the law that he fails; he fails because he does not possess the essential qualities which go to the making of a good Judge. The same thing applies with greater force when it comes to the executive line. A man may be a very good mathematician; but would that ensure his success in the position of Home Member? I think not. But what Colonel Gidney has said is a totally different thing. I hope that he did not mean that inefficient people from one community should be appointed in preference to efficient persons from other communities. What is the idea behind this question of the Indianisation of the Services? What is the basis of this cry? The fact is—and it cannot be disguised—that the people believe that the English people have not been properly safeguarding the interests of indigenous communities, and they desire that the Indians should come in in larger numbers and be given a fair chance to develop their country properly. If that is the basis for their asking for Indianisation of the Services then I do not see why different communities should not have safeguards for their communities as well. If there is any examination, I would much prefer that it might be held in England, because England is a totally different country from India. In England where everybody is supposed to be equal and free the only test is that he should pass certain examinations, that he has received a proper education and that he is well trained. But in India the fittest man is not the person who has passed a certain examination. A man with lesser education but a stronger character would be a much better man than he with a higher education but with no character. Mr. Joshi may talk of his ideal world and ideal India; but I suppose his dream will be like Plato's dream. The world has never been perfect and India can never be perfect, Sir. He may say that India expects that public servants should forget everything, their caste, their creed, etc., but of course expectation is a different thing from what actually happens. Is it actually happening to-day? Does he mean to say that India, a conservative country, will forget like that in the near future? Will his dream be realised within a decade or so? I do not think so. It will take years and years. Of course when India is so perfect that every individual Indian forgets that he belongs to a particular caste or creed there will be, I suppose, not a single soul and there will be no Colonel Gidney at that time to ask for communal representation. But we are talking of the present; we are talking of present conditions; and when we talk of present conditions we should see how India is at present, and according to the present India we cannot see any other way but to ask for

[Mr. Muhammad Yamin Khan.]

communal representation. My friend, Mr. Jamnadas Dwarkadas, may say that communal representation is a game of the present Government

Mr. Jamnadas Dwarkadas: I have never said so.

Mr. Muhammad Yamin Khan: You meant that by saying this, that with these jealousies existing and all this kind of friction there can be no advancement in the country. I think that without this there can be no improvement in this country, unless we have communal representation. The different communities will develop themselves; they will have no jealousies. Formerly what used to be the case? Take any instance. Take the Councils. Take the District Boards. Take the Municipalities; take anything. What were the elections based on? It did not matter how efficient a man was; if he did not belong to a particular community nobody would vote for him. Do the gentlemen who advocate the elimination of communal representation realise what the state of affairs is in the districts? Go anywhere. If a Jat is standing I do not think that a Rajput can get a single vote from villages where Jats are living; where Rajputs are living the Rajputs will get all the votes. If a Muhammadan is standing and any Hindu gentleman is standing, probably the Muhammadan will be fortunate enough to get a few votes of his own friends. . . .

Mr. Deputy President: Order, order. I would draw the attention of the Honourable Member to the fact that he has exceeded the time limit and that he should bring his remarks to a close.

Mr. Muhammad Yamin Khan: Very well, Sir. On this basis I think that the Resolution which has been moved by my friend, Colonel Gidney, should be adopted by this House and I hope that the House will adopt it.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : Sir, I did not intend to intervene in this debate, but I wish to emphasize two or three points which should not be forgotten in giving a vote on this Resolution. Let us remember that we are now considering the question of the recruitment to the Indian Civil Service and nothing else—not the provincial service—but the Indian Civil Service which can boast of Sir William Vincent, Sir Malcolm Hailey, Mr. Innes and Mr. Denys Bray who are our colleagues here. Let us remember that (Mr. K. Ahmed : 'And Mr. Chatterjee')—I am not going to mention the Indians now for the very best of reasons. You are recruiting to this service Indians to compete with these gentlemen whom I have named; you want a Chatterjee, you want a Monomohan Ghose, you want people of that sort who can hold their own against these mighty fellows who come out from abroad and do signal service to our country. We who speak of castes and creeds, let us remember that we do not by doing anything on our part create a caste, an inferior caste in the Indian Civil Service. Let all men be equal in that service; let us not lower the reputation of that service which has won for itself a reputation all over the world. By adopting this proposition you are running a grave danger; the danger is of reducing, of impairing the reputation which it has built for itself for a whole century. The Indian Civil Service will only be proud to own in its ranks men who can by their calibre, by their capacity, administer the affairs of this country. The time is not yet when we the Legislature can do the work of this country. For years and years to come I think we will have to depend upon the Indian Civil Service, composed mainly, I hope, of Indians. In years to come

they will still hold their own and carry the flag of bringing civilisation, bringing knowledge, bringing capacity in the discharge of their duties and uplifting this country as it deserves to be uplifted. Therefore, let us remember that. What is the good of talking about representation in legislatures, representation in taluk boards, representation in village panchayets? How is that an analogous question at all? Why confuse the issue by bringing in those questions? Now, I am quite willing to admit that we have to recognise this unfortunate and ugly fact that there are communities and sects and sub-sects—I know it from my own bitter experience of the small community to which I belong. Colonel Gidney spoke of minorities. I am in a minority community; we are one million out of 44 millions in our province. I am not fighting for my community at all; a time may come perhaps when I may have to stand up and fight for my community, but not yet; I hope better sense will prevail with my countrymen and that they will not carry these small ideas in their heads when they have got a bigger task before them. I know the country does not want this; a few educated people in the upper ranks are clamouring for the public services, as if public service alone is the only method of enriching this country. Am I to be told that land should be parcelled out according to the strength of the communities? Am I to be told that commerce and trade should be parcelled out according to the strength of the communities? Who prevents these people from coming forward and claiming all these benefits when you have got open competition? Uplift yourselves. Those gentlemen who are interested in their communities should do everything to uplift the members of their community. I am surprised that such a proposition should come from Colonel Gidney. Why, Sir, he belongs to the most petted and most fondled community. Look at the Telegraph list, look at the Customs House list, look at the Police; look at any of these services. Is he represented there according to the strength of his community? Why, Sir, they are a most favoured community, and I am surprised that Colonel Gidney should come forward with this proposition. If he gets his deserts according to his numbers where will he be? And that Colonel Gidney should complain comes as a surprise to me, for has he not come out in a competitive Service, topmost, I hope? At any rate, he is topmost in his profession, and he has not failed to achieve a reputation in that Service. Therefore, let us remember that we are dealing with a Service which requires our best men. If really we want them to make their mark in the Civil Service, if we want them to hold their own against men of the calibre whom we have named, and if you accept this Resolution, I say you will be lowering them in the estimation of their colleagues, you will be putting them in a lower caste, you will be treating them as Pariahs in the Civil Service. Remember that danger when you vote for this Resolution.

Bhai Man Singh (East Punjab: Sikh): Sir, I rise to support this Resolution. It is rather sad that I have to oppose those friends of mine whom I had always the privilege to support, but time comes when one has to differ from his friends, and with all deference I beg to differ from my friends like Mr. Rangachariar, and Dr. Gour. At the very outset, I should point out the defects that arise from the predominance of any one single class in certain Services to the exclusion of others. Why are we complaining against the predominance of the English element in the I. C. S.? There might be many other reasons, but to my mind there are two very important reasons against it. One is that an European officer does not fully understand the language, the ways and manners and habits of the

[Bhai Man Singh.]

people. Naturally, Sir, if another class in India gets the same preponderance in the same Services, it would surely be under the same disadvantage. If a gentleman from a distant corner of India goes to govern another distant part of the country, he will be in exactly the same position as an Englishman. I don't mean to suggest this about any particular gentleman, but if there are hordes of gentlemen like that, they will be exactly in the same position as Englishmen, because they will not know the language and customs and manners of the people of those parts. The other thing is the want of sympathy which we so often feel. I submit, Sir, it will be well nigh the same thing if one class predominates in a certain Service. It does not lie in our mouths to say 'Indianise the services, let anybody come at any place, we should not mind it.' I do say that I am very much in favour of the Indianisation of the Services. I am very much in favour of merit being given its due weight. But let me ask, is efficiency the monopoly of any certain class? There are mainly three objections which up till now I have been able to gather against the Resolution of my friend, Colonel Gidnev. One is that efficiency should prevail; the other is that it will break down our nationality and that we should consider ourselves as one nation; and lastly the third thing is the impracticability, and that is the principal thing. There are so many castes and creeds. These are the main objections which I have so far been able to gather. There might be some others which might have escaped my notice.

Now let us take the first objection, that is, efficiency. Efficiency is not the monopoly of any one particular class or community, and efficiency does not necessarily consist in literary education alone. I am surprised to hear long sermons on efficiency now forced upon us about literary examinations. With all humility and with all deference, I bring forward this argument—I do not mean to attack the motives of any friends of mine here, far be it from me—but I say that it is a certain mentality that certain people think in a certain way, and this might be due to that. When I was arguing this very point two years ago while we were discussing the Esher Committee's Report, I was pressing that the communities who had proved their efficiency till now in the military service should get commissions. I know that a good many of my nationalist friends—by "nationalist" I mean those who are now saying that this proposition would now demolish our nationality—I mean those friends who hold such views, opposed me then. Sir, in the military line is it the efficiency of letters only that should prevail? I remember how very strongly and severely I was opposed when I was fighting for the rights of those communities who have proved their efficiency in the military line. Efficiency, I submit, does not consist in book knowledge and in writing articles and papers. How are you to know that a gentleman who is able to answer so many questions in mathematics would prove a good Commander of the Army? How do you know that a gentleman who knows a good deal of the History of India or who can answer well a good paper on Logic would prove a very good administrator? I submit there are instances in actual practice where students who were always at the top in Arts and Law Colleges have proved themselves utter failures as practical lawyers. We cannot always say that the present competitive examination is the only test to judge merits and that it is the only successful test. I do say that it is one of the tests. And what is it that we want according to my friend Mr. Shahani? We want duly qualified candidates. Well, we say let there be a competition

between us first, and let us show that we too have got our capable men, and let them be tried. If you find that some of them cannot write answer papers like others, let them be tried whether they can administer better justice or prove better administrators. I don't mean to say that there should be no efficiency, but let the minorities too have a chance. I am sorry my friend Mr. Jamnadas is not here. He was very virulent over my friend Mr. Bagde, and said 'For God's sake do not bring in irrelevant matters,' but I say let the trade of Europe openly compete with the trade of India. Because the interests of industry in India are at stake and they want protection; let them grow and let them give a fair chance of showing their capacities for development and then you can show that we compete with anybody. So, I say now let the minorities have a chance of competing among themselves. Let them prove their merit and then we shall say after some time that we can compete with anybody when we are fully grown. Minorities—the principle of defending minorities is not a bad one. I think, if you give a chance to the minorities to develop their resources, and to come abreast with you, you will be strengthening the weaker communities and creating a stronger India thereby. Sir, if there is a competition between communities themselves, if we should decide that we should have 5 Sikhs and 2 Muhammadans and 2 Hindus—I beg your pardon, I do not mean that these are the actual figures—but suppose there are so many Bengalis, so many Muhammadans and so many Mahrattas, for God's sake nobody can say that the candidates that we select from the Muhammadans or the Sikhs or the Christians or the Madrasis are bad to the extent of 20 per cent. or would have an efficiency of 10 per cent. in one case and 20 per cent. in another. Well, all we are saying is let every community have a proportion, we are not at all wanting to decrease the efficiency of the Services. We are rather giving minorities a chance of developing themselves further, so that they may give us better men in future. So much for the action proposed. We simply want that the best men from every community be taken and if there is competition between these men all over India, nobody can say that we are favouring any particular community. It has been deprecated strongly by Dr. Gour that the principle of communal representation has been adopted in the High Courts. May I ask, Sir, if the Hindu and Muhammadan Judges have not both proved highly efficient. Who can deny that the Right Honourable Mr. Justice Amir Ali was one of the best Judges as were a good many of our Hindu friends. I think the Punjab is proud of the name of our present Chief Justice, Sir Shadi Lal, and the late lamented Mr. Justice Shah Din.

Sir, the next point is about nationality. This is perhaps a most touchy point, about which it is sometimes said "We shall spoil our national unity." I would simply deplore, Sir, that our nationality should be spoiled. I would rather like that we should not come into existence as a nation if we are not to exist as a strong nation. But how can national sentiment be developed? There is absolutely no use in denying facts and dwelling on ideals. Facts are facts and cannot be changed. Communities do exist. Communal feelings do exist. There is no use saying "My dear Sir, do be quiet. People will call us bad fellows if we fight among ourselves. Sit silent. We will develop." What does it mean? As I said the other day, the cat does not run away if the pigeon shuts its eyes. Your communal differences will not run away by simply saying we should ignore them. Recognise the fact and find out a solution. I submit, Sir, that the present practice does recognise this.

[Bhai Man Singh.]

May I remind the House of a little fact—I think I am right—of course my information is not very definite—but I am told that on the retirement of Dr. Sapru a certain province, perhaps from the South, said that Bombay should now be represented in place of Dr. Sapru. Does it mean merit or efficiency, does it mean nationality? Is not the Government of India, even in the selection of its Executive Councils trying to find out, of course, efficient and very efficient men but trying to represent different communities and different provinces? Why deny facts? Does the feeling actually exist? Then, Sir, it is very easy to say "We deprecate the existence of the principle of communal representation in these Councils." But do you really think, Sir, that if certain communities had no elected men at all in this House they would be satisfied? Would the heart-burning created in the minds of these minorities be conducive to national unity? It is all very well from the point of view of one people but it is not so pleasant from the point of view of others. National unity? I mean to say the fact exists and that fact has been recognised on all hands. For so many years the Indian National Congress tried to ignore these hard facts of the existence of Hindu and Muhammadan communal feelings. They said "No, we will have a united India." But they had subsequently to recognise the fact. I go a step further. You will say perhaps the Congress men of that time were weak men.

Mr. Deputy President: I must draw the attention of the Honourable Member to the fact that he has exceeded his time limit.

Bhai Man Singh: Very well, Sir. Then I will bring my speech to a close. Even Mahatma Gandhi and Mr. C. R. Dass had to admit that we should decide about the rights of the different communities. If everybody in a family is getting his own share the family will live in peace. If some individuals of the family do not get their proper share and others predominate over them, there is bound to be a rupture. It is the same with a community. We shall become a nation when we shall learn to respect the rights of others, to give our minorities their dues, to recognise that they exist. Sir, I am sorry that I cannot further discuss the practicability of the question, and with these remarks I support the Resolution.

(An Honourable Member: I move, Sir, that the question be now put.)

Mr. Deputy President: The question is that the question be now put.

The Assembly then divided as follows:

AYES—28.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Ashan Khan, Mr. M.
Asjad-ul-lah, Maulvi Miyan.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Cabell, Mr. W. H. L.
Ghulam Sarwar Khan, Chaudhuri.
Gidney, Lieut.-Col. H. A. J.
Gour, Dr. H. S.
Holme, Mr. H. E.
Ibrahim Ali Khan, Col. Nawab Mohd.
Ikramullah Khan, Raja Mohd.

Man Singh, Bhai.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nabi Hadi, Mr. S. M.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Sen, Mr. N. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Srinivasa Rao, Mr. P. V.
Subaposh, Mr. S. M. Z. A.
Webb, Sir Montagu.
Yamin Khan, Mr. M.

NOES—27.

Akram Hussain, Prince A. M. M.

Asad Ali, Mir.

Bajpai, Mr. S. P.

Basu, Mr. J. N.

Bhargava, Pandit J. L.

Chaudhuri, Mr. J.

Cotelingam, Mr. J. P.

Dalal, Sardar B. A.

Das, Babu B. S.

Gulab Singh, Sardar.

Hussanally, Mr. W. M.

Iswar Saran, Munshi.

Jamnadas Dwarkadas, Mr.

Misra, Mr. B. N.

Mitter, Mr. K. N.

Mukherjee, Mr. J. N.

Nand Lal, Dr.

Pyari Lal, Mr.

Ramayya Pantulu, Mr. J.

Samarth, Mr. N. M.

Sarfaraz Hussain Khan, Mr.

Sarvadhikary, Sir Deva Prasad.

Singh, Mr. S. N.

Sinha, Babu L. P.

Ujagar Singh. Baba Bedi.

Vishindas, Mr. H.

Zahiruddin Ahmed, Mr.

The motion was adopted.

The Honourable Sir Malcolm Hailey (Home Member): In view of the course which this debate has taken, I had at one time some doubt whether I ought or ought not to intervene. Indeed, I hope, Sir, you will not accuse me of flippancy if I say, that I have at times felt a little like the Irishman who seeing an affray going on in the road asked, "Is this a private fight or may I join in?" But I cannot of course neglect my obligations in this respect. My friends here have asked me to define the attitude of Government in the past and present on this question. I have incidentally to clear up certain misapprehensions which have been voiced by Members here. The discussion has been so prolonged that I shall confine myself very strictly to the terms of the Resolution. I shall not be led astray, as some of my friends here have undoubtedly wished, into a discussion regarding isolated appointments such as those of Judges in the High Courts. Believe me there are certain experienced animals before whom it is quite useless to wave a red flag. I am one of them. We are talking purely about the Indian Civil Service. Then again, I shall not be led astray into attempting to justify the retention in our Electrical Rules of the principle of communal representation, since that is alien to the subject. Nor shall I be inveigled into reviving a discussion, in regard to a matter we debated yesterday, and which Mr. Shahani wishes me to resume to-day, whether a gentleman who is unfaithful to his wife can or cannot be a sufficient surety for a bad character. We are talking, as I said, solely of the Indian Civil Service, and Colonel Gidney's Resolution refers specifically to a change in the manner in which we obtain recruits for our Indian Civil Service in India, as distinguished from the Home Examination. The question has a long history. If time served, I could go with the House back to the year 1833, the year in which the famous declaration was made that:

"There should be no governing caste in British India and whatever other tests of qualification may be adopted, distinction of race or religion shall not be of the number."

But I will not on this occasion take the House through the stages of that history, because, after all, the main point then debated,

1 P.M.

indeed the main point debated right up to the eighties or nineties of last century, was the question of what was then described as the monopoly of the European, and that, at present, is not the question under discussion. We first of all considered the question of communal representation in our Indian recruitment, if I may use that convenient term, in about the year 1886 when the Aitchison Committee, the first of our great Committees on public Services, made its recommendations. It was in

[Sir Malcolm Hailey.]

favour of open competition among Indian recruits for the provincial Services, holding that there must be one test of eligibility only, the test of intelligence and character, and that other considerations should have no weight in the choice of Government servants. But it recognised that this system was not universally applicable; that there was a strong feeling in India that the claims of different communities and different religions should be balanced; and it accompanied its recommendation by a stipulation that where necessary the local Governments should still choose by nomination in order to attain the object to which I have referred. The Government of India in the main affirmed this view, though it expressed a preference for competition among nominated candidates when pure competition was not adopted. I omit subsequent stages, until I arrive at 1904, when the Government of India issued the well known Resolution of that year on Education. Its attitude was then determined partly by considerations of educational requirements; in dealing with the question of competition it pointed out the disadvantages of that system, showed that it did not in itself afford a test of character, and emphasized that a competitive examination was in itself a disadvantage to the progress of education, since it ceased to be liberal, and confined itself entirely to the attainment of success in examination. It was under the influence of those considerations that they then decided that local Governments need not follow the competitive system in making appointments to their provincial Services. Three local Governments had initiated the system.—Madras, Bengal, and Bombay.—and they at once discarded the competitive system and returned to nomination pure and simple. The Punjab adopted it, though only in respect of a very limited number of appointments.

I pass—again with some omissions—to the Public Services Commission of 1911. I have no doubt that the recommendations of that Commission in this respect are well known to the Assembly. I apologise for taking the Assembly through this retrospect but it is important to the explanation of our present position, for the present state of our ideas on the subject is the development of what has happened in the past. The Public Services Commission decided that it was undesirable to lay down any hard and fast rules as to the proportions of communal representation; its necessity should be met by the judicious use of the nomination system. That opinion was not unanimous. Mr. Chaubal deprecated attaching too much importance to this factor and would prefer the negative form, namely, that posts in services should not substantially be the monopoly of any one caste in India. Mr. Ramsay Macdonald thought that communal representation was a bad system, and that it should be abandoned, but he added that it could only be abandoned with an improvement in education and growth of a common civic spirit. Sir Abdur Rahim thought it inadvisable to emphasise the principle of communal representation as against that of impartial selection of the best men, and though on occasion it was advisable to secure communal representation, subject to the insistence of adequate qualifications, he added the recommendation that substantial recognition should be given wherever possible to the general conditions of a competitive system. The point was discussed at length in dealing with the report of the Commission; I pass over the somewhat divergent opinions recorded by local Governments, and merely give the decision of the Government of India. It was given in this form: "The Public Services should be recruited on the principle that they should be filled by the most competent men available. This principle is, however, subject to modification in the interests of the

training of Indians in the administration of their own affairs. Full opportunities should be afforded to Indians to qualify themselves for the more important posts in the public services and to demonstrate their fitness for responsible duties. It must, however, be recognised that intellectual qualifications combined with physical capacity should not be the sole test for admission to important posts in the public services. Due regard must also be given to such considerations as character and hereditary connections of candidates both with Government and with the people with whom their work will mostly lie; while in the present conditions of India it is essential that there should not be an undue predominance of any one class or caste. The circumstances of each Service will have to be considered in view of the above principles." When Government sets out to lay down a formula on a question of this importance, it not infrequently happens that in the nice balancing of considerations on both sides its conclusions lack some of the virtue of definiteness. In this case we have a very nicely balanced judgment (A Voice: "Too nice"), which certainly combines all considerations inherent to a decision on such an important question; if the sense of balance is more obvious than the definiteness of the conclusion, nevertheless I think it will be agreed by all who have heard it that it contains a moderate and reasonable statement of principle, namely, that you should get the best men available, but that you should not allow the preponderance of any one class or any one caste in your public services. I lay stress indeed on that negative form; it is one to which I shall have to refer again. I must pass over again in my rapid retrospect the many important discussions which took place in the Imperial Legislative Council when it dealt with the recommendations of the Public Services Commission. My friend, Mr. Sarma, was one protagonist, Sir Muhammad Shafi took an important part in the discussions; there were other famous figures engaged. While the main discussion centred again on the question of the maintenance of a fixed European proportion as against progressive Indianisation, there were many, such as Nawab Ali Chaudhury, who claimed that the particular aspect of the question which we are discussing to-day should receive primary consideration. It is interesting to remember that when some Members of the Council objected that open competition pure and simple would mean that Brahmins from Southern India would largely dominate the lists, both Mr. Sastri and Pandit Madan Mohan Malaviya promised on behalf of the Brahmins of Southern India they would stand aside until it was generally decided that it was no longer necessary for them to do so. But indeed, whenever we discuss the question of the Services at large, and the problem of their Indianisation, this particular aspect of the question has always come athwart the discussion. It did so when Mr. Jinnadas raised the question of Indianisation a year ago in our debates. It will be remembered that Mr. Bagle then moved an amendment much in the form of some of the amendments that have come before us to-day. I have troubled, I hope not unduly troubled, the Assembly with a retrospect showing how we have arrived at our present position; and I propose now to show exactly what our rules are in regard to the recruitment of Indian Civil Service in India itself. There has been some misapprehension on the subject. Indeed, I myself, as representing Government, have found it difficult to-day to understand fully whether our present position was being attacked or was being supported, and if so, by whom it was being attacked and by whom it was being supported. Here are the facts. We still look to London to supply us with the bulk of our candidates, and there of course the Indian competes without previous nomination or selection. Next, I take our Indian recruit, that is, our candidates recruited in India itself

[Sir Malcolm Hailey.]

to whom this discussion particularly applies. Our practice here is to announce 67 per cent. of the appointments for Indian recruitment as available for open competition. I do not enter into the reason why that particular figure was taken; it is due to the fact that there are certain direct appointments from the Bar and to the existence of listed posts. 67 per cent. then are announced as available for open competition. Nomination is provided for in section 97 (6) of the Government of India Act in order to secure to some extent representation of the various provinces and communities in India. It will not of necessity take place every year, but only when the results of the open competitive examination in India fail to give the representation required. If the distribution of successes in the open examination turns out to be such as will meet the requirements of the various provinces and communities, resort to nomination will be unnecessary, and the vacancies held in reserve will be filled as far as possible by selection from among candidates who sat for the competitive examination and attained a certain qualifying standard. Failing this, they will be filled by nomination. Now that shows at once the very limited scope reserved for nomination, and the reasons for which we have adopted it. The scope is limited because nomination only comes into play when it is found that the 67 per cent. open competition does not give something like adequate representation of different provinces and communities, and nomination again will only be used for one definite purpose, namely, to insure that the main provinces and communities shall not be unrepresented. It will at once appear therefore that we do not and indeed never have intended that this limited reserve of nomination should be for the purpose of representing minority communities or backward classes. Our sole object may, as I have said, be described rather in a negative form, namely, to prevent the over-weighting of our Services with any one particular class or representatives of a particular province. It will interest the House if I analyse the result of our first open competition in India. There were 11 posts open for competition. They were filled up as follows: three from Madras, one from Bombay, the United Provinces, the Central Provinces and Bihar and Orissa and two from Bengal. All were Hindus. We reserved in addition four posts for nomination, and on this occasion utilized the provision to the full. One reason was that we required a Burman recruit; it has been considered desirable that Burma should be placed on a separate basis, that is to say, if no Burmans succeed in entering by the open competition, that we should nominate a Burman candidate. One of the four was a Burman, one was a Muhammadan from Bengal and the remaining two were representatives from the Punjab and Assam. This was strictly in accord with the general principles which I have described as guiding us in this matter. I now proceed to my conclusion, which is to give the attitude of Government on this Resolution. I have explained the very limited scope to which we now resort to nomination and the object with which we do so. Let me be clear again that it is not the intention of Government to resort to nomination in the Indian Civil Service merely to secure that advancement of minority or backward communities. Indeed, taking the matter only on its practical side, I do not myself know how we should proceed to promote the cause of minority communities. They are already many; and directly we attempted to help one, others would declare themselves. Greater communities would disclose unexpected cleavages; claims to representation based on novel and hitherto unaccepted standards would be set up. For my own part, I should shrink from so Herculean a task as an attempt to arbitrate between the conflicting claims of the different minority communities in India, and

to establish standards for ascertaining their comparative value to the State. We are already engaged in a difficult enough task,—and we only make the effort because this much seems clearly justifiable—in seeing that the claims of any one Province or of any of the great communities are not entirely outweighed. I can with truth add that Government itself would be only too happy to avoid any system by which we had to discriminate in recruitment for the Public Services. We should be glad to avoid a system under which we run the risk of imputations of partiality to one community or another. We want nothing but the best men. We want men who are judged by one test only, the test of character, intelligence and efficiency, and the greatest of these is character. But facts are what they are. We have been led into our present system by the history of the past; and we have to ask ourselves whether India at large has yet arrived at that stage of social development in which there need be no consideration at all of provincial claims or the claims of the major communities. India has not, I take it, yet arrived at that stage in politics. However much some of us may desire to see the end of communal representation on the franchise, the history of the last three years has shown us that India at large is not yet ready to abandon it. There may come a time when educational and social advancement will secure that result, when there will no longer be recognition either in politics or in the Services of the claims of particular religions or particular communities, when all such differences will be lost in the larger sentiment of nationality or social service. But that time is not yet. In the meanwhile the position of Government is clear; we are proceeding on grounds which obviously lay themselves open to very little criticism; and we ourselves see nothing in the trend of current opinion which indicates the necessity for a change. The Resolution asks for a change in our present system; I have declared what our present system is; and for ourselves we see no necessity for any modification. For this reason, I could not support the Resolution even if indeed I perfectly comprehended its terms. When affairs are moving so rapidly as they are now, to again attempt to change the system of recruitment for one of our major services,—to again open the whole of this question to discussion, to again invite an interchange of opinions which, amicable as it may be in form, as it has been to-day, yet nevertheless discloses strong differences of standpoint among various communities—is in my view not desirable. I can only support the system as we have it at present, and claim that it should continue.

Lieut.-Colonel H. A. J. Gidney: Sir, with your permission I wish to state that I am prepared to accept Mr. Shahani's amendment to my original Resolution; and in doing so, Sir, I thank you for the opportunity afforded me by the Government Member of making a few remarks on the way this Resolution has been received. At the outset, Sir, when I consented to move this Resolution, I knew that I was running the gauntlet—I was perfectly aware, judging from the threats that I received from the Bombay Member that he would rap my knuckles, from the Madras Member that he would "go" for me, and, as my community is a small one, I was perfectly prepared to run that gauntlet. It was a sort of an intensive attitude of threats to me. The result has been as I expected. My Honourable friend, Munshi Iswar Saran, has addressed an admonition, and desired that I should suffer a censure for having the audacity to present this Resolution. I would have thought, and I still think, that when he goes home this evening and thinks seriously he would change his mind and pass the very opposite of a censure on me for having had the courage to expose my community to his attack, knowing

[Lieut.-Colonel H. A. J. Gidney.]

fully that, by putting forward this motion before this Honourable House, I was risking a reference to certain subordinate preferential treatment for specific services rendered. I realize that that day is gone, and to-day my community is not enjoying preferential treatment. Therefore, as the representative of a minority community, I make bold to put forward this motion, feeling that my community has rights like those of the rest of India and having that feeling, with great pleasure, I accept this censure passed on me by my friend Munshi Iswar Saran. But I do feel that he should think of it, and reflect on it, seriously. Now my Honourable friend Dr. Gour, in his thunderous voice, said to me, "what do you want, you belong to the Anglo-Indian community, you are only about 100,000 in number and your proportionate claim for appointments when compared with the rest of India is 1 in 8.150 according to which you are entitled to only one-third of an appointment per annum." He seems to have worked this out with mathematical precision. Possibly Dr. Gour belongs to the Rajput community, and feels he is entitled to come here and to try and have a sword thrust at me, but, what I say is, 'we are a minority community, and therefore, in common with the rest of the minority communities in India, we ask for the protection of this House.' I am only fighting the case of a minority community, which I think should receive the solicitude of Dr. Gour. He remarks in a very scathing way that, because we are such a small proportion, we are not entitled to get one-third. Have we got a third? I want to know. He refers to all the Services. I am talking of the Indian Civil Service alone, which is the subject of this Resolution. If you scan the list of nominations, you will find that my community has not received it. Dr. Gour seems to have the right to mistake differential for preferential treatment.

Then as to my friend, Mr. Rangachariar, who belongs to that famous learned class, the Madras Brahmin—all credit to them. I believe he said his population is one million, but he did not tell you what percentage of successes that one community has obtained in the Indian Civil Service examination. There is all the more credit to them for any successes gained, but it is just to avoid a repetition of monopoly that I have brought forward this Resolution. I purposely deal with this matter on very broad lines, because I realize I am walking on tender ground and I do not wish to offend any community. When my friend, Mr. Rangachariar, turns round and says, 'what about the Railways, the Posts and Telegraphs'—I may for his edification refer him to the latest report of the Madras Presidency which was a half-yearly report, G. O. No. 618, dated the 31st December 1921. I am not talking of Railways, although it was my community that elected to work like slaves on the Railways; it was my community that elected to work on the Posts and Telegraphs when they were not attractive. The members of my community are equally with others named citizens of India, and we are prepared to run a level race with the rest of India. I do not ask for preferential treatment for them. Mr. Joshi says that when appointments are made, they are not voted. I quite agree with him. In fact Mr. Joshi said to me before I moved this Resolution, "I do not think you had better move this Resolution, I think some one else had better do so." I think, Sir, in the circumstances I deserve more praise than censure from my friend, Munshi Iswar Saran. Mr. Joshi did not stray off the right path of my Resolution but he asked if such examinations were made on votes or for the benefit

of any particular community. No one suggested or requested this. He seemed to lay great stress on the type of men who should sit on Selection Committees and I agree with him that such Committee men should forget their communal distinctiveness. But I have yet to learn of a man who sat on a Selection Committee and who could dissociate self from self. There are certain things that go to form the subject called 'human nature,' and you cannot alienate yourself from them. Then we come to the question of Education, and Mr. Joshi makes a suggestion, that is "educate yourself." In theory, it sounds very well,—'educate yourself.' Well, supposing that one educated himself, what is the prospect? I think Honourable Members will have had an idea of what retrenchments are going to be effected in Bengal,—in Education a cut of Rs. 35 lakhs; and it is conceivable that the various provincial Legislative Councils may begin to curtail the education grant for European schools—I bring this out merely to show to Mr. Joshi that it is not a question of time; it is a question of minor communities having been caught napping, Englishmen included, under the Reforms Scheme. The Englishman has been caught napping and he is still sleeping. It is my minority community I want to protect by this Resolution. He calls my Resolution a "ridiculous Resolution." It may be,—yet you have to consider those ridiculous things called "minority communities." Then my friend, Mr. Joshi, said, that I wanted to enter by the back door. I wish to do no such thing at all. The Honourable Member in charge of the Department, Sir Malcolm Hailey, has stated the procedure adopted by the Government of India. He has also explained the provisions he has made so as to get an equilibrium and satisfy all classes. They sound very nice. I have not asked anyone to transgress the law of efficiency. I wish you to accept a bar of efficiency. I do not ask you to take an uneducated man and put him into a position such as the Indian Civil Service or to put him in through any backdoor influence. I do not wish to send in a monster petition to a certain big Government official and say, "such and such a man should get an appointment as a High Court Judge, or so and so should get an appointment as the next Member of Council from Bombay or Madras." I do not wish to do that. There is no doubt that at the next Indian Civil Service Examination you will find Madras again coming up and getting the first four places. You will probably find the community to which my friend Munshi Iswar Saran belongs, securing the next two, leaving nothing for the rest of India. It is for the rest of India that I am putting forward the proposals I have submitted to the House. Unless you act somewhat on these lines, the Englishmen now administering this country will be replaced by those inhabiting the south and the east of India. The Indianization of the services was admirably enunciated by my Honourable friend, Mr. Jammadas Dwarkadas, and the interpretation has been slightly altered now. The fact is that the Indianization of the services in the way Mr. Jammadas Dwarkadas has enunciated it, has really been to replace Englishmen in order to get a cheaper market and a cheaper return for work. It is down here as one of the reasons. But I want to attack the idea of the monopoly of 2 or 3 provinces in India, for the sake of a minority community. The Government of India have also apprehended this swamping and Sir Malcolm Hailey has shown how wise was the Public Services Commission in asking for safeguards. He has almost supported the Resolution which I have put forward here for the protection of minority communities. I put forward this Resolution for the acceptance of the House and I accept Mr. Shahani's amendment to it.

Mr. Deputy President: The original Resolution moved was :

" This Assembly recommends to the Governor General in Council that the present system of conducting Simultaneous Examinations for the recruitment to the Indian Civil Service be changed and that a different method of conducting the Simultaneous Examinations so as to give a fair chance to candidates belonging to different communities and different Provinces, be devised, if necessary, by having a limited form of competition."

To this an amendment has been moved

Mr. S. O. Shahani: Sir, in view of the very worthy remarks which have fallen from the Leader of the House I beg to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Deputy President: The question is that the original Resolution be adopted.

The Assembly then divided as follows :

AYES—27.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Ahsan Khan, Mr. M.
Akram Hussain, Prince A. M. M.
Asjad-ul-lah, Maulvi Miyan.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Das, Babu B. S.
Ghulam Sarwar Khan, Chaudhuri.
Gidney, Lieut.-Col. H. A. J.
Hussanally, Mr. W. M.

Ibrahim Ali Khan, Col. Nawab Mohd
Ikramullah Khan, Raja Mohd.
Man Singh, Bhai.
Misra, Mr. B. N.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nabi Hadi, Mr. S. M.
Roldi, Mr. M. K.
Sarfaraz Hussain Khan, Mr.
Subzposh, Mr. S. M. Z. A.
Venkatapatiraja, Mr. B.
Yamin Khan, Mr. M.
Zahiruddin Ahmed, Mr.

NOES—48.

Aiyar, Mr. A. V. V.
Ayyar, Mr. T. V. Seshagiri.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Faridoonji, Mr. R.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Holme, Mr. H. E.
Hullah, Mr. J.
Iwar Saran, Munshi.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.

Joshi, Mr. N. M.
Lakshmi Narayan Lal, Mr.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Samarth, Mr. N. M.
Sarvadikary Sir Deva Prasad.
Sen, Mr. N. K.
Shahani, Mr. S. C.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Ujagar Singh, Baba Bedi.
Vishindas, Mr. H.
Webb, Sir Montagu.

The motion was negatived.

The Assembly then adjourned for Lunch till Quarter to Three of the Clock.

The Assembly re-assembled after Lunch at Quarter to Three of the Clock. Mr. Deputy President was in the Chair.

RESOLUTION RE SCHOLARSHIPS TO INDIANS FOR RESEARCH WORKS.

Mr. B. Venkatapatiraju (Ganjam cum Vizagapatam: Non-Muhammadan Rural): Sir, the Resolution which I propose to place before the House for its consideration runs as follows:

"This Assembly recommends to the Governor General in Council that twenty-five scholarships, each tenable for five years at about Rs. 4,000 per head per annum eventually costing not more than five lakhs annually, be given year after year (and with your permission I will add here 'as funds are available') from the Imperial Revenues to Indians of great promise specially for research work in any part of the world and in any branch of knowledge approved by the Central Legislature."

Sir, my task has been lightened very much by the Resolution which was moved by the Honourable Mr. Samarth on the 23rd of February last, when the Honourable Mr. Chatterjee who was then Secretary in the Industries Department, indicated the Government policy with reference to the training of Indian youths. I may perhaps here say in parenthesis that we congratulate the Government on the fact that, for the first time, an Indian official has been raised to Cabinet rank, and, because of his ability, character and integrity we find that he has been raised to the position of a Member. I hope during the period of his Membership there will be no change in the Government policy which he has once announced. Sir, the Honourable Mr. Chatterjee stated that "it is the duty of the State in India to provide adequate facilities in India itself for the training of our youth in all the different industries" and that "this is the policy that every civilised and progressive country has adopted." He further added: "No established industry in any country can prosper, if it has to depend either for its supervisory or higher labour, or for the masses of the artisans which it employs, on men imported from abroad or on men trained abroad." I quite appreciate that, because every country which wants to be self-reliant must see that their men are sufficiently trained, either in their own country or abroad in order to replace foreign experts or specialists. But the Honourable Mr. Chatterjee has stated that there must be a time when we need not send anybody abroad for training. Perhaps that is an ideal time, I do not know when it will come to India, but I can assure the House and I also mention it to the Honourable Member for Education that it takes a very long time before even a Government with all its resources can say "We have established institutions in the country so that persons need not be sent abroad." May I mention, Sir, that the expenditure incurred on all the Universities and research institutes in India by the State and otherwise is much smaller in amount than the expenditure of one University in America. Columbia University in New York spends nearly two crores every year, whereas the utmost we are able to get for the Bangalore Institute is only Rs. 4,50,000, of which the Government of India contributes Rs. 1,50,000 and there are a number of Universities in America which are spending 50 lakhs or even a crore. Besides, there are Institutes which are to be found in other countries, in England and Germany, and some in France where our people can go with advantage. I do not think it is possible for a very long time to come for us to educate our youths entirely in the country without finding it necessary to send them abroad.

But, Sir, I find certain difficulties in the matter. We know from the various speeches made by Government Members that they are very sympathetic with reference to making India self-sufficient in the matter of education, but we often notice the adoption of a timid policy by them, or

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what might be called "the drag and brake" policy. In a generous moment they will announce "Oh! We shall do this," but next moment they say "Perhaps we are going too far;" and they put on the brake. Now, we do not want such a policy of "drag and brake."

We want the Government with reference to this matter to adopt a clear and definite policy because we know their general views as they have been stated by Mr. Chatterjee: what we want is a definite policy as to the manner in which the training of Indians for research should be directed and developed. If we leave it to the future, it will never be done. The Government should come forward and lay down a definite programme. The Member in charge of Education, the Member in charge of Revenue (who has certain subjects under him) and the Member in charge of Industries should all three work together and obtain the approval of the Viceroy to any scheme they have worked out. They can then say "This is the manner and the method we propose to adopt in order to provide for research scholarships." I appeal to them to do this at once, because they have to do it some time, if not to-day, then to-morrow. They cannot avoid it. Next I would ask them to make sufficient provision to find out to what extent the existing institutions should be re-modelled and expanded so as to further such research. That they have to do because I may mention in this connection that there are only three institutes. One is the Sir Jamsetjee Tata Institute at Bangalore, the second the Imperial Institute at Dehra, and the third the Imperial Agricultural Institute at Pusa. I know the Indian Government have contributed something for a sugar expert at Coimbatore; but I find when I read the report submitted to the Government of India by Sir Henry Pope, Sir Asutosh Mukerjee, Sir H. H. Hayden and Dr. C. V. Raman with reference to work in the Indian Institute at Bangalore, I find they say it requires 20 or 25 lakhs of capital expenditure to make it thoroughly efficient, and an additional expenditure of Rs. 60,000 for its upkeep, while providing only a few subjects which they have mentioned—I need not enumerate them here—which they wanted to have there. Further they suggest that even with reference to persons who have to be sent abroad they should be trained in India in order to find out their special aptitude with reference to particular subjects. If the present facilities at Bangalore are inadequate, you may say there are two other Institutes. I have not got with me any public report except what was stated by the Secretary in the Revenue Department of the India Office when he was giving evidence before the Lytton Committee. Mr. Turner (that was his name) then said—page 292 of the Lytton Committee's report—that with regard to the complaint that no facilities were given to students to undertake research at the Institutes at Dehra Dun and Pusa and that they were confined only to professors and teachers he believed that the contention was broadly speaking true, but that he thought there had been exceptional cases of students undertaking research work at Dehra Dun though full information could be obtained only in India. I have therefore given notice in order to get information on this point. But the broad fact is, as I have stated, that proper facilities are not given either at Pusa or Dehra Dun for Indian students in the matter. I think that the Member in charge of Education or the Member in charge of Revenue should see to it that Imperial Institutes like those on which we are spending a lot of money should give facilities for research to Indian students. Thirdly, I suggest, Sir, at what stage and through what agency Indians whose scientific and technical equipment has been completed so

far as the institutional resources of this country are concerned should be selected and deputed for further scientific training abroad. My object in making this suggestion is in order to avoid some misconceptions on the subject. When I gave notice of this Resolution that students should be trained for research, several members naturally thought that five years were unnecessary as those persons would be sent abroad at public expense. But I have taken this course with a view to meeting the objection of the Committee appointed to find out the working of the Research Institute at Bangalore. They say the students should have training in India and for that training about two years will be necessary in most cases, because we must know whether the students whom we select have the aptitude for a particular branch of work or not; and also that whatever facilities India possesses should be availed of to the full. When these boys have been trained in that manner we can send them for three years abroad for research. After all, we are not sending these people in order to get employment for them afterwards. It is not a purely service question. We want these persons as specialists or as experts. They must be persons who can develop their master-minds in order to add to the world's knowledge. Therefore we do not want mediocrities. We want great men in order to replace the great men we are getting at present from foreign countries. We find three American specialists were brought in for the Pusa Research Institute. Our object should be in course of time to train our own boys in order to fill up these important posts. Fourthly, I would suggest that the Government should also make up their minds to ensure that Indians should be trained at as early a date as possible and in ever-increasing numbers to fill scientific and technical posts for which abilities of the highest order are requisite. We were told on the last occasion that about 118 students were sent by the Government of India and that they are employed, suitably employed. I do not know how many were employed in Government Institutes but they must be very few. We know as a matter of fact when we refer to the members of the services that very few Indians are occupying important posts. Therefore it is absolutely necessary that proper men should be trained so that when they are well qualified we can employ them in their own country and avoid the unnecessary employment of foreign experts. The Honourable Mr. Chatterjee was kind enough on the last occasion to quote with approval what the Japanese Government were doing at that time. They were sending large number of students for training abroad in order to replace the foreign experts in the country. That is exactly my purpose. One objection I may mention here, that has been raised to my Resolution is whether Rs. 4,000 per annum is necessary. Some people think a lower figure would be sufficient; but I may say that the Lytton Committee themselves stated that they were obliged to increase the scholarships for Oxford and Cambridge from £250 to £350; and they thought that owing to the high cost of living which obtains at the present moment from £300 to £400 were absolutely necessary if persons are to have proper education at Oxford or Cambridge. That comes to Rs. 6,000; and I know that if it will not cost Rs. 6,000 it will certainly cost Rs. 5,000 to send a man to New York to Columbia University. If you send him to California University or to Harvard University at Boston, perhaps it would cost less. To send students at this time either to Germany or Japan would be still less. But this matter will have to be settled by the Government, as to what is required, and therefore I use the expression "as funds are available". I am only pressing the matter in order that when funds are available the scholarships may be instituted and increased from year to year. But, I may also state, Sir, that I do not think the Government

[Mr. B. Venkatapatiraju.]

would feel that there is want of talent in the country. I hope they do not entertain any such idea. The brilliant examples which we have in India do not at all discourage the Government in thinking that there is talent in the country. There are persons who, if appreciated and facilities afforded, will turn out to be experts, quite as good as any country could produce. India has in its own time produced experts, but for some reason or other we have not got the same facilities and therefore we are unable to count so many. We, however, have them in this country. If you want mathematicians, if you go to Madras, you will find any number. You have got the best professors and physicists in Bengal; we have also got Mr. Sircar, the greatest historian. We have the greatest persons in science. There are also other persons and I do not think I need name them. Therefore I think Government would not at all be discouraged that India has not got such talent for the purpose. I am asking for a modest sum of Rs. five lakhs eventually and only ask for Rs. one lakh now. If the Government are spending Rs. 12,000 lakhs every year, may I not ask them to spare out of the Rs. 12,000 lakhs, Rs. one lakh for this year for this purpose? I hope the Government would help us in securing the regeneration of the country by not opposing this Resolution and giving early effect to the Resolution and by putting into practice what they preach and what they promise.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, I am intervening in this debate at this early stage in the hope that I might be able to specify the position of the Government with reference to this question and that might assist the House to come to a fairly early conclusion on the subject raised by the motion of my Honourable friend. I wish, Sir, at the outset to express my own gratitude for the personal reference that my friend has made to me and I can only ask for the same indulgence, the same generous indulgence, from the Members of the House to me in my present capacity as they have always accorded to me throughout my membership of this House. The Honourable Mr. Raju prefaced his remarks by quoting certain statements which I had made on the occasion of the debate raised by the Honourable Mr. Samarth with regard to the training of Indians in industries outside India. Sir, I must state that neither the Government nor I have wavered in the policy that was then stated by me in this House. I can only repeat that the Government of India fully agree with the Honourable Mr. Raju that research is a very important—indeed one of the most important elements—in securing industrial development in this country and also for the purpose of the advancement of general culture in order to build up the nation. Sir, I would go even further and I think probably every Member of the House would agree with me that just as in the case of industrial training, so in the case of research, it is very desirable so far as possible that research both for the purpose of industrial development and for the purpose of culture should be conducted by indigenous agency. Therefore, Sir, it will be admitted that the question is an important one and I hope that I am voicing the feelings of all Members of this House when I say that the Honourable Mr. Raju has done a good service by bringing this question before the Assembly. Perhaps, Sir, Mr. Raju would agree with me if I make a further statement and that is that research should be conducted so far as possible in India and not abroad. I do not quite know whether Mr. Raju contemplated that students should pursue research both in industrial subjects and in cultural subjects abroad and then give it up when they come

back to India. I think, Sir, it is most essential that facilities should be provided for the students to carry on their research after they come back to India. It is not much use sending students to be trained in the methods of research in European countries or in America or Japan if they find when they come back that they have neither laboratories nor libraries nor other equipment to enable them to pursue their studies. The two things, therefore, Sir, must go hand in hand. We should make every possible endeavour to send our students, men of promise, to foreign countries in order that they might obtain the very best possible training, but at the same time we must not forget to provide them with facilities in this country. Progress in the first direction must be conditioned by progress in the second direction. I was rather distressed to find a current of pessimism through the speech of the Honourable gentleman. He seemed to think that Government might make promises, but then they would follow a policy of what he called 'drag and brake' and that Government would not carry into effect what they had promised. I do not think, Sir, that there is any justification for any pessimism or despair of this kind. The Government of India have not been oblivious of their obligations with regard to the promotion of research. The Honourable gentleman himself has mentioned three institutions, namely, the Institute of Science at Bangalore, the Agricultural Institute at Pusa and the Forest Institute at Dehra. He has admitted that the Government of India give a very handsome grant every year to the Institute of Science at Bangalore. He has also admitted that large sums are spent on the institutions at Dehra and Pusa. He has given voice to a complaint that at Pusa and Dehra sufficient opportunities are not given to Indian students for training in methods of research. I am not personally acquainted with the most recent developments in these two institutions and I would leave it on some future occasion to my friend the Honourable Member for Revenue and Agriculture to defend himself with regard to those two institutions. But I have had something to do with the relations between the Government of India and the Institute of Science at Bangalore and I can assure the Honourable gentleman that the Government of India are most anxious that that institution should be utilised to the very best advantage by Indian students and every possible help that the Government of India can give in the matter has been given and will be given in the future. The Honourable gentleman has instanced the case of the Columbia University where, he said, several crores of rupees are spent, whereas all over India we spend only a very small sum. It is quite true, Sir, that the benefactions devoted to Education and Research in the United States are really magnificent, but, Sir, it is well to bear in mind that most of those foundations depend on private benefactions. I have been over the Columbia University and I have also been over the University belonging to the City of New York. I have very great admiration for both those institutions, but so far as I could learn, they were dependent practically indeed almost entirely on private benefactions and on grants from local bodies like the Corporation of the City of New York. I do hope, Sir, that Mr. Raju's Resolution and this debate will bring forward more private benefactions in these causes than we have had hitherto. I do not depreciate the endowments that have already been made by wealthy Indians in the cause of education and research. We have the Bangalore Institute in mind, and we have many more institutions like the Bose Institute in Calcutta and the Science College in Calcutta, and many other institutions all over India, but we want a great many more. I wish that my countrymen would realise

[Mr. A. C. Chatterjee.]

that these things cannot all be provided merely by the State; that they must also come and aid the country in proper development in all directions. Apart from the institutions which Mr. Raju mentioned, there are others also devoted to research, which Government have helped from time to time. There is, as I mentioned just now, the Bose Research Institute in Calcutta to which the Central Government make an annual grant. Then, Sir, I think the House is aware from the speeches that were made on previous occasions that there is the Indian Medical Research Association, which is doing most valuable work in the field of medical research, to which the Government of India make a very handsome annual grant. Then in the pre-Reform days, when the Government of India could help the universities, in the days of peace and plenty, as some one remarked the other day, very large sums were given in aid of university education and post-graduate studies in different universities, and we hope that a very large proportion of those grants were devoted to purposes of research. The Honourable Members of the House are also aware that Government are making efforts to establish a School of Mines and Geology. There also it is hoped that a certain amount of the work of the staff, as well as of the students, will be devoted to research purposes in order to assist in the development of the mineral resources of the country.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): When will it come into existence?

The Honourable Mr. A. C. Chatterjee: I think you will know at Budget time. Honourable Members are also aware that as one of the results of the recommendations of the Industrial Commission, a committee was appointed under the presidency of a distinguished scientist from England to go into the question of chemical research in India. That Committee made certain recommendations. I do not say the recommendations have been carried out, but I am mentioning this just to indicate that the Government of India have not lost sight of the importance of this subject in relation to industrial development. Then again, Sir, with regard to the training of scholars abroad, perhaps the House is not aware that there are already a number of scholarships given by the Central Government or by Provincial Governments for research in languages such as Sanskrit and Arabic. Then, even among the ordinary scholarships given at present by Provincial Governments to students for training in England, a number are given in order to train these students in methods of research in foreign countries. I may instance the case of Dr. Dhar, who is now a distinguished professor in Allahabad, a pupil of Sir Prafulla Chandra Ray, who was trained abroad in chemical research as a Government scholar. Then, Sir, the Committee presided over by the Earl of Lytton, of which my distinguished friend opposite was a Member, went into this subject, and if you will look at Appendix IV of their report, you will find that there are already quite a number of Indian students doing research work in foreign countries.

I find that the number of scholars who are given there as doing only research work comes to about 28. They are conducting research in such various subjects as Economics, the English language, History, Mathematics, Moral Sciences, Natural Sciences and Oriental languages. I may

mention that there are at least 12 Indians who are now undertaking research in Natural Sciences in Great Britain and 9 Indians doing research work in Oriental languages. It is clear, therefore, Sir, that a good deal is already being done. I do not say that more could not be done but we are confronted with the present financial position of the Government of India. I am glad, Sir, that the Honourable Member has recognised that fact by the addition that he has suggested to-day in the Resolution proposed by him. The financial position of the country is well known to all Members of this House and it is not for me to emphasise that point. I can only mention, Sir, that it is on account of these financial difficulties that the Government of India have not been able to proceed with the recommendations made by the Chemical Services Committee; it is on account of these financial difficulties that we cannot develop the School of Mines and Geology as fast as we should like to do; it is on account of these financial difficulties that we have had to postpone a project for the establishment of an institution in Calcutta which would have absorbed the present institution for research in Tanning maintained by the Government of Bengal. Honourable Members of this House are aware that we are now undertaking an inquiry for rigorous retrenchment in every direction, not merely for economy but for rigorous retrenchment. In these circumstances, Sir, although we have every sympathy with the Honourable gentleman's aspirations and wishes, and as I hope I have indicated that all my sympathies are with him, we can only hope for better times to come when effect can be given to these ideas and to the principle of this Resolution. I have dealt with the principle of the Resolution only. The Honourable Member himself has said that so far as the details are concerned they must be left to later judgment, to fuller consideration both by the Government and by this Assembly when the time and the occasion arise. I hope, Sir, I have explained that the Government have every sympathy with the Resolution which the Honourable Member has placed before the House, but we cannot give effect to the proposal immediately; we can do so and we shall do so as soon as funds permit.

Mr. Deputy President: I think it will be better if we take the first amendment at this stage.

Sardar Gulab Singh (West Punjab: Sikh): Sir, I rise to support the Resolution so ably moved by my Honourable friend Mr. Raju. The cause which he has advocated is the noblest one possible, and the country stands in great need of encouragement to improve its industrial condition as the natural resources of India which are many could not be utilised to their utmost without having experts or specialists. I beg to withdraw the amendment that stands in my name in the list of business as the Honourable Mover of the Resolution himself has removed the defect in the original Resolution by the necessary additions of the words 'as funds are available'. I hope that this Honourable House will accept the Resolution as it stands amended.

Mr. Deputy President: I would request the Honourable Member in future if he wants to withdraw his amendment under the Standing Orders merely to say 'I withdraw the amendment that stands in my name.'

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, we rejoice that the spirit of the Government reply is sympathetic. That certainly will conduce to early disposal of this motion so far as the

[Sir Deva Prasad Sarvadhikary.]

academic side of it, if I may so call it, is concerned. The Honourable Mr. Chatterjee has deprecated the current of pessimism underlying the speech of the Mover of the proposal. But in his heart of hearts, does not Mr. Chatterjee feel that there is more than room for pessimism in this concern that has been given expression to to-day and much more than that? I happen to know, Sir, that he feels as keenly as any one of us in this Assembly or outside, with regard to the utter lack of facilities in these directions. As Secretary in another Department not primarily connected with education, he did all he could to further research work connected with Commerce and Industries. I join again in the tribute that Mr. Raju has paid to his single-hearted devotion to educational advance in connection with commerce and industries and we welcome his advancement. I welcome his reply from another point of view, namely, that the recommendations of the Lytton Committee's Report are not likely to be adversely received by the Government, although he has taken good care to keep the expression of that sentiment from the Assembly; read between the lines, I believe that the recommendations have commended themselves to the Government here and in England. Mr. Chatterjee referred to the schedule of Research students in the Report. In Government parlance, which no Secretary or Honourable Member can avoid when he has been in Government environments for a fairly long time, he asked the Assembly to believe that *quite a large number* of research students are doing good work in England and that a *good deal of work* is being done there. I do not propose to talk shop at length, because I have had a good deal to do with this Report. But I may give the Assembly some figures which will enable them to see what *quite a large number* and a *good deal* in Government parlance means. This is undoubtedly a nation-building Resolution to which no one can demur and from which no one can differ, at all events so far as what is called showing sympathy is concerned. The whole point of the Lytton Committee's recommendations is that if India is to advance, if the Reforms are to be at all successful, India must be educationally self-contained and Mr. Raju's Resolution and Mr. Samarth's Resolution now on the shelf for more than 12 months will be one of the first steps towards the attainment of that ideal. I shall take some subjects—important subjects, that I suppose the Legislature would first consider in connection with Mr. Raju's recommendation, if accepted, when the question of choice of subjects for the proposed scholarships comes before them. In Dyeing, what is this large number spoken of by Mr. Chatterjee studying in England?—2. In Mining—8. Mr. Chatterjee will bear me out that in connection with some recent appointments relating to mining with which he and I had to do, our greatest difficulty was that we had not properly trained men out here and therefore the go by had to be given to most of the men on the spot because they had not had enough training abroad.

In Leather Manufacture the figure is 6. If this Research Institute in Calcutta that Mr. Chatterjee spoke of is ever to come, how many of these 6 will be available for work there and would even all the six be enough? In Metallurgy, upon which one of the most important key industries of the country must always depend, we had the tremendous number—1. In Naval Architecture—1. His Excellency the Commander-in-Chief is here and he will appreciate how much towards the naval defence of the country we are going to contribute with that one solitary single student studying Naval Architecture, whatever that may mean, in England.

And, Sir, in Oceanography we have 1. A largely growing subject in India with its tremendous ocean frontage which we shall not know how to defend when the time comes—one is studying. I hear a voice crying out "Nature will defend us." God be praised and Nature be thanked!

In Pottery, in which India can do any amount of good and useful work we have 2. And in Town-planning, which we hear of everywhere all over India the figure is 1. I do not say these are all suitable subjects and that there are not more. On the other hand, we have scholarships in Phonetics, in scientific study of the Languages, in what is called Natural Philosophy, that is mostly ordinary Physics and Chemistry, suitable for college work. We have all that, but we want a great deal more and something better. The question must be as to whether the work of co-ordination should not be undertaken and undertaken in a way that Mr. Raju's and Mr. Samarth's Resolutions suggest. Sir, I do not wish to labour the matter, but I welcome the Resolution and the spirit in which the Government is giving it its support as an earnest of recognition of what the Lytton Committee has insistently demanded—that India shall be educationally self-contained and the men who can contribute towards that must be trained abroad. Mr. Raju has been just out of the country. I am glad he has seen for himself what education abroad, particularly in research, can do. I quite appreciate that men, coming back with the newest ideas on research work and the newest methods, coming and seeking appointments in the Education or some other Department either as glorified clerks or as Assistant Secretaries are not properly placed. But whose fault is it? It is as much the fault of the Government as of the people that capital resources and co-ordination of arrangement are not forthcoming. Government has made itself responsible in various matters with regard to that, which need not be detailed here, and facilities are wanted for people who come back. This fact must not be lost sight of. I am glad, Sir, the amendment for reduction of the number of scholarships is not going to be pressed because 25 after all, even when they come, will not be at all too large a number for all India. Mr. Samarth's Resolution has been referred to. We do not know what is going to happen to it. We have been referred to the provinces with regard to the provincial subjects. Probably that is technically right. But what is happening in the provinces now? With their attenuated university resources, with their tremendous 5½ lakh cuts in educational grants, the provinces will not be able for a long while to do much. I do not say the government resources here are plentiful, but when asked for a paltry five lakhs of rupees as the first step towards nation-building processes, the Government of India's obligations cannot be ignored either by the Auditor General or by the Member for Finance or Education. We have got to make a beginning and an earnest beginning and a beginning at once, and if this Resolution is now accepted, I hope it will not meet the same fate as Mr. Samarth's Resolution action on which has been pending for the past 12 months and over. I think these matters ought to be taken up in the spirit in which Mr. Chatterjee has spoken to-day and not treated in the way in which Mr. Samarth's Resolution has been so long.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): I move, Sir, that the question be now put.

Dr. Harn Lal (West Punjab: Non-Muhammadan): Sir, the former part of the speech of the Honourable Mr. Chatterjee was very encouraging. The Government should be thanked for their very sincere sympathy with this motion no doubt. But I am very sorry to see that the Honourable

[Dr. Nand Lal.]

Mr. Chatterjee told us that there is a lack of funds and consequently he is unable to say when practical effect will be given to this motion. With reference to those remarks I feel bound to address the House. Sir, this is a question of education. I think the whole country and this House especially will be very glad to provide any sum for this most desirable enterprise. We want research in India and a number of scholars are quite ready to undertake that work. I think it will not be right to give this answer that we had better wait, because the money is not available. Money is being spent for a good many other matters and affairs. The question of culture, I mean to say, the question of education, industrial and scientific development, is not a whit less important than those matters, and those affairs, in which money is being spent. If this proposition may be accepted, then I believe the Honourable Mr. Chatterjee will be pleased to concede that immediate effect should be given to the spirit of this Resolution.

Mr. H. M. Samarth (Bombay : Nominated Non-Official) : Not the letter?

Dr. Nand Lal : With these remarks, I support the motion which has been so very ably moved.

Mr. Deputy President : What about your amendments?

Dr. Nand Lal : I withdraw all the amendments in the light of the discussion which we have had on the motion.

Mr. Muhammad Yamin Khan : I move, Sir, that the question be now put.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Let the question be now put.

Mr. Deputy President : Lala Girdhari Lal Agarwala.

(Cries of "Withdraw.")

Lala Girdhari Lal Agarwala (Agra Division : Non-Muhammadan Rural) : I simply want to say a few words in support of the Resolution. (Cries of "Withdraw.") Will the Honourable Members allow me to speak?

Mr. Deputy President : Does the Honourable Member wish to move his amendment?

Lala Girdhari Lal Agarwala : I want to support the motion which is before the House and not the amendment. Sir, I had no intention really of moving my amendment, nor do I move it. But I simply wanted to support the Resolution. I am thankful to the Government for giving us the assurances, but I wish to say a few words in regard to them. The Honourable Mr. Chatterjee has told us that scholarships have been granted for research work—in what?—in Arabic in England and other places, in Sanskrit—where?—in Germany, and in philosophy and so forth. But I wish to know what good those scholarship holders can do to the country when they come back. I want research work on the technical and mechanical lines. I want our Indian young men to be able to manufacture in India, as I have said before, aeroplanes, steamships, motor cars,

spinning and weaving mills, machinery, electrical goods and also those articles which we have now to bring from other countries, and thus to make India a self-contained India. We do not want too many poets in Arabic and in Sanskrit. We do not want to count how many words appear in a particular book and so forth. I submit that the work which has been done so far by the Government on these lines is not conducive to the good of India. Further, I suggest that the Government will, at the time of making the selection, see that first class boys are sent up and not second class boys. At the same time, I hope that Government will see with clear glasses and not with coloured glasses that an opportunity is given not to only one section of the community. Of course, I do not want to bind the Government in any way, but when other things are equal, I hope that considerations of communities and castes will not be totally ignored. I have already said that I do not want to move my amendment and I simply support the Resolution as it stands, in the light of the remarks which have been made in the House.

Mr. Jamnadas Dwarkadas: I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is that the following Resolution be adopted:

"This Assembly recommends to the Governor General in Council that 25 scholarships, each tenable for five years at about Rs. 4,000 per head per annum eventually costing not more than five lakhs annually, be given year after year from the Imperial revenues, as funds are available, to Indians of great promise specially for research work in any part of the world and in any branch of knowledge approved by the Central Legislature."

The motion was adopted.

RESOLUTION RE SUPPLY OF FACILITIES TO ENABLE MEMBERS OF LEGISLATURES TO DISCHARGE THEIR PUBLIC DUTIES.

Rai Bahadur Lachmi Prasad Sinha (Gaya cum Monghyr: Non-Muhamadan): Sir, I beg to move the Resolution which stands in my name:

"This Assembly recommends to the Governor General in Council that all the Government officials should furnish every Member of the Assembly with all the necessary informations with full particulars and give all the facilities towards the discharge of their public duties."

The Resolution demands that Government officials should be required to furnish information with necessary details to the Honourable Members of this House relating to any matter of public welfare and utility and give them facilities towards the discharge of their public duties. The demand, Sir, I think is a very reasonable one and if accepted by the House is calculated to do immense good to both the Government and the public and further lessen and lighten the task of the Council. The mass outside have sent us as representatives to this body and expect that we would conscientiously discharge our responsibilities. They also expect that we would not be failing to take up their right cause whenever occasion arose and that we should keep strict watch over their rights and interests wherever they are in danger of being jeopardized. In addition to the responsibilities which we owe to our constituencies, we are further bound by oath to be faithful to His Majesty the King-Emperor and to faithfully discharge our trust in the welfare of both the rulers and the ruled.

[Rai Bahadur Lachmi Prasad Sinha.]

Our position therefore is a very delicate one and if we are to be honest and faithful Legislators we ought to be true and loyal both to the Government and to our constituents. But, Sir, this is not possible until and unless we enjoy the confidence of both the parties. There can, however, be no doubt in the constituents' reposing their unconditional and entire confidence in us as this has amply been proved by the fact that they have chosen us to represent their cause in the Assembly here. Now remains the question of the Government's confiding in us and this requires to be settled. I am afraid I am not able to enunciate the policy of the Government in this respect. If there is some doubt in it, it would be anomalous for the Government to expect our confidence in them without their confiding in us. Mutual trust is a source of great pleasure and satisfaction and it is mutual trust we demand and demand not unreasonably. As representatives and trustees of the people and confidantees of the Government we claim to be supplied with all information relating to a public matter, and if it is absolutely necessary in the benefit of mutual interest that the officers and servants of Government should, whenever required, allow us, the representatives of the country, to know what is being done for the public and facilitate our inquiries by enlightening us on necessary details.

It has always been seen that strict secrecy is maintained on behalf of the officials over matters of grave importance and nobody is allowed to know the real details. As a result of this, matters drift from bad to worse and ultimately the whole blame is thrown on the Government, rightly or wrongly it is for those to judge who are in the know. Blame to Government or discredit to the officials, the result is all the same and it is that the mass outside have to suffer. It becomes calumnious and goes a great way towards shaking the faith of the people in the Government. I am not a believer in the fact that the Government do wrong always, but the best of their motives are even dyed black by this attitude of studied secrecy maintained towards the people and their representatives.

During the strike over the East Indian Railway last year which was said to have sprung out as a result of an alleged assault of a European on an Indian fireman, I am informed by one of our Honourable friends that he devoted full 24 hours in running from Moghalserai to Tundla in order to find out the real clue of the strike, but his attempt failed totally. No one gave him any information about it. None of the railway officers or employees at the intervening stations dared to give him any information relating to the strike, as they were probably afraid of furnishing such information lest their higher authorities would get offended. Now, I represent the people of Monghyr and the big workshop of the East Indian Railway Company located at Jamalpore is only a distance of about 6 miles from the place. There were troubles at Jamalpore owing to the strike, and a great exhibition of Military force was made at the railway station, but I, a representative of the people, living only next door, was never consulted. There is no denying the fact that situations could have been saved by intervention of popular leaders, but no recourse has ever been taken to this device. We are kept in the dark and the officials do not care to give us any information in the absence of any orders of the Government.

There are numerous examples and it would be needless to make mention of them here, but I must say that if the Government only trusted us

and allowed us to know what we wanted to know, a vast amount of their responsibility would have been transferred to our shoulders and we would have helped to bring about a speedy and happy settlement in troublous matters. The fact of our being in the know would do much to dispel the doubts of many who, possibly, getting influenced by the harrowing and grossly exaggerated stories published in the Press, are losing faith in the present form of administration.

I know, Sir, that we have a great responsibility before the public we represent and the public has also got a right to inquire of us as to what we are doing for them and the country. If we are ourselves to remain in total darkness, how can we be expected to throw light on others. It is therefore a matter of absolute necessity that the Honourable Members of this House should be acquainted with all the facts and figures available only in the offices of the Government here and elsewhere, in the districts and in the provinces.

Sir, in order to enable us to discharge our onerous duties and the honest functions that have been imposed on us and entrusted to our care by our countrymen and the public as also by the Government, the Government must assist us and facilitate our cause.

With these few words I conclude and I hope the Resolution will meet with an unanimous support of the House.

Maulvi Miyan Asjad-ul-lah (Bhagalpore Division: Muhammadan): (The Honourable Member spoke in the Vernacular:*)

The Honourable Sir Malcolm Hailey (Home Member): The Mover of this Resolution put his case forward mainly on the ground that we do not sufficiently trust the Members of this Assembly; he said that his own position and that of his friends was difficult; that they had a duty to discharge towards their constituents and towards the public, and that we give them no assistance in the discharge of it. How does he propose to supply that deficiency? We having apparently failed in our duty, having failed, answered questions directed to us, and having never put Members of this Assembly on the way to receive the information that they require, how does he propose to gain it? He would have us order all Government officials to furnish him and other Members of the Assembly with all necessary information. That is how the proposition starts. Its effects have been well illustrated in the speech of Miyan Asjad-ul-lah. He told us that village officers make great mistakes,—frequently act against the law; he considers that it would be well if Members of this Assembly had authority from Government to interfere with such village officers, and see that they do not break the law. He desires again that when he requires information from any Government office it should be immediately given. He tells me that if I desired to do my duty conscientiously I should immediately accept this Resolution; nay, more, I ought really to have initiated the measure myself. If I have to decline that invitation I have to do so mainly on the ground of practicability; for it is no use considering a principle unless you can translate it into practice; and it is no use issuing rules if they are a dead letter the minute they are printed. Now, it is impossible for us to issue any such instructions to the servants of Local Governments. Let us assume for a minute that such instructions were issued and they were disobeyed; or assume again—and it is no very wide assumption—that in reply to a demand for

* The original speech and a translation of it will be printed in a later issue of these Debates.

[Sir Malcolm Hailey.]

information the servants of a Local Government were to supply information so inaccurate and misleading that a Member of this Assembly would, if he took action on it here, stand in a very false position before the public. What power should we have to bring such officers to book? None at all. It is perfectly true that we are entitled to call upon Local Government for information; but we must obtain that information ourselves from Local Governments. We are not entitled to enter into direct relations with their employees. That is one difficulty. There is an even greater difficulty. Some of the Local Government's servants belong to Transferred Departments. We have no authority under the Devolution Rules for interfering even with the Local Government in a Transferred subject. The House will remember that on a well-known occasion, Parliament itself decided that it would not be right for it to interfere directly with Transferred Subjects. So much so then for the possibility of our issuing a Regulation of this nature in regard to the servants of Local Governments. There are however a large number of servants employed by us direct. We have Government servants in areas which we directly administer, Delhi and the North-West Frontier Province, and we have Postal servants, Telegraph servants and State Railway servants and the like. I take their case also on the ground of practicability. Now, it is clear that you cannot ask a Government servant to discuss orders that have been given to him by a superior, not even for the sake of earning the greater confidence of the Legislative Assembly, could we as a Government, or could indeed any other Government, allow a procedure so destructive of discipline? Then again, it is not reasonable to depend on inquiries made from any such subordinate servants in regard to facts. They do not see the whole of them; their individual information may frequently be misleading. Thirdly, and this is even more important—it is not fair to ask a subordinate Government servant to judge whether that information is confidential or not. It would place on him an unfair responsibility, since his use of it might subsequently bring him into discredit with his superiors. There are obviously therefore very substantial grounds why no such instructions should be issued to the servants whom we directly employ in the Central Government. Of course it is true the Honourable Member might demand that he should

4 P.M. be allowed to call upon the head of a Department for the information he requires. If he were allowed to do so, he would practically be using the same agency as we use ourselves, but with this difference; if on an inquiry that we make from the head of a Department we consider that his answer is misleading or insufficient, then we see that he completes it, and in the result it is we who stand responsible for that answer to the Legislative Assembly. The House will now, I hope, agree that I have brought my argument to reconciliation of practice and principle. If, as I claim, our present practice is the only procedure practicable, I claim also that it undoubtedly coincides with the true constitutional position. Members of this Legislature are in direct relation with Government and not with Government employees; and the measure of the success with which they discharge their duties to the public, is the extent to which they influence us directly or indirectly in this Assembly. I know of no country with Parliamentary institutions which has regulations such as the Honourable Member would desire to see enforced. I believe that nowhere is it laid down that Members of the Legislatures are entitled to enter into direct relations with the employees of the Executive Government. I believe that everywhere the practice is that where information is desired, it is obtained from Government itself, and for a very good reason; the information that

is sought must be complete, and must be such that Government is prepared to be responsible for it, and for which the Legislature can take Government to task if it proves unsatisfactory or unreliable. For these reasons I think that the proposal of the Honourable Member is not only unpractical but also undesirable from the constitutional point of view; and if I fail to comply with his invitation to show greater confidence in Members of this Assembly in this respect, I do so on substantial grounds; for I believe that such a measure as he desires would be unwise from every point of view.

Rai Bahadur Lachmi Prasad Sinha: On hearing the reply of the Honourable the Home Member I beg permission, Sir, to withdraw my Resolution.

The Resolution was, by leave of the Assembly, withdrawn.

RESOLUTION RE KING'S COMMISSIONS FOR INDIANS.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): Sir, I beg to move the following Resolution:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commission for Indians by direct recruitment and by promotion from the rank of Viceroy's Commissioned Officers in such number that all vacancies in the Indian Regiments be in future filled by such Indian Officers only till all Indian Regiments are wholly Indianised."

In moving this Resolution, Sir, the first thing I want is that Honourable Members of this Honourable House may not misunderstand my motive in moving this Resolution. I am not actuated by any racial feeling; I do not wish to in any way minimise the great services rendered to the Indian Army by the British officers for a very long time past. British officers in India have played a great part in teaching discipline to the Indian army and in maintaining peace and order in the country. The great quality of a Britisher of knowing his duty is well known to all Members of this Honourable House, and the whole House, I hope, will agree with me and will support me in appreciating the services which British officers have been rendering to India. They have taught such good discipline that the fruits of it were found on the battlefields of France, Mesopotamia, Palestine, South Africa, China and other places. British officers have led the Indian troops in a remarkable way, and they have won great fame for the Indian army. So I do not want in any way, as I said in the beginning, to minimise the services of British officers. My motive in moving this Resolution is a totally different one. My first object is to try and get the stigma which attaches to Indian soldiers as a class removed. This is, I suppose, the only country where we have got regiments from a civilized country and from martial races officered by men of other nations. Indian officers have played a great part and they have shown great capacity in many a field and they have proved that they can be capable officers. If such officers who have distinguished themselves in the army are promoted only up to the rank of a Lieutenant or in rare cases, to that of a Honorary Captain, I think it is not doing justice to them; it will mean that their services are not properly appreciated. Indian soldiers and Indian regiments have won battles for the Empire and it was through Indian hands and Indian soldiers that success was achieved for the British Army in countries like Mesopotamia and Palestine. I think, Sir, that when Indians have proved themselves so worthy as soldiers of the Empire, they deserve better treatment and their services should be properly appreciated and recognised and in a more liberal manner. In India we have got a particular class from among whom

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men are recruited for the army. It had been for a long time considered that the Indians who come to join the Army are illiterate people and they could not go above a certain status. Now, I find from that very class of people and among them there are a good many people who are very well educated. The sons of soldiers, the sons of Viceroy's Commissioned officers are very well educated now. They are receiving their education in public schools, in universities and they can be very efficient officers, if they get a commission from the King. They have got a martial spirit. They have got a tendency. They have got behind them the spirit of centuries. A son of a soldier comes to join the Army and probably the same regiment to which his father belonged. And it is happening in most cases and there is no reason why, if a sufficient number of young men can be found from amongst these people, they should not be given King's Commissions and their status should be limited to getting a Viceroy's Commission only. I think that great liberality should be shown towards these people and they deserve it. Up to now, Sir, one difficulty that was the foremost difficulty was that among the martial classes educated people could not be found and that I have explained that difficulty is being removed every day. Even if that difficulty had not been removed, was not going away by itself, it was the duty of the State to provide proper education in recognition of the services of these soldier classes so that they may be properly educated and they may be trained after the manner of their forefathers. Indian regiments were recruited in the time of the East India Company in this way. The Indian regiments of the East India Company had Indian officers among them but a certain incident—unfortunate incident which happened in 1857 took away the confidence we had in the Indian officers of the Indian regiments, and a policy was pursued after that of keeping proper control over the soldiers. And that policy was pursued on account of this that, if the officers were Europeans, they would properly control and there would be a safeguard for the East India Company or afterwards for the Crown too. I dare say, Sir, that that may not be the solitary fact, that may not have been the only guiding factor in adopting that policy. It might have been that the East India Company wanted to train their soldiers after the manner of European discipline and they imported British officers from England to train the soldiers on those lines. But times have changed since then. Now, we find in India many young men who go and receive education in England. They have received education in European style, and this has been widespread in India for the last three decades at least and a sufficient number of young men are available who can be trained like British young men are trained at Sandhurst. In this way, Sir, I have been saying that for some time past His Excellency the Commander-in-Chief has shown some liberalism in getting King's Commissions for Indians in a larger proportion than used to be the case formerly and India is thankful to him for that. But I should say, Sir, that the number in which the Indians are getting to-day is not sufficient and that is not satisfying my conscience. My object in moving this Resolution is that there ought to be two bodies of army organisation in India, one purely the British Army and the other purely Indian Army. The Indian Army should be officered by Indian officers only and the British regiment should be officered by British officers. and I will not in any way go beyond what circumstances will permit. I quite realise that India at present depends largely on British assistance and British control in this country. If the British left to-day, there will be anarchy in India. But though we may not be able to defend our shores,

though we may not be able to defend our frontiers, I want that Indians should receive proper education and proper training to defend their country, and the best course of doing it would be by giving effect to the Resolution which I am proposing. My Resolution, Sir, has been misunderstood in some quarters. I found some discussion in the press which is due to a misunderstanding of my Resolution altogether. My object is not that if a vacancy falls in the regiment of the rank of a Colonel, a new Indian should be brought there and appointed a Colonel or a Major or even a Captain or even a Second-Lieutenant to-day. My object in moving this Resolution is that officers of the Indian regiment should be limited now. Particular offices should be reserved for the Indian Army, and I suppose that is so, unless they are changed from the British Army. But there should be no change from the British Army. The officers who are reserved for the Indian regiments must stick to the Indian regiments. Suppose there is a vacancy in the rank of Colonel. Of course, a Major, *ipso facto* either in this very regiment or from the other regiment, whoever is senior, will take his place and will be promoted to the rank of Colonel. People from below will take their precedence and will have promotion. Now, the only vacancy in this way will be that of a Second-Lieutenant or a Lieutenant, and this should be filled by an Indian. All the vacancies which will occur as Second-Lieutenant in the Indian Army should be filled by properly trained Indian officers. I propose in this Resolution that Indians should be given King's Commissions in such number that they may fill all those vacancies which may occur as Second-Lieutenants in future. Now, Sir, by this process, if I am not wrong, as far as my information goes, it takes 22 years to become a Colonel—it may be something more than 22 years, it may be 24 or 26 years, but whatever period it takes, after that time, these Indian regiments will be officered by Indian officers only. So, if effect is given to my Resolution to-day, it will take at least 22 years from now to Indianise the Indian regiments only. In this way there will be no harm, and when we have got the reformed Councils, when we have got the statutory period fixed at ten years for revision which, of course, the Government have acceded to curtail sometime ago according to the debates in the Assembly—then, Sir, if it had been for ten years we would have known how much progress India has made towards getting its own army. In ten years probably we would have had all the Captains in the Indian regiments Indians, and only Majors and Colonels would be by that time British officers, but by slow process they would be replaced by Indian officers. There is another safeguard. I know that it might be argued that the English character—British character—when I use the expression “English” I hope the House will understand me to include in it the Scotch and Irish as well (*A Voice*: “How Irish?”)—will have to be preserved. The British character will continue and all the officers will give these young men proper education, and these young men who will come there as Second-Lieutenants will be associating with the British officers and will receive the same training as the British officers in the same regiments and preserve the British character. The same discipline will continue and that will be purely after the English style. After that period, there will be a great saving in the Indian regiment. Now, in the Indian regiments we have got a double system of officers. We have got King's Commissioned officers and Viceroy's Commissioned officers, a double system of Commissioned officers. I do not see what is the use of having two systems, two kinds of officers. The Indian officers are simply kept to help the British officers, or their chief work is, I understand, simply to get recruits. In British regiments we have not got this double system. They have got the non-commissioned officers which we have got in the

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Indian regiments as well, but these Viceroy's Commissioned officers are simply there for show, or to give help to these King's Commissioned officers. If effect is given, after 22 years we shall have only one kind of officers, and probably before that comes, once we have got all the Captains and Lieutenants in the Indian regiments Indians, then there will be no necessity to keep a risaldar major or risaldar or other officer of lower rank. Those people who will come as such will bring recruits or there might be a certain percentage in every regiment appointed as a recruiting officer. Now, Sir, I think that will be a great saving in the Indian revenue and the Indian Army will be able to stand by itself. This will not affect in any way the position of British regiments in India. The point which has been argued and which might be argued on behalf of the Government that there is always a fear of breach of the peace might be removed too. Last year in the Budget speech His Excellency the Commander-in-Chief said and that gave rise to a lot of criticism in this House that it would take years and years to get the Indian Army. Of course I am not going into controversial matter and I do not wish to revive the same discussion to-day. I do not wish to move this Resolution in that spirit but I wish to move this Resolution in the spirit in which I have spoken to-day. There used to be one bogey. Every time there was a question of Indianisation of the Indian Army the Afghan bogey was put forward and there is the question of Bolshevie Russia. The Afghan bogey is no more. We have got no fear from those quarters. There is a treaty settled with the Afghan King and Afghan Government is a peaceful ally of the Indian Government. Bolshevie Russia is far removed. I think even if those questions were present to-day, my Resolution would not affect them because this would not bring in any sweeping change. This would not bring a change in a day or two, in a year or two but it will bring a change certainly after more than 20 years. Then, Sir, riots may take place in India like those in Malabar. For the purpose of keeping down such things, there might be a strong British army, if that British army is really required in the strength in which it is kept. That is a question on which I do not wish to dwell because that question is covered by another Resolution of mine, which is not for discussion to-day. We find that the regiments which were employed in Malabar were mostly Gurkhas and other Indian regiments too. So I can say that Indian regiments can always be safely trusted to deal with situations like that and there is no reason not to trust the Indian officers who would be trained in the British style and according to the traditions of British regiments. This is, Sir, my chief motive in moving this Resolution, and I think, Sir, and I hope that it will meet favourably from the Government party, and I hope and I think this is not such a request which may be not granted. I hope His Excellency the Commander-in-Chief will see his way, knowing the need of the country and the object for which I wish to move this Resolution and what is my idea, to accept it.

Mr. Deputy President: Resolution moved:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commission for Indians by direct recruitment and by promotion from the rank of Viceroy's Commissioned Officers in such number that all vacancies in the Indian Regiments be in future filled by such Indian Officers only till all Indian Regiments are wholly Indianised."

His Excellency the Commander-in-Chief: Sir, I welcome this opportunity to say a few words in reference to this Resolution. The Government are well aware that Members of the Legislatures, and indeed an

even wider circle of political opinion in India, are deeply interested in this very important problem. I can assure you that the Government have taken, and are taking, an equally keen interest in it, though circumstances have so far not made it possible to make a definite announcement with regard to the matter or to state the measures that are in contemplation in order to secure the object which the Honourable Mover has in view. From statements already made in this House Honourable Members are aware that the Government is still not able to set on foot any specific scheme of Indianization, or even to say really now when this will be possible. It is hoped, however, that it will be possible to make an announcement at no very distant date when the correspondence which is still proceeding between the Government of India and the Secretary of State has been concluded. The correspondence has been prolonged, and the consideration given to the matter has been very thorough, as indeed the importance of this matter deserves. The Resolution does not therefore deal with any new proposal but with one which has already been very fully explored. In these circumstances, it will be clear that it would not be open to the Government to accept the Resolution as it stands, since they cannot prejudge a matter which is still under discussion. On the other hand, the Resolution is not unwelcome, since it gives me an opportunity of placing before the House some at any rate of the considerations on which a decision must ultimately depend, and also of stating in their proper relation the measures which the Government have already undertaken to grant His Majesty's Commission to Indians. Now I presume it is thoroughly understood by every Member of this House that Indianization is a process which relates only to the Indian Army. I am not sure that there has not been in certain quarters some misunderstanding in this respect. Indianization is in no way connected with the British units which serve in India or with the question of reducing their numbers. The question of Indianization arises only in regard to a specific portion of the Army in India, namely, the Indian Army, and the object in view is, primarily, the replacement of British Officers of the Indian Army by Indian Officers holding King's Commissions.

Now, before I go any further I want to say that you cannot expect me as Commander-in-Chief in India to view with unmixed feelings the possibility of eliminating the British Officer from the Indian Army. Whatever may happen in the future, if India is in the end able to do without the British Officer in the numbers that have hitherto been employed, Honourable Members of this House and I hope also a much wider circle will recognise the inestimable value of the services which the British Officer has rendered to India in the past and of the conspicuous part that he has played in building up and consolidating the Indian Army, an army of which the people of India have every reason to be proud. The Indian Army has a traditional reputation for efficiency and reliability which is I think universally acknowledged. It will be unnecessary for me to dilate on their heroism, their self-sacrifice; for Honourable Members all know the great achievements of the Indian Army before the great war, during the great war and since the great war, both in India and overseas. And if any testimony as to the share which the British Officer has had in these achievements were required, it would be, I know, readily forthcoming from the most authoritative quarter possible, namely, from the Indian Officers and the Indian soldiers themselves. To me one of the happiest and most striking features of the British Raj in India is the respect, unquestioning obedience and, I would add, the genuine affection which

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for many years his Indian comrades have invariably given to the British Officer of the Indian Army. I should not do justice to anyone, least of all to the representatives of the people of India if I did not at the very least pay this tribute to the order which the Resolution of my Honourable friend apparently seeks to change. Now, it would be idle to ignore, on the other hand, the desire for change that comes very naturally with changing times, and I can readily understand that as the people of India claim increasing independence they should also claim increasing opportunities to fit themselves for self-defence. A desire that the Indian Army should be Indianized follows as a natural sequence, and Government, as I have already said, have for a considerable time recognized that a demand of this kind is inevitable and they have spent much time and pains in investigating the best means of assisting the people of India to realize their ambition without at the same time sacrificing even for a time the traditional efficiency of the Indian Army. It goes without saying that even in the transitional stage it will be essential to preserve the country's means of defence efficient and unimpaired. This is the first and the greatest difficulty of the problem before the Government. An efficient army is composed of intensely human factors, one of the chief of which is an inherent dislike for violent changes. A change of this nature which would rapidly eliminate a large number of British Officers would certainly be a violent one. Obviously a step of this kind would best be taken when the skies are clear and the process of transformation undisturbed by the presence of dangers either external or internal. And I need hardly remind the House that ever since the end of the great war India has never wholly been free from some form of external or internal menace. Neither of the difficulties which I have mentioned, however, have discouraged the Government from attacking the issue. And what I wish here to emphasise is that, while larger schemes have been maturing, definite measures have been taken to secure the grant of King's Commissions to individual Indians who are suitable and qualified. The first results of our efforts to secure suitable candidates for Sandhurst were not very encouraging. The number of Indian boys who came forward in itself was small and very few of them were found to have reached the standard of educational and physical fitness which are required to qualify a candidate for the first stage of a military career. It will probably interest the House to learn in some detail the steps which the Government have taken to overcome these difficulties. The story is one of steady and continuous progress. In the first instance, during the war and since, 371 Honorary King's Commissions have been granted mainly as war rewards to Indian Officers holding the Viceroy's Commission in the Indian Army. In addition to these, there are now some 66 Indian Officers holding the full King's Commission and serving in the Regular Indian Army, or doing the normal period of attachment with a British regiment, which is required of every officer, whether British or Indian, before he joins the Indian Army. Of these latter some were originally in the Imperial Cadet Corps and were commissioned from the Indian land forces. Others were commissioned from the Cadet College established during the war as a temporary measure at Indore; others were again promoted from Viceroy's Commissions and others have been commissioned after a regular course of training at Sandhurst. In addition to these, there are at present some 28 Indian Cadets under training in the Royal Military College at Sandhurst, who, if successful, will

shortly qualify for King's Commissions. But we have dug the foundations even deeper than this. In order to enable Indian boys who desire to enter the Army to acquire the qualifications for admission to Sandhurst we have, as this House is well aware, established the Prince of Wales Royal Indian Military College at Dehra Dun. At the present moment there are 88 boys in residence in the College and by April 1923 I hope there will be 70 boys. The report on the first term's work of the Dehra Dun College was distributed to Members of the Legislature and I have only recently received a report on the working of the second term, the contents of which are most satisfactory. I should like to quote you a few passages from this Report. It says:

"The lines on which the cadets have been organised into sections and also into divisions for studies, have proved eminently satisfactory and will be continued. The Cadet Captain and Section Commander are with experience realising their responsibility, acquiring an aptitude for command and have carried out their duties in a manner which does them credit. The continuance of this system will, it is hoped, enhance their usefulness and lead to beneficial results in general."

And again it says:

"There has been an all round improvement and many cadets, who had apparently played no games before they joined, show a wonderful change in their physique, manliness and agility. The Inspector of Physical Training inspected the Cadets in November and expressed himself fully satisfied with the results."

I myself recently inspected the College and found that the school has been admirably organised and is being well administered by an exceptionally efficient staff. Nothing more could have been done, beyond what has already been done to ensure its success, and—as the Honourable the Finance Member is not here I may perhaps refer to it—I am contemplating in the not very distant future an increase to this College by a considerable amount. I hope that, perhaps within twelve months it may be possible to double the numbers that are already there.

You are also aware that the Government contemplate the establishment of other military institutions which will provide an education, preliminary to the education to be obtained at the Royal Indian Military College, Dehra Dun. We are doing this because it has been realised that, if Indianization is to be given the fullest chance of success, it is essential that Indian boys, who desire an Army career, should have precisely the same opportunities and facilities in the matter of education, both physical and mental, as have always been enjoyed by English boys who are destined for a career in the Army.

Finally, in regard to this aspect of the case, I think the Legislature ought to know that, in order to remove the possible discouragement that might otherwise have existed, Government provide education at Dehra Dun at a cost to the parent below the cost to Government of maintenance of this institution.

The facts which I have just stated are sufficient to show without any further comment from me that, in anticipation of wider proposals for Indianization, Government have adopted a markedly progressive and thorough policy, for the purpose of securing qualified Indians as officers for the Indian Army, and the only further point to which I desire to draw particular attention is that, so far as human means can devise, the Indian cadet is being given every opportunity to make himself as efficient an officer as his British confrère.

I presume by the way that Honourable Members understand why we attach so much importance to the preliminary education of candidates for King's Commissions. In all modern countries good education, as

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the foundation of character, has always been regarded as essential for those who desire to take up the profession of arms in the capacity of officers. An officer is first and foremost a leader of men, and it is necessary for him at the outset to acquire the knowledge and the character which will not only enable him to face danger himself, but will give him the power to induce others to follow him when danger threatens, and to inspire them with trust and confidence in his ability to lead them to success. Initiative, resolution, coolness of judgment, and capacity to command, are the essential qualities of an officer, and the education of those who aspire to hold His Majesty's Commission, must from early boyhood be designed to develop these qualities to the fullest possible extent.

Again, the profession of arms has at all times had its scientific side, but this aspect has in recent years, and particularly since the great War, become very much accentuated. The education of an officer does not cease when he receives his first Commission, as some people are very liable to think. In reality it is then only beginning and it continues throughout his whole career. I am myself still learning every day from Honourable Members in this House, whose ideas are sometimes new and the expression of them forcible. In recruiting officers for the Army, we have to look for those who will not only be successful as combatants but will be successful also in the technical, administrative and Staff Department of an Army. These considerations must, however, be familiar to all. I have laid some stress on the matter because it leads me to one of the specific objections which debar Government from accepting the Honourable Member's Resolution. To accelerate progress by the grant of King's Commissions on any considerable scale in the near future to officers who at present hold the Viceroy's Commission would not be a practicable scheme since the latter do not as a rule possess the educational qualifications or the capacity for educational betterment which are essential not only in the junior ranks of the army but also, and more particularly, in the senior ranks. The problem is not merely to get a sufficient number of Indian officers as such, but to obtain those with the character and educational qualifications which will enable them to rise to positions of trust and responsibility. To make an Army you require to have officers trained in combatant, technical and staff work capable of discharging the duties of the multifarious posts which are necessary for the successful administration of a modern Army. No one knows better than I do what a magnificent body of men are the Indian officers holding the Viceroy's Commission to-day and what superlative services they have rendered and are rendering to India and the Army. Many of them have received the King's Commission, largely as a reward for gallantry and distinguished service in the field and we shall continue to recognise such distinguished services by the grant of further King's Commissions to this class as time goes on. But you may take it from me as certain that it would be wholly impracticable to find the bulk, or even a large proportion of the officers required for the Indian Army from this source alone. There is also, as it appears to me, another obvious flaw in the proposal of the Mover of this Resolution. As I read his Resolution, he suggests that the recruitment of British officers should now wholly cease and that in future none but Indian officers should be recruited from the Indian Army. In the light of what I have said to you, in view of the paramount necessity of maintaining your capacity

for defence unimpaired throughout the transition stage, would it be wise or even practicable for Government to commit themselves to the wholesale Indianisation of the Indian Army before they had had an opportunity of proving either the success or failure of such a change by Indianising some portion of the Indian Army, and by testing a wholly Indianised unit not only in peace but also in war or in some form of frontier service. Perhaps the House will allow me to quote the observations on this point of a very distinguished Member of this House whose presence we miss here to-day but whose interest in this problem and whose knowledge of its intricacies is probably unequalled amongst Indians—I refer to my friend, Sir Sivaswamy Aiyer, who, writing in the *Nineteenth Century Review* not very long ago, said:

"No sane Indian politician advocates the filling up of the higher ranks of the Army with Indians without training or experience."

and he adds:

"As a matter of fact, no one has asked that the commissioned ranks should be exclusively recruited from among Indians: we have been pressing only for the removal of the barriers against us and for the recruitment of Indians to the higher ranks on a liberal scale to start with progressive annual increments."

I wish he was only here to-day to take part in this debate because he has studied the question to my knowledge with great care and very profoundly.

I think I have said enough to indicate a few of the difficulties with which this problem bristles. Some of the barriers have already been removed. The attitude which Government have so far adopted in regard to this matter, though it has been prudent, has also been reasonably liberal. I have mentioned that further changes are in contemplation. What form these will take I am not in a position at the present moment to reveal. But in reference to Mr. Yamin Khan's Resolution I would say to the House: "Don't try to go too fast. Don't try to run before you can walk. If you do, you will assuredly fall down." In dealing with the Indianisation of the Army, India must proceed by degrees and by well-considered stages, if her advance towards the desired independence in other departments of the administration is to progress surely and safely without undue risk or danger to the community at large.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban):

In the first instance, Sir, I solicit your leave and the leave of the Assembly to move a few verbal amendments to the motion put before the House by Mr. Muhammad Yamin Khan and if that leave is not allowed I shall speak to the Resolution itself. The amendments that I ask your leave, Sir, to move is to substitute the word "or" for the word "and" in the second line, to omit the word "all" in the third line, to omit the word "only" in the fourth line, and to omit the word "wholly" in the fifth line.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Read the whole after filling in the amendments.

Sir Deva Prasad Sarvadhikary: I am going to. We have had many lectures from Dr. Gour, but that hint from him is hardly needed. The Resolution as I would amend it will stand like this:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commission for Indians by direct recruitment or by promotion from the rank of Viceroy's Commissioned Officers in such number that vacancies in the Indian Regiments be in future filled by such Indian Officers till all Indian Regiments are Indianised."

Have I your leave, Sir?

Mr. Deputy President: Yes.

Sir Deva Prasad Sarvadhikary: Sir, the Commander-in-Chief is in a learning mood

Mr. R. W. Davies (Madras: Nominated Official): But the leave of the House has not been obtained. I object to the amendment.

Mr. Deputy President: I have allowed the Honourable Member to proceed with his speech. It is for the House to accept or to reject the amendment.

Sir Deva Prasad Sarvadhikary: I have leave to move the amendments. That has been given. It is too late now to object to it. Well, Sir, the Commander-in-Chief is in a learning mood and he learns even in this Assembly. We are also in a learning mood now and ever. We have learnt much from what His Excellency has told us this afternoon. Much have we heard that heartens and encourages us for the future. We recognise the difficulties of the situation and the limitations of the position. While we do that, we are anxious to place before the Government and the public some substantive and substantial form in which we make our demand. We recognise the difficulties of the Government of India. It is not merely Whitehall, as Dr. Gour cried out in the course of the Commander-in-Chief's speech, that is interfering with us. Whitehall for this purpose is a mere post office between us and what the War Office stands for—the military organisation of England. Even when Whitehall is sympathetic, it will not be able to have its own way altogether. That, however, will not prevent our making our demand.

My first amendment has reference to what the Commander-in-Chief said regarding the present position, calibre, status, and education of the Viceroy's Commissioned officers, and it will not be possible, if we retain the word "and" to have recruitment according to the military authorities requirements from that body to any very considerable extent. My amendment, however, will not shut them out in suitable cases. The matter is left entirely to the military authorities to decide whether it can and shall be by recruitment or by promotion from the Commissioned ranks of the Viceroy's Officers. That gets rid to a certain extent of the objection that His Excellency has put forward with force that I recognise.

Sir, when Indian officers are going to take the place of British officers, even though it be in the Indian regiments, I do not for one moment want to countenance the position that they shall be inferior to the British officers in any way, by education, by training and character and various other things which are inseparable from a good soldier as well as a good citizen. He ought to be able to hold his own in the Army, as Mr. Rangachariar suggested this morning they ought to be able to hold their own in the Civil Service. Therefore, that is a *sine qua non* which nobody will want to do away with. We are entirely at one with Sir Sivaswamy Aiyer 5 P.M. reference to whose work we appreciate. Conceded that, the Army Authorities and the Government will find it difficult to resist our demand so far as that is concerned.

Then we recognise the difficulty of rushing things. Apart from considerations of expediency, where are the men to be had immediately to take all these places as vacancies occur? It would to a certain extent be a gain for the present if suitable men, like those

that gave such good account of themselves in the Bengal Ambulance Corps and the Calcutta University Corps—as they come along, are given promotions and this amended Resolution would secure this object. I do not think piling up of superlatives such as “all,” or “only,” or “wholly” will add to the force of the demand. Indianisation is Indianisation. It has a definite meaning. Whether Indian Regiments are, to be wholly Indianised or largely Indianised or mainly Indianised will be determined by the exigencies or the circumstances for the time being. Our goal, our objective, our ideal, here as elsewhere, is that Indianisation shall proceed as far as possible and as fast as possible, without detriment to efficiency, without detriment to the high standard which we must maintain in our Army, as everywhere else. If all this is conceded, where comes the difficulty in accepting the substance of this Resolution? Government is busy corresponding, framing schemes; we have indications which show what the mind of the Commander-in-Chief and the Government here is. That is encouraging, but that does not go very far, for they are handicapped. We want definitely to say that this is the ideal that we aim at and we should like to know what there is to prevent that ideal being accepted and being given effect to cautiously, slowly, if you like, but steadily and without any detriment to the goal and objective in view. Sir, the Commander-in-Chief has himself said that this is a deeply important matter. We consider this to be vital. Everything else pales in importance where nation building is concerned. If the Reforms are to be a real success, we must have an abundant part in the national defences of the country and must be prepared for it apiece, but certainly without detriment to efficiency again. That we are quite agreed about.

Sir, the Commander-in-Chief has said that it must be made quite clear that Indianisation applies only to Indian regiments. The motion before the House does not take us any further than that. But may we not some day hope that just as he wants the British officer to continue in the Indian regiments it may be possible for Indian officers to take their place alongside British officers in British regiments? What has happened in other walks of life, the civil service, commercial life, educational and medical including the Indian Medical Service, service in law, engineering, everywhere? The Indian who has been tried and found not wanting has had conceded his place above his British colleagues and the Britishers, be it said to their credit, have loyally served them. Are we not seeing this now in the Secretariat, in the Honourable Indian Members' Departments, in the High Courts, at the Bar, in commerce, in education, everywhere; wherever an Indian had his chance he has justified himself (A Voice: “and as soldiers”). And as soldiers. This was unthinkable only a few years ago and still it is so. A time may come,—who knows, why not soon—when India will have her own British regiments untrammelled by considerations of War Office Routine—of British regiments officered by British and Indian officers,—who knows that Indian officers will not be welcomed by British regiments themselves to take their place alongside British officers. Sir, that is not the objective of this amendment, but as the Commander-in-Chief has introduced the matter, I think we may be permitted to express the hope that a time may come, when by soldierly and citizenlike qualities an Indian soldier may be permitted to take his place alongside the British officer in British regiments as well. But that must be for another day.

Sir, the value of the Indian Army is recognised. Its gallant officers by war services have earned King's Commissions,—371 of them. Many more of them have given their lives and many more have fought gallantly.

[Sir Deva Prasad Sarvadhikary.]

Could not many more have been given Commissions? If the authorities had their scheme ready, if they are really sympathetic and fully prepared, they could and would have done what is or must be inevitable in the near future. Sir, I do not want to take up the time of the House too long. There must be many other Members who are anxious to speak but I think it is up to us in this Assembly clearly, definitely and strongly to say that we want something, definite, substantial and intelligible, on the lines of the amended Resolution. At one time I thought that one or other of the amendments might suit the circumstances of the case better, because one does recognise that one cannot decide in detail these things in an Assembly like this and in a hurry. But what we are proposing to-day, subject to the amendments that I move, is fairly definite but not aggressive or inadmissible so that the authorities may not have any option in the matter. They have to accept the principle and give effect to the spirit of the Resolution as soon and as well as they can. If this proposal is accepted they can do this in the near future and must.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I move that the discussion be adjourned.

The Honourable Sir Malcolm Hailey (Home Member): It disturbs me to have to place before you a motion which is, for me, of an unusual nature. Usually such motions come from my friends on the opposite side. (A Voice: "Not always.") The fact however is that this evening we have a very important Executive Council meeting at 5-30 p.m. at which the presence of all Members of Council is necessary; it is therefore difficult for us to continue this discussion. I would, therefore, ask you, Sir, to adjourn.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 25th January, 1923.

LEGISLATIVE ASSEMBLY.

Thursday, 25th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Mr. Deputy President then took the Chair.

QUESTIONS AND ANSWERS.

VIEWS OF LOCAL GOVERNMENTS ON MATTERS OF PUBLIC IMPORTANCE.

250. ***Mr. Manmohandas Ramji:** Will the Government be pleased to state:

- (a) whether they ask the opinions of Local Governments as a whole, that is, the Executive Members and Ministers together, or separately, when referring for opinion on matters of general public importance,
- (b) whether they have received the opinions of the Members and Ministers jointly or separately,
- (c) if not which of the Local Governments do not submit the opinions of Ministers, and
- (d) whether the Government propose to consider the desirability of directing all Local Governments to do so in future?

The Honourable Sir Malcolm Hailey: The normal course followed by the Government of India in consulting a Local Government is to ask for the opinion of the Local Government which means the Governor in Council in relation to reserved subjects and the Governor acting with his Ministers in the case of transferred subjects. The Governor General in Council is not primarily concerned with the procedure adopted by the Local Government for the formulation of its opinion on such references, but I would invite the attention of the Honourable Member to clause IV of the Instrument of Instructions to the Governors of the various provinces in accordance with which the Governor is directed to encourage the habit of joint deliberation between himself, his Councillors and his Ministers. Generally speaking the opinions received from Local Governments are given as the joint opinion of the Local Government, though occasionally the particular opinion of individual Members of the Executive Council and Ministers is given separately. The Government of India have no sufficient information to enable them to discriminate between Local Governments in this respect, and they do not propose to issue any direction in the matter.

RENTS IN DELHI AND SIMLA.

260. ***Munshi Iswar Saran:** (a) Will Government state the basis on which rent for the Government houses in New Delhi is charged from the occupants of those houses?

(b) Is it a fact that a number of junior officers occupying Government houses in New Delhi are also paying rent to Government for their houses in Simla?

(c) Is it a fact that for the five months that these officers are in Delhi, they have to pay separately rents for two houses, one in Simla and the other in Delhi?

(d) Is Government aware that in such cases the combined rent for the Simla and the Delhi houses, even excluding the charge for furniture, works out to a high percentage of their salary?

(e) Do Government propose to direct that the total house rent charged by Government for residence provided by it should not exceed 10 per cent. of the officer's salary?

Colonel Sir Sydney Crookshank: As the answer to this question is very lengthy, I propose, if I have the permission of the Chair, to lay it on the table.

(a) Rents for residences in Delhi are recovered on a seasonal basis, the season being reckoned as a period of five months.

2. The rent assessed for each building is a sum calculated to cover cost of

(a) interest charges on the capital cost calculated at the rate at which Government is borrowing money at the time of construction,

(b) maintenance charges,

(c) municipal and other taxation.

The amount that can be recovered from each individual is, however, limited to 10 per cent of his pay, but over and above this, extra rent, which is not limited in any way, is recovered for electric installations, special services such as water supply and plumbing, and furniture. Each of these being assessed in a similar manner to the rent of the building itself.

3. As the rate of interest under 2 (a) above has varied considerably since construction was first started in Delhi, advantage was taken this year when revising rents—as necessitated by the introduction of the Fundamental Rules—to pool the interest charges so as to ensure all being treated alike. For the sake of convenience rents were pooled for (a) officers' residences, and (b) residences of ministerial establishment. The average rates so calculated worked out to

Officers.

4½ (round) in the case of buildings and electric installations.

4½ (round) in the case of special services.

Ministerial establishment.

- 4½ (round) in the case of buildings.
4 (round) in the case of electric installations.
4 (round) in the case of special services

as compared with the uniform rate of 3½ per cent in force before the issue of the Fundamental Rules. The allowance made for repairs is as follows :

	Officers.	Ministerial establishment.
	Per cent.	Per cent.
Building	2	1½
Electric installations	3½	4
Special services	3½	5½

The maintenance charges vary with the specification of the work.

(b) Yes.

(c) Yes.

(d) The proportion which actual recoveries bear to salaries is as follows :

- (i) Junior officers drawing Rs. 1,350 to Rs. 1,999 . 10·6 without furniture and 12·2 with furniture.
(ii) Junior officers drawing Rs. 900 to Rs. 1,349 . 12·2 without furniture and 14·4 with furniture.

(c) The matter is under consideration.

UNIVERSITY ELECTIONS.

261. **Munshi Iswar Saran:** Will Government state if the Hindu University at Benares and the Muslim University at Aligarh will be given the right of electing their own representatives in the coming election?

The Honourable Mr. A. C. Chatterjee: Government do not at present propose to take any action in this direction.

Mr. K. Ahmed: Isn't that derogatory to the principle of education, and that is one of the reasons why students are boycotting the Government Universities and they say that they should be nationalised? Isn't that so, Sir?

The Honourable Sir Malcolm Halley: It is a question of opinion.

STATEMENT OF GOVERNMENT BUSINESS.

Mr. Deputy President: I should like to know from the Leader of the House if he has any announcement to make with regard to the forthcoming business before the House.

The Honourable Sir Malcolm Halley (Home Member): We propose, Sir, to hold a meeting to-morrow, Friday, to continue the discussion on the Criminal Procedure Code (Amendment) Bill. As regards next week, it will

[Sir Malcolm Hailey.]

be devoted entirely to Government business. But we do not propose next week to continue the discussion on the Criminal Procedure Code Bill. There will probably be four or five meetings, and it is proposed to take into consideration the Reports of the Joint Committees on the following Bills which were presented on the 15th and 16th January :

The Indian Boilers Bill,

The Indian Mines Bill,

The Cotton Transport Bill, and

The Cantonments (House-Accommodation) Bill.

It is also hoped to take into consideration at an early date the Report of the Joint Committee on the Workmen's Compensation Bill which was presented yesterday. It is also proposed to refer to a Joint Committee the Indian Cotton Cess Bill which was introduced in the Assembly on the 23rd instant.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Is there any meeting on Saturday next?

The Honourable Sir Malcolm Hailey: It is not proposed to hold a meeting on Saturday.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Will there be an off day in the week following?

The Honourable Sir Malcolm Hailey: In the week following we shall have an off day either on Saturday or Friday; it depends on the progress we make with business.

Mr. Deputy President: The House will now proceed to the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, the amendment which I have to move is intended merely to make clear what is apparently the intention, namely, when a person, after having undergone some portion of his imprisonment is released on condition and that condition is broken, and he is again ordered to go back, he must give security only for the unexpired portion of the period. That is the object of the amendment in clause 6, paragraph 2 and paragraph 3, section 124. My amendment has been slightly altered by the draftsman which Government accepts, and therefore, Sir, in place of the amendment as it stands, I move that the following be substituted:

"That in sub-clause (iii) of clause 23, for the second paragraph of the proposed new section 6 the following be substituted:

(c) Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period

equal to the period between the date of the breach of the conditions of the discharge and the date on which except for such conditional discharge he would have been entitled to release) the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion, and

(b) in the third paragraph for the word 'may' the words 'shall, subject to the provisions of section 122' be substituted; and after the words 'original order' the words 'for the unexpired portion aforesaid' be inserted."

Both these amendments are merely intended to make it clear that the bond required or to be given will only be for the unexpired portion. I want to make it clear that it should not be for the whole length of time, because he has already undergone a portion of that period. To make that clear, I move that amendment.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, Government accepts these amendments.

Mr. Deputy President: The amendment moved is:

"That in sub-clause (iii) of clause 23, for the second paragraph of the proposed new section 6 the following be substituted:

(a) Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of the discharge and the date on which except for such conditional discharge he would have been entitled to release) the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion, and

(b) in the third paragraph for the word 'may' the words 'shall, subject to the provisions of section 122' be substituted; and after the words 'original order' the words 'for the unexpired portion aforesaid' be inserted."

The question is that that amendment be made.

The motion was adopted.

Bhai Man Singh (East Punjab: Sikh): Sir, the amendment (No. 84) standing in my name . . .

Sir Henry Moncrieff Smith: I think this amendment has been disposed of by the discussion we had the other day. It is substantially the same as the amendment moved by my learned friend Mr. Rangachariar, and the House on that amendment expressed the opinion that they would prefer to have the law as it stands in the Code maintained. If my friend is moving the proviso, that is a different matter; but the first part, the substantive amendment has been disposed of.

Mr. Deputy President: I take it that the Honourable Member is moving the second part: "Provided further that in case, etc., etc. . . ."

Bhai Man Singh: I do not propose to move the second part.

Mr. Deputy President: The question is that clause 23, as amended, stand part of the Bill.

The motion was adopted.

Mr. Deputy President: Under the ruling I have given amendment No. 86* in the List of Business is outside the scope of the Bill and is therefore out of order.

No. 87† is also outside the scope of the Bill and therefore I have to rule it out of order.

The question is that clause 23-A stand part of the Bill.

The motion was adopted.

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatam: Non-Muham-madan Urban): Sir, on behalf of Mr. Agnihotri I move:

"That in clause 24 in sub-section (1) of section 133 for the words "he thinks fit" the words "is adduced" be substituted."

The new section 133 (1) says:

"Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers, on receiving a police report or other information and on taking such evidence (if any) as he thinks fit, that any unlawful obstruction or nuisance should be removed etc."

Now, Sir, when a Magistrate wants to take evidence under this section it is in order to show that there is a necessity for taking action, and I think it is better that the evidence adduced should be allowed to be taken by the Magistrate. Because he may otherwise decide to take only such portion as he thinks fit and not the whole. This section leaves it too much to the discretion of the Magistrate, and I therefore suggest the addition of the words "is adduced."

* "86. After clause 23-A insert the following clause:

'23-B. To section 128 of the said Code the following proviso shall be added, namely:

'Provided that no such force shall be used to the members constituting such assembly if they do not offer resistance to their being arrested.'

† "87. After clause 23-A insert the following clause:

'23-B. After section 131 of the said Code, the following section shall be inserted, namely:

'131-A. Where under the provisions of this Chapter any person proceeds or determines to disperse any such assembly by the use of fire-arms the following rules shall also be observed:

(1) Fire-arms should be used only if such assembly cannot otherwise be dispersed and no fire-arms should as a rule be used except on the written authority of a Magistrate of the highest class available on the spot. Provided that when immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public the seniormost police or military officer present on the spot may give the written authority instead and the same shall be communicated to the nearest Magistrate forthwith.

(2) Before the assembly is fired upon the fullest warning should be given by all available means to the assembly that unless it disperses within a given time it will be fired on.

(3) The person giving the authority to fire shall ordinarily give such interval between the warning and firing as he considers sufficient in all the circumstances of the case.

(4) A full report of the occurrence shall be made in all cases when such assembly is dispersed by the use of fire-arms to the nearest first-class magistrate within 24 hours of the occurrence and such report shall be a public document.

(5) If the person is himself a first-class Magistrate his report shall be made to the District Magistrate and if the person is a District Magistrate his report shall be made to the Local Government.

(6) Notwithstanding anything contained in section 132 any person injured by the use of fire-arms or any parent or guardian, husband or wife of a person killed by the use of fire-arms may make a complaint against any person for any offence committed by him by reason of any act purporting to be done under this Chapter."

Mr. H. Tomkinson (Home Department: Nominated Official): Sir, in this Chapter of the Code we are dealing with public nuisances and it will be seen that the amendment proposed refers to the first step in the procedure. The District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class on receiving a police report or other information and on taking such evidence, if any, as he thinks fit—is empowered to issue a conditional order. The order, Sir, is only a conditional order, an order to the person to whom it is directed to appear and show cause against or else to comply with the direction in the order after it has been received by him. It is open to him later to produce any evidence he thinks fit and to show cause against. I submit, Sir, that it is entirely unnecessary here to make it compulsory for the Magistrate to take all the evidence which is adduced, because the full inquiry follows afterwards. The words in the Code as they stand at present are, "as he thinks fit," and it is not proposed in the Bill to amend those words. I submit, Sir, that this is all that is necessary, in view of the fact that we are dealing only with the preliminary stage. It is just the same thing as if you were taking cognizance of an offence on a complaint. You merely examine the complainant and then a summons is issued and so on, and you proceed to hear evidence afterwards. The conditional order under this section has practically no more effect than a summons addressed to an accused person. In these circumstances, Sir, I submit that it is entirely unnecessary to make the amendment proposed by my Honourable friend.

Rao Bahadur T. Rangachariar: Sir, I support the amendment. The object of this clause is for a Magistrate to make up his mind on a complaint made either by the Police or it may be by a private individual. He has got to decide it himself in the first instance and he asks the man to appear either before himself or some other Magistrate of the first or second class and move to have the order set aside. So that in the first instance it is a conditional order. Therefore the Magistrate has to adjudicate on the information given by private parties, and the only option given to the party to whom notice is given is to set aside that order. It is therefore but right that the Magistrate should take the evidence which is adduced before him before he makes that order. It is not as if you issue notice on a complaint or anything of that sort. I therefore think that there is a great deal of substance in the amendment.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): Sir, I oppose this amendment. If the Honourable Members will turn to section 188 they will find that an order that has to be passed for the abatement of a public nuisance may refer, for instance, to any building, tent or structure, or any tree in such a condition that it is likely to fall. Now, if the Honourable Mover's amendment is accepted, is the structure or building to fall in the meantime while evidence is being recorded by the Magistrate? And any person who wishes to give evidence may summon and resummon witnesses and the danger to be averted in the meantime may not be averted at all. The object of section 188 is to provide a speedy remedy in cases of public nuisance. The chapter itself beginning with section 188 is of a quasi-criminal character: the proceedings are more or less of a civil character, and I therefore submit that the amendment, if adopted, will delay the proceedings and no good will be served by taking all the evidence that is adduced in a case. The Magistrate may think that one or two witnesses are quite enough to

[Dr. H. S. Gour.]
 establish a good *prima facie* case for immediate action. If his discretion is fettered by having to record all evidence that is adduced, it may be wholly unnecessary and it may be wholly superfluous. The evidence will be recorded and in the meantime the public nuisance may be perpetrated. I therefore submit that the discretion given to the Magistrate is a sound one and should not be interfered with.

Mr. Jamnadas Dwarkadas: (Bombay City: Non-Muhammadan Urban): I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is:

"In clause 24 in sub-section (1) of section 133 for the words 'he thinks fit' substitute the words 'is adduced'."

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: (Madras: Nominated Non-Official): I beg to move the amendment (No. 89) which stands in my name, viz.:

"In clause 24 in sub-section (1), paragraph 2 of proposed section 133, insert the words "from any public place or" after the words "be removed" and omit the said words where they at present occur in the said sub-section."

The amendment is purely a drafting suggestion. If the Government is not prepared to accept it, I am not going to press it. The section would read better if my suggestion is adopted. The second clause of section 133 reads thus:

"that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public or from any public place, or"

I am asking that the words "from any public place or" be transposed immediately after the words "be removed." If my suggestion is adopted, the paragraph will read thus:

"that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public, or"

That is purely a drafting suggestion. I move it and leave it there.

Sir Henry Moncrieff Smith: Sir, I suggest that it is unwise for this Assembly to make this amendment for the very simple reason that if a change is made in the law, the Courts would ask what the intention of the Legislature is. The actual transposition of the words will not affect the substance of the clause, but some Magistrates may ask why the words have been transposed now and they may come to the conclusion that the intention of the Legislature is to make the words "from any public place" governed by the words "which is or may be lawfully used by the public." I think it undesirable that we should make a change.

Mr. T. V. Seshagiri Ayyar: If the Government draftsman does not want it, I do not press it to a division.

Mr. Deputy President: Amendment (No. 89) was, by leave of the Assembly, withdrawn.

Lala Girdhari Lal Agarwala (Agra Division: Non-Muhammadian Rural): Sir, my two amendments Nos. 90 and 98 go together and I therefore ask for leave to move them together.

Mr. Deputy President: It would be convenient to the House if the Honourable Member would move his amendment No. 90 at this stage.

Lala Girdhari Lal Agarwala: Sir, my object is this. Amendment No. 90 would be necessary only if amendment No. 98 is there; otherwise it would not be necessary at all. Both go together. I may be allowed to explain this. These amendments are amendments in the proposed new section 133 about conditional order for removal of nuisance. It says: "Whenever a District Magistrate, etc., on receiving a police report or other information and on taking such evidence (if any) as he thinks fit, finds that the conduct of any trade or occupation, or the keeping of any goods or merchandise is injurious to the health or physical discomfort of the community". Now, the amendment I propose is that after the word "health" the word "morality" may be inserted and the word "physical" may be expunged, and at the end an Explanation may be added to the following effect:

"Action may be taken under this section for suppression or regulating of brothels and disorderly houses as well as places used for gambling in Satta, Badni or share-marketting as also places inhabited by prostitutes or used for storage, distribution or sale of intoxicant."

The word "physical" would become unnecessary if this Explanation is added, because there are some discomforts which may not be called physical discomforts, which may be mental discomforts. For example, if a brothel is maintained close to the house of a gentleman, although he would have no physical discomfort, he will have mental discomfort. Of course, I know that in some districts action has been taken under the section "Nuisance" in matters like this. But others think that the section "Nuisance" is not wide enough to include these matters. As the section is being redrafted, I submit that it should be made quite clear that this sort of nuisance should be allowed to be removed whenever there is any just cause for grievance. Now, I have added the words "Satta, Badni or share-marketting" with this object. In some places there is gambling and there is a law for gambling. Similarly there is gambling in shares which becomes a nuisance in certain places. Government should have power in certain cases to stop licenses or to regulate them. That is the object of my amendment which I move. It runs thus:

"In clause 24 in section 133, sub-section (1), paragraph 3, after the word 'health' insert the word 'morality' and omit the word 'physical'.

and at the end of section 133 add another Explanation as follows:

Explanation.—Action may be taken under this section for suppression or regulating of brothels and disorderly houses as well as places used for gambling in Satta, Badni or share-marketting as also places inhabited by prostitutes or used for storage, distribution or sale of intoxicants."

Sir Henry Moncrieff Smith: Sir, I think my Honourable friend's amendment will probably meet with little support in this House and therefore I shall deal with it very briefly. The question of morality is explained by my friend's second amendment. He intends to give Magistrates power under this section to deal with brothels. I would suggest to the House that this is a matter which is much more suitably dealt with by provincial legislation. We have numerous Municipal laws. (*A Voice:* 'And by the Municipalities.') There is no Municipal law in the country which does not make provision for this matter. There is a Cantonment Law which also

[Sir Henry Moncrieff Smith.]

provides for it. As regards gambling there are at present no less I think than nine gambling Acts in force in the various Provinces, and I think the Code of Criminal Procedure should not attempt to entrench upon them. In regard to intoxicants again, we have our Excise Law; every province has its Excise Law and the matter is fully provided for. It is therefore unnecessary that we should introduce this matter into the Criminal Procedure Code.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muham-madan Rural): I move that the question may be now put, Sir.

The motion was adopted.

Mr. Deputy President: The amendment is:

"In clause 24 in section 133, sub-section (1), paragraph 3, after the word 'health' insert the word 'morality' and omit the words 'or second,' and add the Explanation as follows:

Explanation.—Action may be taken under this section for suppression or regulating of brothels and disorderly houses as well as places used for gambling in Satta, Badni or share-marketing as also places inhabited by prostitutes or used for storage, distribution or sale of intoxicants."

The motion was negatived.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, my amendment is:

"In clause 24 in the last paragraph of proposed section 133 (1), omit the words 'or second'."

Section 133 is used in very exceptional cases, and the right of the public is rather interfered with by District Magistrates or Sub-Divisional Magistrates. Sometimes if a building is being constructed, under this order it will have to be stopped, or if any man is carrying on a lawful trade, it will have to be stopped, and many other things which are done in the exercise of the civil rights of the people are to be stopped under the orders of the Magistrate. In such cases we want a Magistrate of the first class or a Sub-Divisional Magistrate who has got ample experience of these matters to issue the orders. The section provides that either a District Magistrate or a Sub-Divisional Magistrate, or a Magistrate specially empowered by the local Government on this behalf, shall issue these orders. But the last paragraph of clause 24 (1) says:—"to appear before himself or some other Magistrate of the first or second class." My point is that these cases being so important and involving intricacies of civil law and construction, should not be tried by second class Magistrates, but only by first class Magistrates, who are Magistrates of ample experience.

Mr. H. Tonkinson: Sir, my Honourable friend suggests that in these provisions we are interfering with the right of the public. I venture, Sir, to suggest that we give power in this Chapter of the Code to interfere with the actions of single persons who are committing a public nuisance. He suggests that because we are dealing with all these matters, the inquiry should only be held by a first class Magistrate. Now, Sir, under the existing law (and the Bill makes no change whatsoever in this respect), it is a District Magistrate, a Sub-Divisional Magistrate, or a Magistrate of the first class who makes the conditional order. Now, as we all know, in many Provinces the Sub-Divisional Magistrates will be stationed at headquarters, and there will nevertheless be tahsildars and so on scattered throughout the district. The public nuisance may be committed anywhere in the

district, and it is clear that the present law conduces to the interests of the subject by enabling the Magistrate who makes the conditional order to direct that this shall be inquired into by a Magistrate on the spot. That, Sir, is the reason why in the present law it is permissible for the further inquiries to be held by a second class Magistrate, and I submit, Sir, that it would be quite a mistake of this Assembly if they make any change in this respect.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): I think, Sir, the amendment proposed is a very sound one. The matter is so very important that only a first class Magistrate should issue the conditional order. The idea is that he is an experienced officer, a man of very ripe experience and he knows what is what. And therefore, in its subsequent stages to entrust the inquiry to a second class Magistrate, a person who ordinarily resides in the tehsil or mufasil towns and not at headquarters, and has not much experience, is I think not very desirable.

Sir Henry Moncrieff Smith: Sir, I think my friend who has just spoken has provided one argument against the amendment. He says second class Magistrates ordinarily reside in the sub-divisional or mufasil towns. Is it not necessary that in these cases of preliminary inquiry, the inquiry should be made by a Magistrate who is on the spot? If this amendment is accepted, then in the cases to which my friend refers all the witnesses will have to move along to the headquarters town of the district where the first class Magistrate is. They will be put to considerable inconvenience and my friend, I think, by supporting this amendment is rendering himself liable to a charge of adding to the already long list of public nuisances.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): The question may now be put.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, I oppose this amendment on various grounds; firstly that it is not convenient. Supposing the obstruction or nuisance is committed at a tehsil, will you ask the first class Magistrate to go there, or will you ask the applicant to go to the place where the first class Magistrate is? He will have to take a number of witnesses and he will have to go himself. This will not add to the convenience and expedition of the work, rather it will impede it. On these grounds I oppose the amendment.

(Several Honourable Members: The question may now be put.)

The motion was negatived.

Mr. Deputy President: The question is that clause 24 stand part of the Bill.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, my amendment runs as follows:

"In clause 25 for the words 'and in the manner' substitute the words 'and substantially in the manner'."

It relates to section 130 and is a very modest and necessary amendment. That is to say, the person against whom the order is passed has to comply with it "within the time" and "in the manner" specified in the order. Honourable Members have no doubt noticed the numerous cases enumerated in section 133: to fence a tank or a well or an excavation; to repair a building; to remove or support a tree. All these

[**Rao Bahadur T. Rangachariar.**] things are given. I only provide for the safeguard that if he substantially fulfils the order in the manner required, he should be deemed to have complied with the order. I mean, supposing he is asked to put up a teak-wood support and he substitutes another equally strong wood support he would have complied with the order substantially, although not exactly in the manner required, that is to say, not literally, but substantially in the manner required. Supposing he is asked to put up a steel beam and he puts up an equally strong concrete beam, why should he be deemed not to have complied with the order? Therefore, in order to make it clear, I introduce the word "substantially."

I move the amendment, as it stands in my name.

Mr. H. Tonkinson: Sir, the Bill proposes to require the person against whom an order is made under section 133, either to perform the action directed within the time and in the manner specified in the order, or else to appear and show cause. The Bill inserts the words "and in the manner." These words were inserted by the Committee presided over by Sir George Lowndes and, if Honourable Members will refer to the remarks of that Committee on this clause, they will find that they say that "a small amendment is also required in section 135-A by reason of the amendments we have proposed in section 133." That is to say, these words have been proposed to be inserted in section 135 because of the changes that the Committee proposed in section 133. Now, Sir, what are those changes? They relate to the orders which may be issued by the Magistrate in the first conditional order. The first case in question is as follows:

Orders:

"to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation."

The next case in which an amendment was made by the Committee is:

"To remove such goods or merchandise or to regulate the keeping thereof in such manner as may be directed."

Another case is—

"To destroy, confine or dispose of such dangerous animal in the manner provided in the said order."

Now, Sir, I would ask my Honourable and learned friend whether there can be any question of desisting from carrying on or removing or regulating substantially in the manner directed any trade or occupation. Can there be any question of regulating the keeping of goods or merchandise substantially in the manner directed or of disposing of a dangerous animal substantially in the manner directed? Sir, what we want in this case to provide for is absolute compliance.

I think that the amendment proposed is open to much graver objection on another ground. My Honourable friend wishes to permit the person to whom an order is directed to plead substantial compliance. Now, Sir, what would be the result of being able to plead substantial compliance? The Magistrate will know that compliance is to be vague. Therefore, the original order will be vague. What we want, Sir, is a precise order, from which the man to whom it is directed will know

exactly what he has to do. I submit, Sir, that if this amendment is accepted, we shall be doing more harm to these people whom my learned friend desires to benefit than good.

Dr. Nand Lal: Sir, I feel bound to oppose this amendment. In the first place the word "substantially" is very vague; it is extremely difficult to determine what is "substantially" and what is not. Therefore, it will make the task of the Magistrate very cumbersome.

In the second place, I do not find any justification for introducing this word. My learned friend, perhaps on account of lack of time, failed to see what matters and what affairs this provision relates to. The word "substantially" will be misplaced altogether, and, therefore, in brief, on these two grounds, I oppose the amendment.

Mr. E. A. Spence (Bombay: European): I move that the question be now put.

Mr. Deputy President: The question is:

"That in clause 25 for the words 'and in the manner' substitute the words 'and substantially in the manner'."

The question is that that amendment be made.

The motion was negatived.

Mr. Deputy President: The question is that clause 25 stand part of the Bill.

The motion was adopted.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadian Rural): Sir, I propose:

"That in clause 25A the following should be substituted for the proposed section 139A, sub-sections (1), (2) and (3), namely:

"139A. If the order made absolute under section 137, sub-section (3), or section 139, sub-section (1), is concerning the obstruction, nuisance or danger to the public in the use of any way, river, channel or place and the contention of the person against whom such order is made, is that there is no public right in respect of such way, river, channel or place, the order of the Magistrate shall be subject to any subsequent decision of a competent Civil Court."

to which I wish to add, with the permission of the House, the words "on that point".

I shall explain my meaning, Sir. To understand the section we must go back to section 133, which says:

"Whenever a District Magistrate, a Sub-divisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a police-report or other information, and on taking such evidence (if any) as he thinks fit, that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, etc., etc."

Now, the proposed section says:

"Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and, if he does so, the Magistrate shall, before proceeding under section 137 or section 139, inquire into the matter."

[Mr. J. Ramayya Pantulu.]

(2) If on such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court : and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require."

Well, the object of the new section is first to give the party against whom an order is made, a warning that he can set up a defence that the place or river or the way in regard to which the order is made is not a public place, and, secondly, if he sets up that plea and the Magistrate finds reliable evidence in support of that plea that he should stop further proceedings until that point is decided by a competent Civil Court.

Well, it seems to me that the first remedy that is proposed to be provided by this section is unnecessary because, according to the wording of section 133 which is that "any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place," the question whether the place, river or way is a public one or not is directly an issue as soon as a preliminary order is made. The preliminary order will state that there is reason to believe that a nuisance or obstruction has been created in a place, river, or way, which the public have a right to use, i.e., in regard to which there is a right of way to the public. So, whether there is a public right of way or not is a question directly in issue in the case and is a question that arises out of the preliminary order issued by the Magistrate, and I do not see any necessity for the Magistrate again warning the party appearing before him and asking him whether he sets up a defence on the ground that there is no public right of way. When the preliminary order is issued, what is the party against whom it is issued going to do? Clearly he must either say that the place or river or way is not a public one, or if he admits that it is a public one he must say that no obstruction has been created on it. These are the only two defences he can set up. The law itself makes it clear that the Magistrate has got information that the way, etc., is a public one. If there is no public right to it, if the public has no right to enter upon it, then there is no case and the preliminary order cannot be made at all. So the question whether a place is a public one or not is directly in issue and arises out of the preliminary order itself. I do not, therefore, see why the Magistrate should give a special warning to the party appearing before him. That is quite unnecessary.

Some of my friends might think that I am arguing from the bureaucratic point of view. Well, we have been acting the defence pleader rather too much during the last few days but we are here to treat the matter in a fair and dispassionate manner from the point of view of the Judge who has had to deal with these cases.

Then supposing the party sets up a plea that there is no right of public way to the place, etc., the proposed section says that the Magistrate shall not decide that point, but that if he finds there is reliable evidence in support of that contention, he shall stay the proceedings pending the decision of a Civil Court. But how is the matter to go to the Civil Court? The party against whom the preliminary order is made will certainly not go to the Civil Court. He has achieved his object. Why should he go to the Civil Court? And if he does not go, who else is to go to the Civil Court? This is a matter in which the public as a whole is concerned and the public is too diffused

to resort to costly civil proceedings. Then, is the Government to go to Court? This also is impracticable. Moreover Government can, at this rate, be driven to a Civil Court in every case. My point is that the Magistrate should himself go into the question whether there is a public right of way or not. If he finds there is no such right he will discharge the preliminary order. If he finds there is such a right to his satisfaction, let him make that order absolute but subject to the decision of the Civil Court. Then it will be for the party against whom the order is made absolute to go to the Civil Court. He will be compelled to go to the Civil Court. If he can show that the place is not a public place, then the order of the Magistrate will become null and void. That seems to me to be the only businesslike procedure in the matter, and I therefore propose this amendment.

Sir Henry Moncrieff Smith: Sir, there are very great difficulties about this amendment. If Members of this House will look at the report of the Joint Committee on the Bill they will find that the Joint Committee devoted a considerable amount of attention to this matter, and I can say from personal experience that they also devoted a great amount of time. My friend, Mr. Pantulu, wants to defer a decision as to the existence of a public right of way—to defer a decision from the Civil Court—till after an order has been made absolute. Now that is distinctly contrary to the views of practically all the High Courts. What the Joint Committee did in this case was to try and give effect to the law as interpreted by the High Courts of this country. The High Courts have laid down over and over again that where there is a denial of a public right based on substantial grounds the Magistrate's jurisdiction is ousted at once. He cannot proceed any further in this matter of removing a public nuisance. But what would be the effect of my Honourable friend's amendment? The Magistrate himself apparently (whether with or without the aid of a jury, I am not quite sure) will proceed to determine the question of the existence of a public right. Well, if he decides there is no public right, then of course it goes no further. But supposing he decides there is a public right and he makes his order absolute. My Honourable friend says, "Well, then the party aggrieved goes to the Civil Court," and after possibly very dilatory proceedings he gets his declaration that there is no public right. But will that help the man in whose interests Mr. Pantulu has moved this amendment? You have got to remember that in this case we are dealing with the removal of a nuisance or an obstruction or a danger. The obstruction may be a tree, quite a valuable tree. The Magistrate has decided that there is a public right and he has confirmed his order that the tree is to be removed. If the man does not remove it, you will see if you look at section 140 of the Code, that the Magistrate can have the tree removed himself. What good will be the subsequent decision of the Civil Court that there was no public right? The tree will have gone. It may not be a tree; it may be something of far more value. It may be a building. The building will have gone, and what compensation is the man going to get for what he has been forced to remove? The amendment made by the Joint Committee in the Bill in this respect

was I think made entirely in the interests of the subject. Where
 12 noon. there is a *bond fide* denial of a public right there can be no question of going on and taking executive proceedings to force the man to remove the obstruction or the nuisance. My friend asked what will be the effect of staying the proceedings when the Magistrate finds that there is a *bond fide* claim that no public right exists. The man has achieved his object. He has established his claim. The Magistrate has said, "I cannot

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proceed any further. My jurisdiction is ousted." Who is going to settle the matter? The obstruction continues. It is the person who is aggrieved by the obstruction who will have to take the necessary steps. If the place concerned is in a municipality, the Municipal Corporation will bring a suit. That is not an unknown thing. If it is Government property, a suit will be filed by the Secretary of State. To lay down that, even when there is a *bond fide* claim or denial of a public right, the Magistrate must and ought to settle that matter himself and can then proceed to make an order absolute, is, I think, most undesirable and, as I said, it is contrary to the views of all the High Courts. That matter must be decided by a competent Court. There is no question about it that a Magistrate taking an executive proceeding under this Chapter is not the proper person to decide so serious a matter as a question of title.

Bhai Man Singh: On a point of order. I submit that my amendment No. 99 is practically just the same as 95 and I may be allowed to move it and give my views upon it.

Sir Henry Moncrieff Smith Amendment No. 99 is entirely different. It does not seek to get rid of Section 189A as it stands at present. It does not get rid of that part of the section which lays down that when there is a *bond fide* claim the proceedings must be stayed.

Mr. W. M. Hussanally: (Sind: Muhammadan Rural): I think, Sir, there is a considerable amount of force in the contention of my friend, Mr. Pantulu. It must be remembered that proceedings under this Chapter are summary and no Magistrate will have the time or the leisure to make any elaborate inquiry into a matter of a public right of this kind. Moreover that is a matter specially within the province of the Civil Court and not within the jurisdiction of a Criminal Court. The point that has to be considered in a matter like this is whether there is a public right or not. Now, if the Magistrate comes to a decision that it is a public right, even then the man against whom that order is made absolute must have the option to go to the Civil Court and the decision of the Magistrate which will be made absolute for the time being only must be subject to the decision of a competent Civil Court where the matter will have to be threshed out at some length and after taking all the evidence that is necessary. If on the other hand the Magistrate decides that there is no public right, then what happens? Who has to go to the Civil Court? So far as the person against whom the order is made, he is quite safe. He need not trouble about going to the Civil Court at all and supposing this takes place where there is no municipality, then who has to go to the Civil Court. Certainly no member of the public will go to the Civil Court and not even a municipality in a town will care to go to a Civil Court because the Civil Court procedure is very long and costly. Sir Henry Moncrieff Smith said that the Secretary of State would file a suit. For the Secretary of State to file a suit of this kind is not an easy matter and it will take a long time. A case ought to be made out and it ought to be of sufficient importance for the Government to interfere and bring a suit of this kind on behalf of the Secretary of State. Meantime the public suffers and if the matter is not of sufficient importance to move the Government to bring a suit in a Civil Court on behalf of the Secretary of State, the public suffers. The procedure laid down in the clauses of the new proposed section are clumsy and cumbersome and I believe the amendment as proposed by my friend, Mr. Pantulu, is short and to the point. I therefore support this amendment.

Mr. Jamnadas Dwarkadas: I move that the question be now put.

Dr. Nand Lal: Sir, to my mind the amendment seems to be superfluous. I do not think this is a useful amendment and deserves the support of the House. May I invite the attention of my learned friend, the Mover of this amendment, to clause (2):

"If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court."

Mr. W. M. Hussanally: Who is to go to the court?

Dr. Nand Lal: That is a separate question. The Magistrate is quite prepared to give him time to have it determined.

Mr. W. M. Hussanally: Why should he go?

Dr. Nand Lal: The man, who thinks he is aggrieved, may go to the Civil Court and have it determined. If he wishes that the thing may be expedited he may do his level best to see that the decision is given on that question. Should the Secretary of State go to the Civil Court? Here time is allowed to him to have the question decided. And as I have already submitted, if he wishes the whole thing to be expedited, he may go at once and have adjudication upon that question at once. The clause says:

"until the matter of the existence of such right has been decided by a competent Civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require."

In the face of this provision, as I have already submitted, it seems highly improbable that this amendment may seek for the support of this House.

Sir Henry Stanyon (United Provinces: European): Sir, one can appreciate and sympathise with the motive which underlies this amendment. It is this—that by the somewhat summary order of a Magistrate, a man should not be finally deprived of what he may consider to be his private rights. But we must look also at the other side of the question, and I think there are insuperable difficulties in the way of giving support to this amendment. We can understand the position best by putting forward a simple illustration. A man is ordered to remove an obstruction from a public way. He opposes that order on the ground that the way is not a public way. If an order is made against him, as the law stands, he is not prevented from going to the Civil Court to establish his title. Or, he resists the order upon the ground that, though it is a public way, his act does not constitute a nuisance. That is a totally different position. The Magistrate finds after inquiry that it is a nuisance and he orders its removal. Are we by this amendment going to allow a man against whom the order is passed to go to the Civil Court the next day and get an injunction staying obedience to the Magistrate's order. Again, who is to be the defendant in a case of that kind to show on the opposite side in the Civil Court that it is a nuisance? Difficulties arise in connection with the arraignment of parties. It seems preposterous that every time a Magistrate makes an order regarding a nuisance which is disputed by the person against whom it is made, the Secretary of State, or the Government, or some representative of the public, should be dragged into the Civil Court to answer the claim. And, again, the amendment does not touch the other side at all. What is to happen if the Magistrate decides in favour of the person

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 against whom proceedings were instituted holding that there is no nuisance? The amendment does not provide that the unfortunate public against whom the order goes in that case have to go to the Civil Court. The amendment is one-sided. It is only with regard to the private individual against whom an order is made absolute. Therefore, I think that upon a balance of advantages and disadvantages we shall be better without this amendment.

(Some Honourable Members: "I move that the question be put.")

The motion was adopted.

Mr. Deputy President: The question is:

"That in clause 25A substitute the following for the proposed section 139A (1), (2) and (3), namely:

'139A. If the order made absolute under section 137, sub-section (3), or section 139, sub-section (1), is concerning the obstruction, nuisance or danger to the public in the use of any way, river, channel or place and the contention of the person against whom such order is made, is that there is no public right in respect of such way, river, channel or place, the order of the Magistrate shall be subject to any subsequent decision of a competent Civil Court on that point.'

The motion was negatived.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I will, with the permission of the House, take the two amendments separately.

Mr. Deputy President: I think it will be to the better convenience of the House if the Honourable Member would take the first amendment first.

Mr. T. V. Seshagiri Ayyar: Sir, my first amendment is in these terms:

"In clause 25A in sub-section (2) of proposed section 139A, omit the words 'the Magistrate finds that there is any reliable evidence in support of such denial' and substitute therefor the words 'it appears to the Magistrate that there is a *bona fide* dispute relating to the existence of any such right'."

I had better mention to the House in what stage we are when section 139A is to be enforced. First of all, there is a police complaint or police information or some evidence before the Magistrate; on that the Magistrate comes to the conclusion that an order should be passed, a conditional order, as it is called, should be passed; and on passing the conditional order, he calls upon the person against whom the accusation is made to show cause why he should not be restrained in a particular manner. It is at this stage this section, 139A, comes in. 139A says:

"Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and, if he does so, the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter."

Then comes this clause, namely:

"If in such inquiry"—that is after the conditional order, and when the inquiry is being made—"the Magistrate finds that there is any reliable evidence in support of such denial." The House will remember that

there is to be a third inquiry either under section 138 or section 139. Therefore this is, as it were, a preliminary inquiry before the Magistrate makes up his mind either to proceed against the man or to give him a jury. At this stage to speak of reliable evidence is altogether useless. As has been pointed out by the Calcutta High Court, what ought to be done in such a proceeding is this. The Magistrate should satisfy himself that there is a *bond fide* dispute. The language used by me is that used by the Calcutta High Court in 31, Cal., 979. They refer to an earlier decision and say (you will find it on page 982), that the Magistrate at this stage has to see to the *bond fides* of the claim—then he has either to decide under section 138 by means of issuing a summons and so on, or if the person accused claims, he has to send the matter up before the jury. At this stage, to speak of reliable evidence is likely to put the accused in a very embarrassing position. Therefore all that has to be done at this stage is for the Magistrate to satisfy himself that there is an honest dispute, a *bond fide* dispute on the subject which requires to be further proceeded with. Under these circumstances, I submit to the House that the words 'reliable evidence' are unnecessary. I move that these words be deleted, and that the words which I have mentioned should be substituted.

Mr. Deputy President: The amendment moved is:

"That in clause 25A in sub-section (2) of proposed section 139A, omit the words 'the Magistrate finds that there is any reliable evidence in support of such denial' and substitute therefor the words 'it appears to the Magistrate that there is a *bond fide* dispute relating to the existence of any such right'."

Sir Henry Moncrieff Smith: Sir, personally, I regard this as more or less a matter of drafting,—and naturally I prefer the drafting of the Bill to my Honourable friend's attempt to improve it. Mr. Seshagiri Ayyar towards the end of his remarks explained that he had attempted to take the words used by the Calcutta High Court into the Bill. Well, in the first place, I would suggest that that is not a very good argument to advance in support of an amendment, because the High Courts, when they write their judgments, are certainly not drafting laws; they are trying to expound the law, and they try to do so in plain and ordinary language. But when Mr. Seshagiri Ayyar went on to read what the High Court said, I did not find the word 'dispute' at all in the extract he read. He said that the Calcutta High Court had said that the *bond fides* of the claim must be inquired into. Well, that is quite another thing. A dispute connotes two separate parties, a dispute between one person and another person. A claim is quite another thing. 'Claim' is really the word that we use in the Bill as it stands. It is not actually a claim, it is a claim of a negative proposition,—I think my Honourable friend will admit—a man comes up, and claims that there is not a public right,—and what do we shorten that into?—that there is a denial of a public right.' 'Denial' is the word used, and when there is a denial of a public right, the Magistrate inquires into that denial. My friend suggested that the word 'inquiry' which occurs in the beginning of sub-section (2) of section 139A, is the inquiry which results from the issue of the notice to him to show cause under section 138. It is not quite that. If my Honourable friend will carry his eyes back a little way along sub-section (1) of section 139A, he will find that if the Magistrate questions him—that is the first thing,—the real inquiry has not yet begun—if the Magistrate questions him as to whether he denies the existence of a public right, and if the person does deny the

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existence of that right, the Magistrate shall inquire into the matter, that is to say, he shall not inquire into the whole matter of the notice issued under section 137, but shall inquire into this denial. If the Magistrate inquires into the denial, what does that mean? It means that he must take evidence. I cannot conceive what is wrong with saying, "if the Magistrate finds reliable evidence in support of the denial he shall act accordingly." I can see no improvement whatever in the words proposed to be substituted by my Honourable friend. He professes to have taken them from a High Court ruling; but that High Court ruling does not contain the words. (Mr. T. V. Seshagiri Ayyar: "*Bona fide* claim.") There is a difference between 'claim' and 'dispute.' The claim is one in a negative form; in other words it is a denial, and that is the word we are using. Moreover, as regards the words *bona fide*, the High Courts use it over and over again, but can my Honourable friend point out the word anywhere in the Code? My friend is rather fond of Latin tags. (A Voice: "It means good faith.") Well, let us have good faith perhaps, but *bona fide* is quite another matter; it is not used anywhere in the Code. I put it to the House that the Bill in this respect, as drafted by the Joint Committee, is perfectly clear. The Magistrate inquires into the denial. That involves his taking evidence. We merely say that if he finds reliable evidence in support of the denial he shall stay proceedings. I cannot see how that is improved by saying that "it appears to the Magistrate that there is a *bona fide* dispute" between the person who is asked to show cause and some other imaginary person who is not indicated at all. There is no ground whatever. I suggest, for making this amendment, which to my mind is really nothing more than a drafting amendment, and a drafting amendment on lines which would not commend themselves to a draftsman of experience.

Mr. Deputy President: The amendment moved is:

"In clause 25A in sub-section (2) of proposed section 139A, omit the words 'the Magistrate finds that there is any reliable evidence in support of such denial' and substitute therefor the words 'it appears to the Magistrate that there is a *bona fide* dispute relating to the existence of any such right'."

The question is that that amendment be made.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Sir, I feel very unwilling to move the next amendment*, for the reason that Sir Henry Moncrieff Smith who has been speaking on behalf of the Government seems to think that he has done the best thing possible in the circumstances, and that every suggestion to improve the section must be regarded as altogether unnecessary or mischievous. I think myself that my amendment No. 97 (8) would certainly make the section read better; but if the Government is of opinion that they have done the very best thing possible in the circumstances,

* "(3) A person who on being questioned by the Magistrate under sub-section (1) does not deny the existence of a public right of the nature therein referred to or whose denial is not supported by *prima facie* evidence as to the right claimed in himself shall not in the subsequent proceedings be permitted to make any such denial nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138."

I do not press my amendment as there is no use in taking up the time of the House. I move it, Sir, formally, and if the Government does not accept it I do not press for a division.

Sir Henry Moncrieff Smith: Sir, I oppose the amendment.

The motion was negatived.

APPOINTMENT OF A ROYAL COMMISSION ON INDIAN SERVICES.

The Honourable Sir Malcolm Hailey (Home Member): With your permission, Sir, I desire to interrupt for a moment the discussion on the Criminal Procedure Code in order to make an announcement to the House. I think it necessary to take this course because the matter is of such importance to the House and to the public that I should feel myself to blame if I did not place it in possession of the information at my disposal at the very earliest moment. The House will remember that a short time ago we issued a communiqué with regard to certain reports in the press on the subject of the appointment of a Royal Commission for the Public Services. We stated that those rumours were unauthorized and inaccurate. (*Mr. N. M. Sathartha*: "and premature"). Our words were those I have quoted. They were certainly unauthorized; they were also in their terms inaccurate. But since then, the matter has proceeded further and His Majesty's Government have arrived at a definite decision in the matter; it is that decision which I wish to take the opportunity of communicating to the House. If you will permit me I will read the exact terms of the announcement which has been authorized by His Majesty's Government, and I would ask the House to note those terms particularly, as they show at once the intention of His Majesty's Government in the matter and the exact scope of the inquiry which is to take place. I will make a copy of this available as soon as possible. The announcement is as follows:

"His Majesty's Government have decided to appoint a Royal Commission on the Services in India. The precise terms of reference to the Commission have not yet been definitely settled but will be wide in their scope. It is contemplated that the Commission will be required, having general regard to the necessity of maintaining the standard of administration in conformity with the responsibility of the Crown and the Government of India and to the declared policy of Parliament in respect of the increasing association of Indians in every branch of the administration and having particular regard to the experience now gained of the operation of the system of Government established by the Government of India Act, to inquire into the organization and the general conditions of the services, financial and otherwise, of the superior civil services in India and the best methods of ensuring and maintaining the satisfactory recruitment of such numbers of Indians and Europeans respectively as now may be decided to be necessary in the light of the considerations above referred to."

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Who pays for this Commission?

The Honourable Sir Malcolm Hailey: Might I suggest that a discussion on this matter might suitably be raised either by question or by motion. I have only made the announcement now because I thought it due to myself and to the House as a matter of courtesy that I should place this announcement before them at the very earliest moment that I could do so.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, while we are extremely grateful to the Honourable the Home Member for giving

[Dr. H. S. Gour.]

this House the earliest opportunity of learning of the appointment of the Royal Commission, I think I am voicing the general sentiments of this side of the House when I say that the news has come to us as a shock and that we shall take the earliest opportunity of moving the adjournment of this House to protest against the appointment of a Royal Commission. I ask you, Sir, to give us the earliest opportunity for discussing this question which is of urgent public importance, and in view of the various number of questions that have been put by Honourable Members in this connection and the discussion that has gone on in the public Press, I hope you will afford us an early opportunity of discussing this question.

Mr. Deputy President: I wish to draw the Honourable Member's attention that under the Manual of Procedure a certain procedure is laid down for the adjournment of the House and I am sure that if the Honourable Member moves it, the needful will be done at the proper time.

Mr. Deputy President then called on Mr. Agnihotri to move amendment No. 98, relating to the Code of Criminal Procedure (Amendment) Bill.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban): On a point of order. Dr. Gour has expressed views on behalf of one side of the House, and . . .

Mr. Deputy President: It is open to any Member to move the adjournment of the House at the proper time and the question will be decided upon at the proper time.

Mr. Jamnadas Dwarkadas: I only wanted to say that the National Party associates itself with the remarks made by Dr. Gour.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Bhai Man Singh: I move, Sir, the amendment that stands in my name, which is as follows:

"In clause 25A add the following sub-section at the end of the proposed section 139A:

'(4) Nothing in this section or in section 133 shall prevent any aggrieved person from filing a civil suit about the existence of a public right in the way, channel, river or place concerned or the question of his title therein, and any order made under this Chapter shall be subject to the order of the Civil Court in such a suit.'

The learned framers of the Code have adopted the principle of the Court rulings and as a result of these rulings, 15 Calcutta 504 and 85 Calcutta 283, they have come to the conclusion that if the Magistrate thinks it proper and a *bona fide* objection is made as to whether there exists a public right or not in such a channel, and the Magistrate does not find that the claim is a flimsy one, he can refer it to the Civil Court or, if he thinks that there are no proper grounds for the claim, he can proceed with the case. But there has been another side to the question which has been left out, *viz.*, whether the order of the Magistrates in regard to the public way or right is or is not final. No doubt, Sir, there exists some ruling. There are some rulings which have held definitely that if anybody thinks

aggrieved on the point that there does not exist a public right, he can go to the Civil Court. That principle, Sir, has been held in that ruling :

" A Civil Court is not competent to set aside the order of a Magistrate made under section 521 of the Code of Criminal Procedure, on the ground that such order was made without jurisdiction because the land in respect of which the order was made is private property, and not a thoroughfare or public place. A Civil Court can, however, irrespective of an order made under section 521 by a Magistrate, try the question whether the land which formed the subject of such order is private property, and not a thoroughfare or public place as between the parties to such suit and those who claim under them."

Now, Sir, while lawyers were discussing this case, there was very great difficulty in arriving at this decision. There were different authorities and they had to convince their Lordships. I need not take up the time of the House in going through the history of these rulings. I simply want to submit that there is no reason why we should not lay it down very clearly and definitely that an order which refers to a right of the public in respect of the way, river, etc., should be subject to the final decision of a Civil Court. The sections of this Chapter as they stood did not make any reference to a Civil Court, but in the proposed sub-section (3) we have laid down as follows :

" A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138."

No doubt, Sir, we simply deny him the right to ascertain his position in those proceedings under this Chapter. But having denied him that and not having touched the existing law about Civil Courts, there is the danger that our intentions might be misunderstood, and there is no reason why while incorporating the results of certain other decisions of the Court, we should not at the same time incorporate the decisions arrived at in other rulings and make the law quite clear on the point.

The Honourable Sir Malcolm Hailey: Briefly put, my argument is that there is nothing in the Bill or Code which prevents a party from going to a Civil Court, and I think indeed the ruling which the Honourable Member read out confirms this statement. With regard to the latter part of the amendment, namely, that any order made under this Chapter should be subjected to the order of the Civil Court in such a suit, that question, I think, has already been decided by the House on Mr. Pantulu's Amendment No. 95. In these circumstances, I think I can very fairly put it to the Honourable Member that his amendment is not really required.

Mr. T. V. Seshagiri Ayyar: Sir, I think this is a very dangerous amendment to introduce. Ordinarily any order passed by a Magistrate would not stand in the way of the establishment of civil rights. If you once begin to introduce a provision of this nature, it would lead to trouble. The difficulty will arise as to whether Article 11 or 13 of the Limitation Act or whether the ordinary law of limitation should be availed of. I think if you once introduce an amendment of this nature and say that the order of the Magistrate should be questioned by the Civil Court, it would lead to great complications. Under these circumstances, I would request my friend to withdraw the amendment. The Courts have never found any difficulty in coming to a conclusion that Civil Courts can declare the rights of the parties.

Bhai Man Singh: I beg to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Deputy President: The question is that clause 25A stand part of the Bill.

The motion was adopted.

Bhai Man Singh: The amendment that stands in my name refers to clause 26 and runs as follows

Rao Bahadur T. Rangachariar: Amendment No. 101 will be taken afterwards?

Mr. Deputy President: Amendment No. 101 may be taken later.

Bhai Man Singh: My amendment runs as follows :

"In clause 26 (1) insert the following as sub-clause (i) and renumber the subsequent sub-clauses accordingly :

'(i) In section 144, sub-section (1), after the words 'in cases where' and before the words 'in the opinion of' the following words shall be inserted :

'on credible information received'."

I think it would be better and for the convenience of the House that I should move only the first part of my amendment at this stage. With your permission I should like to speak only on this part of the amendment first.

Mr. Deputy President: Very well.

Bhai Man Singh: Sir, it is a subject which really vitally touches the rights and liberties of my countrymen. Section 144 is one of those sections of which there has been the greatest abuse, and this section is perhaps the widest possible in its scope, and against it there is practically absolutely no remedy provided. Therefore, Sir, I would beg the Honourable Members of this House to give their careful attention to the point whether we are to leave this section 144 as wide and the powers of the Magistrates under it as free as they are at present. Sir, there have been cases where the most respectable, most responsible persons have been ordered not to enter a certain town. I remember very well when our well known countryman Pundit Madan Mohan Malaviya was ordered not to go to Ambala City and not to deliver his lecture, and I know as a matter of fact that Ambala City is perhaps the most docile town in India—(An Honourable Member: "You come from it")—I come from it, of course, and if there are wrong-doers there, you may take it that they are an exception, as the history of my own city shows that there have been no sort of affrays or riots there on political grounds, and perhaps Ambala has supplied the least number of political prisoners during the last two years. So Ambala was a most peaceful place where the most innocent speech of Pundit Malaviya would never have caused any disturbance of the public tranquillity or public peace, nor would his entry into the city of Ambala have caused danger to human life or safety. But all the same the terms of the section are very wide and in the opinion of the Magistrate he has to comply with it. I submit that we must provide very strong safeguards against the abuse of the power given under this section, and this is one of the first safeguards that I am suggesting. I am suggesting, Sir, that the Magistrate should only take action "on credible information received." In the Code we find that whenever we give a power to a Magistrate, he can only move on information received. For example, I may refer Honourable Members of the House to

sections 107, 108, 110 and 183. In section 107 the Magistrate is informed. Similarly section 110 says when the Magistrate "receives information" that any person within the local limits of his jurisdiction is a habitual robber, etc. For the purpose of even robbers and worse criminals where we provide that there shall be a regular trial later on, even in those cases, we want the Magistrate to go upon a certain sort of information received, and I submit that, in revising this Code, we have improved upon those words, I do not remember the exact words. If I knew we were going to amend the Code like that, I would perhaps have suggested those very words instead of my present form of "on credible information received." All the same I submit there is no reason why a Magistrate should proceed on no information being received. Certain rulings of the High Court too are in my favour. I refer the House to 38 Calcutta, page 876. In that case the petitioner excavated a tank on his own land adjoining the house of the opposite party, and the latter objected to the excavation on the ground that his house would be thereby rendered unsafe. No likelihood of a breach of the peace appeared from the police report or the written statements of the parties, but the Magistrate made the order under section 144 of the Criminal Procedure Code without inquiry or recording any urgency. There are two things, Sir, without inquiry and without recording any urgency. Then, Sir, in the body of judgment when the facts are being described, it is said:

"Then, on the 19th April, and without further enquiry and without recording any urgency in the matter, the Magistrate made his Rule absolute not on the ground reported by the police, but as appears from his present explanation, from his personal apprehension that the parties would break the public peace."

Everywhere under the criminal law we want to exclude the personal information of the magistracy, but under section 144, as it at present stands, the Magistrate has the right to order a person not to enter such and such a place on his own personal information. I am sorry there was no revision or appeal provided directly against this section. Whenever the matters have come before the High Courts, it has been mostly in an indirect way. In certain cases the High Courts have inquired about it while they were discussing the fact whether the Magistrate had properly exercised his jurisdiction or not, or whether he had fulfilled all the formalities laid down under this section or not. Most of the rulings under this section are concerned only indirectly with this matter, as when a man has broken an order and has been convicted under section 188 of the Indian Penal Code and those matters have gone on revision to the High Court, then the High Courts had chances to pass remarks about the work of the Magistrate. In this case the High Court have definitely held that the order was not passed on any real apprehension properly arrived at. By using the words "properly arrived at." Their Lordships definitely meant that the Magistrate should come to his conclusions by recording some sort of evidence, by getting some sort of information about it. There is absolutely no reason why the Magistrates should proceed without any information. Further on, Sir, we have got a series of rulings where the High Courts have held also that they should record evidence. I draw the attention of the House to 13 Weekly Reporter, page 46. Of course these are old rulings and they refer, therefore, to sections of the old Code.

"Section 62 of the Code of Criminal Procedure does not authorise a Magistrate summarily to direct a person to remove a wall erected on land that has belonged to any other person in the absence of evidence showing that a riot or affray was likely to occur."

[Bhai Man Singh.]

There are a number of rulings which have held to that point. One ruling says:

"There is nothing in section 62 of the Criminal Procedure Code to justify a Magistrate in making an order for the removal of a bund or other obstruction or nuisance on the mere report of a police constable."

Not only has it been held that the Magistrate is not to proceed on his own information but it has been held that he is not to proceed merely on the report of the police.

"Before making such an order he ought to take evidence from the defendant and, if necessary, on both sides."

Again, Sir, if we look to other series of rulings where cases have gone to the High Courts when there has been a conviction under section 188 of the Indian Penal Code, there the High Courts have held that, if there is no strong, no clear, evidence that the disobedience of the order would lead to a breach of the peace, then the conviction is illegal. I submit, Sir, if the Magistrate has not got good evidence to support his order, where is the use of his passing an order? Supposing he passes an order under the section, a man who breaks it cannot be punished. Unless there is very clear evidence to support the conviction and to prove that there would have been a breach of the peace on account of the disobedience of the order the man would go scot free. Where is the use of making any law behind which we have got no sanction? The last principle was held in 4 Punjab Record, 1916, and in many other rulings. So, I submit, there is absolutely no reason why we should not see what are the definite safeguards that should be provided under section 144. I may point out one more fact, Sir. No doubt an order under the section stands for two months only; but two months may mean a lot; two months may sometimes have disastrous effects on a person. Supposing, Sir, having delivered a very fiery speech on some religious matter, I have made myself obnoxious to a certain class of persons at Ambala and the Magistrate thinks that my going there would cause a riot or a breach of public tranquillity. A certain person at Ambala has filed a suit against me for Rs. 20,000. I have defended that suit, I cannot altogether depend on giving written instructions through a pleader. I want to be present personally. Well, the District Magistrate says: "My dear Sir, I do not care for that, you can appear through a pleader." There is a very clear provision in the civil law that a man can appear through his pleader. The District Judge could very well say "I do not care for the order of the District Magistrate; you can appear through your counsel." There could be another thing. Supposing a man says "I think Man Singh will become bankrupt and run away. In that case there might be an attachment before judgment. Where should I be? There can be infinite hardships through the abuse of this section. The very liberties, the very right of speech, the very right of political propaganda even within proper limits, has been checked by the abuse of this section, and there is absolutely no reason why we should allow this section to remain as it stands without providing sufficient safeguards against its abuse.

Sir, with these remarks, I recommend this amendment, No. 1 of this series, to the House.

Dr. Nand Lal: Sir, there has been an amount of criticism in connection with the applicability or inapplicability of this section, namely, 144, of the Criminal Procedure Code, and I think the author of this amendment has rendered some service in putting forward the amendment under discussion. May I invite your attention, Sir, to the general principle of law? It is this, that every Magistrate and every Judge has to form his opinion on some data before him. I think no Honourable Member of this House will deny the correctness of this proposition. But, when we come to the provisions of this section, what do we find? The section says: In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-divisional Magistrate, or of any other Magistrate (it has been amended a bit) specially empowered by the Local Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, immediate prevention or a speedy remedy is desirable. If there is some sort of evidence before the Magistrate, of course the matter being so urgent, he is fully competent to take action. His opinion based on some evidence must be respected and the orders passed by him must be given the greatest possible regard. But the defect in the present provision is this, that he can form any opinion, *suo motu*, of his own accord, without having anything before him, and, therefore, the provisions seem to be very defective; and I think the arguments which have been advanced in favour of the insertion of the words "on credible information received" will meet the criticisms which have been, as I have already submitted, levelled against this section.

On this ground I very strongly support this amendment.

Sir Henry Moncrieff Smith: Sir, the Honourable Mover of this amendment said a good deal about section 144 as a whole. What he said about his amendment amounted, I think, only to this, that he desired that the law should lay down that a Magistrate should not act on his own knowledge but should receive credible information from some outside person that action under the section was necessary. Sir, I doubt whether it carries us very much further, because, if the Magistrate forms an opinion, he can only form that opinion on information that he has received. If he takes action on his own knowledge, well, his knowledge was not born inside him but comes from outside. The House will

1 P.M. remember, I think, what the purport of section 144 is. In the first place, it is a power in the hands of the Executive to take speedy and immediate action. It is placed deliberately in the hands of the Executive, in the hands of those who are responsible for the maintenance of peace and order in the district, in the hands of those who are responsible for seeing that there is no disturbance of the public tranquillity. Bhai Man Singh referred to a case where a certain gentleman received an order under this section to prevent him from visiting Ambala. Well, in that case the Magistrate must have acted on information. The information as a matter of fact in that case would probably come from some other place, possibly Allahabad, where the gentleman in question lives. It must have come from there and in that case the amendment which my friend proposes to sub-section (1) would not have carried the Magistrate's case any further, nor would it have carried the case of Pandit Madan Mohan Malaviya any further. The House has already on one or two occasions adopted the phraseology of section 204, which is at the beginning of the Chapter, which tells a Magistrate how he is to proceed on a complaint. The words are "If in the opinion of the Magistrate there is

[Sir Henry Moncrieff Smith.] sufficient ground for proceedings." The Government, Sir, has no objection to introducing these words into section 144. They do not fit in very well. It would read something like this then:

"In cases where in the opinion of a District Magistrate"—or of any of the other Magistrates referred to—"there is sufficient ground for proceeding under this section, and immediate prevention or speedy remedy is desirable."

That is not entirely satisfactory because of the form of the section, but I think it would meet the views of the House?

(Some Honourable Members: "Yes.")

Bhai Man Singh: I would accept the amendment.

Sir Henry Moncrieff Smith: Then I would ask leave to move the amendment in that form as an amendment to my friend's amendment No. 102.

Mr. T. V. Seshagiri Ayyar: Will the Honourable Member read out the amendment as he himself would have it—the whole of it?

Sir Henry Moncrieff Smith:

"In cases where in the opinion of a District Magistrate"—I leave out the other Magistrates referred to—"there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable."

Mr. T. V. Seshagiri Ayyar and Dr. Nand Lal: Yes, that will meet the case.

Mr. Deputy President: The amendment moved is:

"That in Clause 26, to sub-clause (i), add the following:

'and after the words "under this section" the words "there is sufficient ground for proceeding under this section and" shall be inserted.'

The motion was adopted.

Mr. B. Venkatapatiraju: Sir, I move:

"That in clause 26 in sub-clause (i) after the words 'of the' insert the words 'second or'."

It evidently means that the delegation by the Local Government to District Magistrates and Chief Presidency Magistrates should be limited to first class Magistrates. Already there is power, Sir, for Sub-divisional Magistrates but there are first class Magistrates who are not Sub-divisional Officers. This is an important section and I think it would be better to confine it to first class Magistrates. I may mention that under this section the other day in the Nellore district a second class Magistrate issued a notice that no meetings should be held in that town, and it so happened that the District Board had to meet. They did not know what to do. In defiance of the order of the Magistrate they held the meeting, and the Magistrate was unable to do anything. Subsequently the District Magistrate cancelled the order. In such an important matter as this, therefore, it is absolutely necessary that we should entrust it to persons who have much experience, and I propose therefore that first class Magistrates only should be given this power. I move the amendment.

The Honourable Sir Malcolm Hailey: We have already considered the possibility of the Local Government empowering a first class Magistrate. Mr. Raju would now make it impossible for them to empower a second class Magistrate. He quoted as a reason one instance in which a second.

class Magistrate issued an order which certainly seemed objectionable. But his friends here I know would be prepared, were I to invite them to do so, to produce a large series of orders by first class Magistrates and even by District Magistrates themselves which were equally from their point of view objectionable. The fact that a second class Magistrate occasionally issues an objectionable order is not in itself sufficient ground for saying that no second class Magistrate should be empowered under this section.

I said the other day—and I hope Mr. Agnihotri will not mind my saying so—that my friend is liable to a crisis of nerves whenever certain sections of the Code are touched. Our treatment of meetings is just one of those points which affects my Honourable friend in this regrettable way. But this Chapter has a very wide scope and extends far beyond the treatment of meetings. There must be many occasions in which a second class Magistrate, distant many miles from a first class Magistrate or Sub-divisional Officer, finds himself face to face with a crisis of this nature. He has not time to wait. The matter is urgent and in the words of the Code "a speedy remedy" is desirable. He cannot afford to state the case to the first class Magistrate and get his orders. I would put it to this Assembly that this is a matter which really must be decided on the spot and on first hand information, and it is necessary that, in many out of the way places where there is only a second class Magistrate, he should be empowered to pass the necessary orders. Again I would ask the House not to confine itself entirely to the case of meetings, for, as I say, the Chapter has a very much wider scope.

Mr. Deputy President: The question is:

"That in clause 26, in sub-clause (i) after the words 'of the' the words 'second or' be inserted."

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, the amendment which I move runs as follows:

"In clause 26 to sub-clause (i) add the following at the end:

"and after the words 'such Magistrate' where they first occur the words 'after recording his opinion that the other powers with which he is entrusted are insufficient' shall be inserted."

That is to say, the object of my amendment is this. This is a reserve power in the hands of the Magistrate—section 144. I ask Honourable Members to remember what all powers we have hitherto given to the Magistrate to secure public peace and public tranquillity. We have now extended the scope of the chapter relating to taking security for keeping the peace. Honourable Members will remember that breach of the peace or disturbance of public tranquillity takes place either by the direct act of the party concerned, that is, by himself committing the breach of the peace or by committing a wrongful act which will provoke a breach of the peace. Both those cases have been provided for in section 107. Persons of bad character are already provided for. As Honourable Members remember, persons convicted of offences involving a breach of the peace are also provided for by section 108. I said that the scope of the preventive powers has been extended by the amendments we have hitherto carried. I mean this. When proceedings under the security chapter are being taken, we have now given power to the Magistrates to pass interim orders pending the inquiry, so that persons called upon to give security either for keeping the peace or for good behaviour are called upon to give interim

[Rao Bahadur T. Rangachariar.]

bonds in urgent cases, so that urgent cases are also provided for. Now under this section 144, I may mention to Honourable Members, action may be taken against wrongful acts and also against rightful acts which are likely to create a breach of the peace or disturb the public tranquillity. Honourable Members who have either applied this section or practised in courts where they have to apply this section will remember on many an occasion perfectly legal acts on the part of the individual have been prohibited because public peace is of more importance than the exercise of legal rights, so that temporarily even the exercise of legal rights can be suspended under this section 144. That is the object of this section. Whereas section 107 prohibits only wrongful acts, section 144 can prevent rightful acts. Let us remember that. Therefore having regard to that, the Magistrate's duty, it will be readily conceded, is to protect subjects of His Majesty in the exercise of their lawful rights. But if he finds it impossible to protect the subject, having regard to the urgent nature of the case, having perhaps regard to the fact that he has not got sufficient police force at his back in order to enforce the exercise of the right or having regard to other circumstances, he is obliged to take action under section 144, he is permitted to resort to this. High Courts have recognised this power. The legal exercise of lawful rights has been prohibited under this section because it is necessary that this reserve power in the hands of the Magistrate should exist. Now, I say deliberately that this is a **reserve power** because in order that he may suppress the exercise of lawful rights, he must have taken all other measures in his power, such as taking security from the person who threatens to commit a breach of the peace. Now, for instance, I have known of cases where in consequence of some religious disputes between parties or in consequence of caste disputes between parties, low castes and depressed classes have been prohibited from carrying processions in streets because it was not a *mamool* and the higher castes take exception to this innovation and therefore the Magistrates in Madras very often had to prevent the exercise by these poor people of their lawful rights by having resort to this section. I am not going to refer to merely political cases. In ordinary cases which come up before Magistrates, in consequence of disputes between various castes, in consequence of disputes for precedence for honours in temples and other places, section 144 is a section which is frequently used and therefore it has been laid down by the High Courts that this section should not be resorted to unless the other powers with which the Magistrate is entrusted are found to be insufficient. I have taken the language from a decision of the Madras High Court so early as in 6 Madras, where in consequence of religious disputes between Hindus and Muhammadans, in consequence of the question as to whether Hindus can beat drums in front of mosques, this question came up before the courts. This particular case was an offshoot of what is known as the Salem riots case, which originated in consequence of this dispute between Hindus and Muhammadans. There the High Court had to examine the propriety of the order. They point out there distinctly that the power conferred upon a Magistrate under section 144 is an extraordinary power and the Magistrate should resort to it only when he is satisfied that the other powers with which he is entrusted are insufficient. The authority of the Magistrate should be exercised in defence of rights rather than in their suspension. But at the same time they recognised there may be occasions when he may have to suspend, that is when he is powerless, when the other powers which he has got are not sufficient and therefore I say that before taking action under this section

he should deliberately come to the conclusion that the other powers, namely, sections 107, 108 and 109 and the police force at his back are insufficient to secure public peace and he must come to that conclusion before he takes action under this section and the heading of the chapter also will support my argument as Honourable Members will notice. These are temporary orders in urgent cases of nuisance or apprehended danger. So that it is really intended for the preservation of the public peace, because the Magistrate is powerless to act otherwise. For instance, I know of a case where a person walking down a street saw a flag on the top of a house which offended his feelings and directly he passed an order to pull down that flag. Who is going to take offence at the flag being hoisted on a particular man's house? That is a right. It was a Home Rule flag. In those days Dr. Annie Besant was not a favoured person at the hands of the Government. She was a suspect and now she is the accredited representative of Government. Therefore an extremist of to-day becomes a moderate of to-morrow and the non-co-operator of to-day may become a co-operator of to-morrow and I am not sure whether Mr. C. R. Das will not be an honoured guest in this House. Therefore in the political passions of the moment action is taken. Section 144 was applied to Dr. Annie Besant as mercilessly and as ruthlessly as against other persons who did not find favour with the authorities. There was, I remember, Sir, another case where a person carried Dr. Annie Besant's portrait on his chest, and, Sir, he was ordered to take it down because he was going to offend the feelings of the loyal and law-abiding section who take offence at these trifles—these people who profess loyalty take offence at these things on mere pretences, as we all know, and on this pretext action is taken; and therefore, Sir, I ask that by all means prevent the exercise of lawful rights, the exercise of legal rights of holding public meetings; preaching to the public is a legal right, we have understood it, of British citizenship in the British Empire. Pandit Madan Mohan Malaviya, who once adorned this Chamber in its former existence, has been prevented from preaching at public meetings. By all means resort to this procedure. I have no objection. In fact the Honourable the Home Member the other day spoke of me as being the ingenious lawyer who suggested to them this extraordinary and exceptional course. I disclaim that compliment. But assuming that it is correct, then I am here, Sir, trying to undo the mischief which I have done. Will you please assist me in undoing that mischief? You say you have acted on my advice—I feel it a great compliment that you acted on my advice, that the Government of India, the mighty Government of India have acted on the advice of poor Rangachariar—assuming that it is correct, I am trying to undo the mischief which I have done myself; and therefore, Sir, I ask, not that we should prevent the use of this section. I know in many cases this section is a very useful section. I know it from my practice of 32 years, I know that section 144 is a very necessary section, but at the same time Magistrates are tempted, the police are tempted, to make use of this section, when parties, rich parties at times of religious disputes, resort to this section. Other persons resort to this section, find it a cheap method of getting an order in their favour,—one order under section 184, another under 145, and the man who is able to get the ear of the police or of the Magistrate gets an order under this section, and the lawful rights of ordinary persons are thus invaded under the guise of this section. Therefore, I ask that there should be this safeguard which I suggest—it has also been suggested by a Full Bench of the Madras High Court in 6 (Madras 208) and also as early as in 19 Calcutta by the Calcutta High Court (19 Calcutta 248, 876) and also

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I believe in other cases. I therefore, Sir, ask that these words be inserted, namely: 'he should first record his opinion that the other powers with which he is entrusted are insufficient.' I move, Sir, my amendment as it stands.

The Honourable Sir Malcolm Halley: We shall not of course object to Mr. Rangachariar's definition of the scope of this section. It does—as he recognizes—provide that the Magistrate may pass an order which will affect the subject in the exercise of his lawful acts. I shall not agree with him, however, in saying that our previous amendments of other Chapters of the Code have largely extended the scope of the preventive sections. He instances the fact that we have provided now for the issue of an interim order, but, so far from that extending the scope of the Act, I would remind him that it is entirely in the interests of the subject himself. The Magistrate always has had power under section 114 to issue a warrant at once if necessary.

Rao Bahadur T. Rangachariar: But he is bound down all the same.

The Honourable Sir Malcolm Halley: That is true,—only as an interim arrangement, instead of being arrested on a warrant. Now the Chapter of the Act we are discussing contemplates essentially that the Magistrate shall not take action under it unless he has no other remedy under the security sections. Mr. Rangachariar desires to add an additional safeguard; he desires that the Magistrate should, as it were, place on affirmation his opinion that he has no other remedy. He points out to us numerous cases in which orders have been passed under this section, which have attracted public attention. I ask him how he would have prevented such orders in any way by the addition of the precaution which he has now proposed. All that the Magistrate has to do is to say that "in my opinion I have no other remedy possible."

Rao Bahadur T. Rangachariar: I expect him to be honest.

The Honourable Sir Malcolm Halley: He will be honest; you won't make him more honest merely by making him assert that he is so. You do not secure that his order is reversed if his opinion of his own powers is not correct. An appellate Court would not be able to go behind his declaration that in his opinion he has no other remedy, for all that you require from him is a mere statement of opinion. It is really very much as though the Honourable Member had suggested that the Magistrate should make an oath that he was in sound mind and health before he brought the section into operation. I would remind the House of what we did a few minutes ago, namely, to insert a stipulation equivalent to that which is applied to section 204,—that the Magistrate should only proceed if he considers that there is sufficient ground for proceeding. Is it now necessary that we should, in addition, ask the Magistrate to place on paper an affirmation on his part that he believes he has no other course but to take action under this section? Do we anywhere in our Acts find that before a Magistrate comes to a decision on a case, he must make an affirmation that he has been all through the law and he is quite sure that no other section applies? Do we make him affirm that he has searched his conscience and cannot find it possible to give any other judgment? For that is the exact parallel to what Mr. Rangachariar now asks us to do. Is it not sufficient that we should simply make it necessary for the Magistrate to state that there is sufficient ground for proceeding?

Mr. J. Chaudhuri: Sir, I am entirely in sympathy with Mr. Rangachariar, but I do not think that this will improve matters. The insertion of such a clause will not improve matters because after the amendment that has been made to sub-clause (1), where it is required that the Magistrate should state that there are sufficient grounds for proceeding under the section is comprehensive enough and after that, the insertion of this clause might lead to confusion. What we have done in the Joint Committee is this. We have provided a remedy where a Magistrate proceeds under this section peremptorily. Formerly he proceeded against a person arbitrarily; he made an order, without giving any opportunity to the person against whom he passed the order, at any time to show any cause. What we have done in the Joint Committee is this. We have given an opportunity to the person or members of the general public who may be bound down, that is, against whom a prohibitory order is passed, an opportunity to show cause. I draw my Honourable friend's attention to clause (5) which we have added to the section, namely:

"Where such an application is received the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and, if the Magistrate rejects the application wholly or in part he shall record in writing his reasons for doing so."

Thus, we say now in clause (1) that the Magistrate must make his order on sufficient grounds and later on we give the party prejudiced an opportunity to show cause. Now, I take it that my friend's amendment which is taken from a judgment is merely a matter of interpretation. If we require a Magistrate to state that he has exhausted his powers under all the other provisions of the Code, he may merely put down a statement to that effect and that would hardly give a remedy to any person affected by the order. I would therefore leave it to the Magistrates to comply with the provisions we have already made where the Magistrate is of opinion that it is a case in which an order should be made under section 144. But that he should have to put down that he has considered or exhausted all his powers under the other sections of the Code and that the case comes particularly within the scope of section 144, is, I think, unnecessary and unreasonable. I would leave it to the superior court to judge whether a Magistrate has applied this section properly or not. I have already said that what Mr. Rangachariar proposes is a matter of interpretation and not of procedure. My friend, Mr. Rangachariar, knows that the superior courts have held that if in their opinion the Magistrate has not acted within the scope of this section then they have jurisdiction to interfere under their revisional powers. So I would leave the matter as it is and leave the Magistrate to act within the scope and limitations provided under this section. If he does not comply with its requirements, I would leave it to the superior courts to interfere according to their present practice. I therefore do not think that the addition of my friend's clause will improve matters.

Mr. E. A. Spence: I move, Sir, that the question be now put.

The motion was adopted.

Mr. Deputy President: The amendment is:

"That in clause 26 to sub-clause (1) add the following at the end:

'and after the words 'such Magistrate' where they first occur the words 'after recording his opinion that the other powers with which he is entrusted are insufficient' shall be inserted'."

[Mr. Deputy President.]

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—23.

Abdul Majid, Sheikh.
Agarwala, Lala Girdharilal.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Ayyar, Mr. T. V. Seshagiri.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Das, Babu B. S.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.

Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Shahani, Mr. S. C.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—45.

Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Ghulam Sarwar Khan, Chaudhuri
Gidney, Lieut.-Col. H. A. J.
Gulab Singh, Sardar.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

Hullah, Mr. J.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncreiff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nabi Hadi, Mr. S. M.
Percival, Mr. P. E.
Pyari Lal, Mr.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sen, Mr. N. K.
Singh, Mr. S. N.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned for Lunch till Quarter to Three of the Clock.

The Assembly re-assembled after Lunch at Quarter to Three of the Clock. Mr. Deputy President was in the Chair.

Bhai Man Singh: Sir, I suppose my amendment* No. (2) was included in the previous amendment and so I shall proceed with clause (8) of my amendment No. 102. It runs:

"Add the following sub-clause after the present sub-clause (i) and renumber the subsequent clauses accordingly:

"(iii) in sub-section (1) the words 'or tends to prevent' shall be omitted'."

* "(2) Substitute the following in place of the present sub-clause (i):

'in sub-section (1) for the words 'of any other Magistrate' the words 'a Magistrate of the first class' shall be substituted'."

If we read the terms of section 144 we will find that it is not only unchecked but it is as wide as possibly it could be; we are to see now whether there is any necessity or whether it is advisable at all to bring in all possible things under this section and within its scope. The section runs:

"In cases where in the opinion of a District Magistrate, a Chief Presidency Magistrate, a Sub-divisional Magistrate, or of any other Magistrate.....immediate prevention or speedy remedy is desirable,

such Magistrate may..... direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or disturbance of the public tranquillity or a riot or an affray."

Now, there are three things included in it, one, actually preventing, the other tending to prevent, and the third, risk to life, property, etc. Now, I submit that the term 'tend to prevent' is such a vast term that anything, even the remotest cause, may be brought within it. We are giving the magistracy a power which should be used very sparingly, a power which is highly summary. I cannot understand why we should make this section so vast that not only should we provide for an order to prevent, but for an order tending to prevent, annoyance, etc. Everything, perhaps even the remotest causes, can be said to tend to prevent a thing. A man, a perfectly good and honest man, is passing through a place where goondas live; some people come and chaff at him; his friends might object to it and they might even find a little quarrel over it. If we stop that man from going there altogether,—his motives may be perfectly right, his object may be perfectly sound, he may be going there on a perfectly lawful errand—but the order to stop him from going there may tend to prevent a breach of the peace. It is such a far-fetched thing that I at least cannot see anything to justify the inclusion of such words in the section. I think the matter is so very clear that no further discussion over it is needed and I hope the Government will see the reasonableness of the demand.

Sir Henry Moncrieff Smith: Sir, the point here is perhaps a little subtle, but I hope to be able to make it clear to the House. The removal of the words 'tends to prevent' would undoubtedly weaken the section very much and I do not think there is any risk of their being used to meet such a case as has been cited by the Honourable Member. Of course the words 'tends to prevent' are much milder than the words 'likely to prevent,' but we should consider what the section lays down. We will take any case referred to in the section; say it is a case of obstruction; the Magistrate has come to the conclusion that a speedy remedy is desirable to prevent this obstruction; he has to do his best to provide that remedy. He thinks of a course of action; he is prepared to issue a direction under this section, but he says "This course that I propose—I cannot conscientiously say to myself that it is likely to prevent the obstruction; I cannot foresee what the result of my action will be; but it is up to me to do my best, to do all I can towards helping to prevent that obstruction." In other words, he has to do what he can; he has to take action which in his opinion will tend to prevent the obstruction. The word 'likely' in fact is equivalent to 'probable' in this case; and the wording 'tends to' is perhaps slightly stronger than 'possibly.' That is all. We cannot be certain that his action will probably prevent a breach of the peace, and yet, my friend by suggesting the omission of the words

[Sir Henry Moncrieff Smith.]

'tends to prevent' will prevent him from taking any action, though he has come to the conclusion that an obstruction is imminent, that he must take immediate steps and if he does not he will be called into question, no doubt by his own Local Government, for not having after all done anything whatever to prevent the obstruction. Therefore, I suggest that these words 'tends to prevent' must remain and that there is no risk whatever of their being used in the fashion in which the Honourable Mover has suggested.

Mr. Deputy President: The question is :

"That in clause 26 add the following sub-clause after the present sub-clause (i) :
'(iii) in sub-section (1) the words 'or tends to prevent' shall be omitted'."

The motion was negatived.

Bhai Man Singh: Sir, my next amendment is :

"That in sub-section (1) the word 'annoyance' wherever it occurs shall be omitted."

I think I am treading on very safe ground in proposing this amendment. Perhaps I was quite safe in my previous amendment also, but it has met with a contrary fate; but I think I am on the safest ground in proposing this thing. In giving such summary powers, such clear executive powers, why should we give power to order not only something that removes any annoyance but something that is likely to prevent, that tends to prevent an annoyance?

We have got here the words 'obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety.' Therefore 'annoyance' here means something that is not covered by injury to human life, injury to human health or injury to human safety. Sir, if there is anything that causes annoyance the doors of the regular courts are open to everybody to take any steps he likes. So where is the reason, where is the justification for saying to a man 'Look here, I am annoyed by such and such action of yours. I will go to the Magistrate and get an order issued against you.' Suppose there is a marriage going on in the house of a rich man, and the *tom tom* is being beaten near by. Another man may have some influence with the Magistrate; he goes to him and writes a letter saying that 'so and so is beating his *tom tom*, which causes great annoyance to me.' The Magistrate goes forth and says 'thou shalt not beat thy *tom tom*!' No doubt the order is only for two months, but to a person who is stopped from celebrating his festivities in connection with his son's or daughter's marriage, it means a great thing. Similarly, a man gets up at 5 o'clock in the morning and begins to sing. It causes annoyance to me. Well, the Magistrate to whom I complain, goes forth and issues an order to stop him from singing in the mornings at 5 o'clock because a speedy remedy is necessary, because so and so is annoyed. I really cannot understand what you mean by speedy remedy and immediate prevention consistently with the idea of annoyance where no danger to human life or health or safety or obstruction or injury is concerned, or where there is no danger of a disturbance of the public peace or tranquillity. I for one really fail to see how on earth we can put in this word in this section. I hope therefore that my Honourable friends will consider well and vote for this amendment.

Mr. R. A. Spence: Sir, I oppose this amendment for the reasons put forward by the Honourable Mover of it. I consider that if this word 'annoyance' is left out, and if the Magistrate has not got powers to prevent people from committing annoyances, there is a very great danger of loss of life and possibly of loss of property. What we propose to do in our law is to prevent crimes as far as possible. There might be many other crimes committed, because people lose their temper owing to annoyance caused by the beating of *tom toms*, and I think that, should a Magistrate be of the opinion that annoyance is being committed which is likely to cause some one to commit a breach of the peace, then it is a very sensible law that the Magistrate should be able to stop that man from committing such annoyance. Therefore, if this clause is left out, I think there will be a danger of loss of life and loss of property to which the Honourable Mover of the amendment so feelingly referred. Therefore, I hope that Honourable Members in this House will not be of the opinion of the Mover of the amendment and that they will not give him that favourable consideration which we should like to give him if only we agreed with him.

The Honourable Sir Malcolm Hailey: I should like to supplement, if I may, in two words, what my Honourable friend, Mr. Spence, has just said. I must say that when I heard Bhai Man Singh's speech, it did occur to me what a bad Magistrate he would make; for he thinks of a variety of things which would never enter the mind of one of our Magistrates. Could he really imagine that a Magistrate would pass an order in favour of a rich man that no body should beat a *tom tom* in the vicinity of his wedding?

Bhai Man Singh: Such orders are daily passed.

The Honourable Sir Malcolm Hailey: All I can say is, that if Magistrates do exist to whom such considerations occur, then I have never met them.

But, why do we desire the retention of the word 'annoyance'? I can answer it by referring to what Mr. Rangachariar said this morning. He realised that under section 144 a Magistrate has very often to deal with cases of a religious origin, and there is no greater source of trouble in certain parts of the country than cases in which one person sets out to cause annoyance to another religious community. I put it that action of this kind is not and would not be covered by the words of the section unless we retain the word 'annoyance'. It is simply for that reason that I think the retention of this word is salutary, and I commend it to the Assembly on that ground and on that ground alone.

The motion was negatived.

Bhai Man Singh: Sir, the amendment that stands in my name reads as follows:

"In clause 26, the present sub-clause (iii) in the proposed sub-section (5) omit all the words after 'showing cause against the order' and re-insert them as sub-section (7) in the form given below, and add the following and re-number the sub-section (5) as sub-section (8):

'and on his so appearing either in person or by pleader, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence that may be adduced'."

I think the last words "that may be adduced" have been omitted, and I may be permitted to add them, because the sentence is incomplete without them.

"(6) Such inquiry shall be made, as nearly as may be practicable in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases."

[Bhai Man Singh.]

"(7) If, upon such inquiry being made the Magistrate is satisfied that the order should stand wholly or partially it shall pass an order to that effect, otherwise it will accept the application and while passing any such order about the application the Magistrate shall record his reasons in writing for doing so."

I also beg leave of the Chair to alter the word 'it' to 'he', because it is a clear mistake—I do not know whether it is my mistake, or it is my typist's mistake or it is of the printers here.

The object of my amendment, Sir, is very clear. I want that when a man is asked to show cause, and when he appears and objects to the order and files an application, that order should stand, and he should be given full opportunity to produce his evidence as in a summons trial, and the order of the Magistrate in disposing of the application should be like a judgment, really speaking in the sense in which we have got the word 'judgment' in the Criminal Procedure Code. I do not know, Sir, how

the learned members of the Joint Committee in this respect 3 P.M. tried to keep on the section as a mere executive thing in the Criminal Procedure Code. I should like to read out the note of the Joint Committee on this clause:

"We accept the amendment made in section 144 by this clause. It was suggested to us that section 144 should be elaborated so as to enable a person aggrieved on an order made under the section to require the Magistrate to make a judicial inquiry regarding the truth of the information on which he had acted and thereby to bring in the revisional powers of the High Court. With the exception of Saiyid Raza Ali we think this proposal goes too far and that it is necessary to maintain the executive character of the provisions under section 144."

This shows clearly, Sir, what is the object of avoiding such like provisions in the section and keeping it the mere summary thing. We are, however, prepared and we have proposed an amendment to this effect, to lay down that a person aggrieved shall be entitled to apply to the Magistrate and show cause against an order and that the Magistrate shall give him an opportunity to be heard in person or by pleader and shall record his order in writing giving his reasons for his rulings. Sir, there is absolutely no use in taking half-hearted measures in adopting half measures in such matters. If it was the business of the Magistrate to see to it, where was the use of providing that he should record his reasons or anything of that sort, if you think that he should be altogether unchecked and uncontrolled in this matter? If his discretion is to be a judicial discretion in the real sense of the word, I see absolutely no reason why we should avoid the writing of evidence in such cases.

Sir, while speaking on my first amendment to section 144 I submitted to the House a long list of rulings wherein the High Courts have consistently held that the Magistrate should take evidence before passing orders and in cases where there had been convictions the High Courts have required that there should be very credible evidence on the file to show that such and such dangers were actually apprehended otherwise they have quashed the convictions under 188 for disobedience of such orders. I submit, Sir, that, if the Magistrate shall have the right evidence, if the man disobeys the order in order to secure his conviction, I see absolutely no reason why he should shrink from doing so at this preliminary stage when the original order is being passed. It is all very well to say: "all these are summary proceedings, these are very minor things." But, Sir, how on earth is it to be tested? At present, as I submit, Sir, there is only an intricate method of testing the validity of such orders, that is through revision. Some of

us have sent in amendments to provide for revision or an appeal against this order by itself and if we are to have any revision or appeal to this order we must make this provision here also that the Magistrate should take the proper evidence in the case. I cannot imagine why such evidence should not be taken. If there is danger of annoyance, if there is danger to the public safety, if there is danger of a breach of the public peace, why should the Magistrate try to keep his information secret? Why should the executive action fear the light of the sun and try to issue its orders in darkness? Where is the ground in giving such powers to the Magistrate that he should not write any evidence and should maintain or quash his own orders. I should really feel obliged if any of the Honourable Members from the Government would tell me the substantial injury, the substantial loss that would occur if the Magistrate is required to write evidence in such cases. The worst criminals, when they are required to procure security, are given that chance. Their trial is to be according to a summons trial as provided in the courts. I for one, Sir, cannot understand why on earth should we leave this section as it is and let the Magistrate decide arbitrarily whether he should or should not do. I submit, Sir, that this is just in the spirit of what our highest courts have held and while we are amending this section, we should not let this point escape and should bring in the spirit of these rulings in the courts itself.

Mr. Deputy President: Amendment moved:

"In clause 26, the present sub-clause (iii) in the proposed sub-section (5) omit all the words after 'shewing cause against the order' and reinsert them as sub-section (7) in the form given below, and add the following and renumber the sub-section (5) as sub-section (8):

'and on his so appearing either in person or by pleader, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence that may be adduced.'

'(6) Such inquiry shall be made, as nearly as may be practicable in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases.'

'(7) If, upon such inquiry being made the Magistrate is satisfied that the order should stand wholly or partially he shall pass an order to that effect, otherwise it will accept the application and while passing any such order about the application the Magistrate shall record his reasons in writing for doing so.'

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadian Rural): Sir, with regard to the provisions which have been so strongly criticised by my friend, Bhai Man Singh, I think it is necessary to remember that under every criminal law, under the criminal jurisprudence of every civilised country, there are first the penal provisions which punish a man who has committed an offence, and there are other subsidiary provisions which enable the authorities to prevent the commission of crimes and also others which will prevent the disturbance of public tranquillity. Now, the question is whether we should have in this Code provisions which come under the head of those that prevent disturbances of public tranquillity. Now, if in enacting those provisions, we were to take up the position that we were trying offenders and the inquiry should assume the form of a trial, whether a summons case or a warrant case whatever it may be, that it should take the form of a trial, we must then contemplate to what extent this inquiry will be enlarged. Now, I ask you, apart from being technical lawyers—as ordinary men—do you think that provision like these should assume the form of trials? Are not these provisions intended to be taken when a responsible officer thinks that there is a disturbance of tranquillity and the other things mentioned in the

[Rao Bahadur C. S. Subrahmanayam.]

clause? Now, when he suddenly comes to the conclusion—and these conclusions can only be come to on the spur of the moment or on the occurrence of things which could not be anticipated—then what advantage is there for the men who are prevented from exercising those alleged legal rights to let the proceedings take the form of a regular trial. Will it profit them, will it advance the cause of peace in the locality, or will there be any good in giving these the form of trials? Now, it is in that view that this section is very important. And the amendment that was made, that is the addition that was made, was in reference to the view which has been frequently expressed that this section has been put to uses which were not originally so fully contemplated, in order to enable those who are interested in these proceedings to know and also the higher authorities to judge whether officers taking action under these sections had exercised a fair amount of discretion and applied their minds to the facts which gave occasion for the order. Therefore, if the House approves that this provision is a provision which is to be used in an emergency in order not to punish people but to prevent an apprehended danger or disturbance, then I think the line of criticism adopted against this provision would not be justified. But if this provision is to be treated as a penal provision and subjected to the scrutiny of an appellate court, if this order is to be treated as a sentence on conviction against the person and higher authority is to sit on this matter as an appellate court, then I think those who bring themselves into this provision are not likely to be benefited, because the action would have been taken, and after the action has been taken and the prevention has been enforced the inquiry is going to begin. What is the advantage? Immediate action is, what is wanted and what is probably not refused even by my friend, Mr. Man Singh. After that immediate action has been taken what is the advantage of having a regular inquiry? Is it to demonstrate to the world that the Magistrate has exercised his discretion wrongly or is it to benefit the person aggrieved? Therefore, I think that these elaborate provisions which my Honourable friend wants to tack on to this section will really do no good, and so I think it is best to leave the clause as it stands.

Dr. Nand Lal: Sir, I differ from the last speaker, the Honourable Mr. Subrahmanayam that in the case of preventive measures no proof or evidence is necessary. I agree with him that this is a preventive step no doubt. In emergent cases, where promptitude is required, as I have already submitted, that preventive measures are generally effective. But when he says that no judicial proof is necessary, and that no inquiry, so far as the taking of evidence is concerned, is necessary, I join issue with him. When I see the opinion of the Select Committee, when they say in clear words that the character of these proceedings is executive, I feel surprised. If any witness in those proceedings tells a lie he will be hauled up under section 193 (of the Penal Code). If you hold, Sir, that these are judicial proceedings, then any statement which is made will be made on oath, and in order to come to a determination in regard to the conduct of the man proceeded against, the proceedings will be given the character of a judicial proceeding, and in spite of there being no proof, a decision is given against him, then that decision, I submit, will be wrong. The argument that has been very strenuously set forth by the last speaker is, "Of what avail would it be if an elaborate inquiry and a proper investigation be made." In reply I may say that the good of it would be that the man who is feeling aggrieved, and who is affected by that order, will realise that he put forward the whole of his evidence, and that the Magistrate has

come to the conclusion after hearing them. This will more or less be a satisfaction to him. But if he is debarred from putting forward his evidence, then certainly he will say that justice has not been done to him. And on the top of it what will be the effect on the public mind? They will think that orders are being passed simply in accordance with the whim or sentiment and opinion of the Magistrate and no proof is taken. Then the Honourable the Opposer of this amendment says, "It is purely discretionary. The Magistrate is allowed to exercise his discretion." Certainly the Magistrate should be allowed to exercise his discretion. In connection with an amendment which was moved some time back I submitted to the House and I am reiterating the same submission that the discretion should be based on some data. The discretion should not emanate from the mentality of the Magistrate alone. The discretion, in any case, must be based on the inference which is to be drawn from the material on the record, and if this discretion is based on some proof on record, and has been exercised judicially, then certainly it must be respected. The Court of revision will take it as a true and proper discretion, namely, the High Court will then feel reluctant to interfere. But if this discretion is to be exercised in the manner in which my learned friend wishes, then, I say, his view is erroneous. It is altogether wrong. My learned friend opposed this amendment on this ground and I think that that ground is a fallacious one. Look at the stringency of the law which is embodied in this section. Arguments have already been advanced by the Mover, with reference to certain words and the natural consequence thereof, and I, sympathising with those arguments, submit that the present law, as is incorporated in section 144, has invited a great amount of criticism. It has evoked that criticism which it is extremely difficult to meet with. I submit that the amendment, which has been proposed, is a very modest one and will be a good safeguard, and I think the Government will be pleased to accept it. Where is the difficulty in accepting this sort of amendment? It (the amendment) suggests, "and on his so appearing either in person or by pleader, the Magistrate shall proceed to inquire into the truth of the information". Are the Government Benches really serious to say that he should not inquire into the truth? I think they will accept my contention that the Magistrate ought and should inquire into the truth of the information. Unless and until he finds the truth of the allegations he should not pass the order. Then clause No. 6 says:

"Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases."

All of you know, Sir, that this is a very innocent form of procedure. It does not mean that a regular charge will be framed and after framing the charge the witnesses will be recalled for cross-examination once more.

Then my learned friend, the Opposer of this amendment, says, "Oh, what is the use of a regular trial?" I may tell him that real trial begins after framing the charge. But here trial means that evidence will be recorded and the Magistrate will come to certain conclusion after having gone through that evidence. It is not a regular trial which we find in warrant cases, because a charge is framed, the accused is called upon to explain and then to adduce evidence. Similarly sub-clause (7) is also of a very modest nature.

"If upon such inquiry being made the Magistrate is satisfied that the order should stand wholly or partially it shall pass an order to that effect."

[Dr. Nand Lal.]

I think the whole House will agree with this view which has been suggested and recommended. If after having gone into all these materials he is satisfied, that the order should stand, it may be done so. Now what is the difficulty in the way of accepting this innocent sort of amendment? It will set at naught the criticism which has been levelled against section 144 of the Criminal Procedure Code. Therefore with these few remarks I support this amendment very strongly.

Mr. H. Tonkinson: Sir, I rise to oppose the amendment. I believe it will not be necessary to make more than a very few remarks to support those made by my Honourable friend, Mr. Subrahmanayam. Let us remember, Sir, what this section deals with. It deals with cases in which immediate prevention or speedy remedy is desirable. In such cases the order absolute has already issued. That order will only remain in force for 2 months. Under sub-section (4) of section 145 of the Code as it stands at present, the Magistrate has power to rescind or alter the order which he has made. The Joint Committee inserted a provision in that sub-section to enable the Magistrate to take such action either *suo motu* or else on the application of the person aggrieved. Then in sub-section (5) the Joint Committee has provided for the action which they consider should be taken when the person aggrieved appears before the Magistrate. In place of these provisions, the Honourable Member proposes to introduce the whole paraphernalia of a summons trial, and that, in a case of an order which is to remain in force for two months only. I submit, Sir, that the proposal would entirely change the character of the provisions of this Chapter and would involve a gross waste of time.

The motion was negatived.

Rao Bahadur T. Rangachariar: Much as I have reason to be despondent, I rise again with full optimism in moving my amendment which is as follows:

"In clause 26 after sub-clause (iii) insert the following sub-clause:

'(iv) after sub-clause (6) as renumbered the following shall be inserted as sub-section (7), namely:

'(7) In all cases where action is taken under this section preventing a person or persons from holding or addressing meetings a report shall forthwith be made to the Sessions Judge who may call for and examine the record of any proceeding for the purpose of satisfying himself as to the correctness, legality or propriety of the same, and pass such orders as he thinks fit.'"

When I look behind me for my followers, they have deserted me. They have deserted me, nearly 60 of them are quietly absent in their homes—60 of the so-called people's representatives. Is it any wonder that people outside threaten to repudiate debts contracted by this Assembly when their representatives choose to absent themselves like this, on important occasions? Sir, I said I am not despondent. Although I am like a general without soldiers, I see in front of me gentlemen to whose intellect I am going to make an appeal and I rely on their sense of gallantry that they will receive a general without soldiers with open arms and make honourable peace with him. Sir, the amendment which I move is an old friend, he is coming up again. (Mr. J. P. Cotelingam: "Sessions Judge.") It is with reference to the use of these executive sections for preventing meetings being held or preventing people from addressing meetings. Sir, it must be admitted that the credit for applying this section to public meetings and to public speakers belongs not to the Government of India but to the Burma Government, the Upper Burma Government. Some Magistrate in Upper

Burma in the year of grace 1916 for the first time applied this section to prevent a meeting being held. That was the solitary instance in which section 144 was applied till the eventful year of 1921, the latter part of which saw the use of this section spreading like plague and other diseases all over the country. One of the objections raised the other day was that we single out this out of the lot, as my Honourable friend for whose opinion I have got very great respect pointed out, I mean Sir Henry Stanyon. Why we single out this out of all the rest is answered by this fact, namely, that it is a novel use of this section—you will agree with me that it is a novel use of section 144 to prevent citizens from exercising their elementary rights of either addressing their co-citizens or holding meetings. Sir, some of my legal friends had their legal conscience very much perturbed, especially my Honourable friend, Mr. Mukherjee, that I spoke of action being taken, that I spoke of action being taken to prevent a person from addressing or holding meetings. They said, "Oh! What bad language you have used? Under section 107 action is not taken, but order is passed. Therefore your language is wrong. Under section 107 action is not taken to prevent a meeting being held or to prevent a person from addressing a meeting, but to get security for keeping the peace. Therefore your language is unhappy." Therefore, they said it is out of place in section 107. I am glad to be able to satisfy them in that respect so far as section 144 is concerned. Magistrate acts under this section. Magistrate prevents a person from doing a particular act. Therefore, those two technical objections, which were taken advantage of even on the Government Benches disappear. Now, the third objection taken was, "What an ineffective remedy you are providing? A report to the Sessions Judge!" Well, he reports to the Sessions Judge. It may be based on materials or it may be based on no materials. What is the Sessions Judge to do? It is said what is the object of this remedy? It is so ineffective. Do you really believe that the Government think it is ineffective? If it is so ineffective, why do they oppose it? If it is such a harmless remedy that I am proposing, why do they oppose it? Have we not got reason to suspect that there is something behind this opposition? Do they not think this is going to be a good remedy? Are they not afraid of it? When you find the Government arguing that it is an ineffective remedy, we are men, we are not children, and we might suspect really that they believe it is going to be an effective remedy and that is why they oppose it. Therefore, Sir, these are the objections taken to this provision when applied to section 107. Under section 144 there may be an *ex parte* order; there may be a final order afterwards. In both those cases the Magistrate will have some material to go upon because he has to record his reasons, he has to record the statement of facts. And moreover further proceedings are contemplated by later amendments to the Procedure Code which provide for revision. Therefore it will not be a case in which there will be no papers for the Sessions Judge to act upon. There will be records to go upon. Therefore the Sessions Judge will be able to cancel proceedings in case they are improperly taken; when he is satisfied the proceedings are improperly taken. There is one other objection. I look with trembling feet to my friend, Mr. Samarth, who is now out of his place. I hope he will be out of his place in the lobby also this time. He thinks this is a weapon I am inventing for the benefit of the non-co-operators. I am not sure my friend will not one day be caught in the same meshes in which other people are caught. I know his sense of patriotism. When this Royal Commission comes along and when perhaps we shall have to organise a procession to the Viceroy's residence in the same way as the unemployed did to the Premier's house, I am not sure

[Rao Bahadur T. Rangachariar.]

he will not join that procession. That section will then come into effect, and the District Magistrate of Delhi, who is I think called the Deputy Commissioner, will serve an order on my friend, Mr. Samarth: "How dare you lead a procession protesting against the appointment of the Royal Commission?" I heard my friend, Mr. Subrahmanayam, saying this was a power which belonged to other countries. I have yet to find a section in the English procedure which empowers the Magistrates to interfere in processions or meetings.

Rao Bahadur C. S. Subrahmanayam: The police, not the Magistrates.

Rao Bahadur T. Rangachariar: The police have power to interfere in case of actual disturbances. They are ready with their batons and not with their fire-arms. Batons are their weapons when these enormous crowds assemble in the various squares. Magistrates of the first class do not serve orders on Mr. Ramsay Macdonald or even on Mr. Keir Hardie preventing them from holding meetings. And my European friends, whose assistance I also implore in this connection are noted for their love of liberty; I know they will not lose their liberty in this country or in any other country, and I appeal to them also to join hands with me in this matter. Sir, liberty of speech, liberty to hold meetings is a sacred right. When that right is sought to be destroyed, when it is sought to put it down under foot in this manner in which it has been done, when the Government confesses its impotence to deal with crowds while they have got such eminently highly-paid police and military to look after the peace of the country, when they think action under section 144 is necessary in order to prevent some speeches in a country where mild Hindus predominate, Sir, I am despondent about the Government. I ask them to look at it from that point of view. There are Magistrates and Magistrates who take different views of different matters. Why, Sir, the wearing of *khaddar* is obnoxious. If you put on a Gandhi cap, as it is called, it annoys, it wounds, and directly an order is passed under section 144 to remove the cap. Is our Indian Government so weak that they should resort to such silly method? Sir, I therefore say we must provide a remedy for this. I hope I have not over-stated the case. If I have, please forgive me, but this is a very vital matter. I hope you will find some remedy for the extraordinary use of these sections. I am confident that the remedy I have proposed is not as efficient as I might have made it. I purposely refrained from other remedies. I purposely refrained from suggesting that the section should not be used for such purposes, because, as I stated the other day, there may be cases when actual incitement to rebellion may take place in meetings, in which case section 144 might legitimately be used. Short of that I do not think it should be used. When it is used for such a purpose, is it not just, does it not occur to you that it is necessary that there should be some safeguard by some superior authority? What is the harm in providing this remedy I suggest, namely, that the records go to the Sessions Judge, who is a senior servant of your own, to bring his judicial mind to bear on the subject and see whether the action has been rightly taken under this section or not. May I therefore in my despondent spirits appeal to the Government Benches and my Honourable colleagues who are presenting an organised front before me, and a disorganised force behind me, to give to this modest motion the treatment which it deserves. I move the amendment which stands in my name.

The Honourable Sir Malcolm Halley: Sir, I confess to a novel and refreshing feeling of pleasure when I hear a leader of that large and compact body of voters, whom we see so often leading his cohorts into the lobby against us, appeal to us to be merciful and not to use our strength. We are so accustomed to come into this Assembly a faithful little band of voters, prepared to encounter an enormous and determined majority on the other side, that we can hardly credit our ears when we hear that it is we who are strong, we who must not use our voting power, we who must for once listen to reason. But I feel great sympathy for Mr. Rangachariar. As he pathetically says, he stands alone. His forces are dissipated; his followers are gone. Might I suggest a remedy to him? Here is a place for him on the Government Benches; let him join us over this Bill; he may be certain that we at all events do not neglect our posts. Our faithful few are always here, and, if you do not see their faces, yet you know that they are close at hand, within call of a bell. If he will join us, he will never want followers.

But to the point, we have been through a great deal of this amendment before. We have heard before, in regard to section 107, many of the arguments which Mr. Rangachariar has addressed to us to-day. If we were hard-hearted then we curiously enough found adherents in the House. Could it have been that we and not Mr. Rangachariar were for once in the right? At all events, we are equally hard-hearted on this occasion also. Mr. Rangachariar might perhaps have had some arguable case in regard to section 107, by which an order can be passed against an individual, binding him over for a period of a year. He might have had some justification for claiming that the circumstances justified this new revisionary procedure, the order to protect the liberty of action of that particular person. But here, what does the Magistrate do? He issues an order for two months only. Mr. Rangachariar would have the proceedings of the Magistrate sent to the Sessions Judge. Meanwhile the person affected will under our new clause have asked the Magistrate to review his own order; by the time the order has become absolute some considerable period will have elapsed. Three-quarters of the mischief will be done, at all events before the Sessions Judge can get to work on the case. Mr. Rangachariar suggests that he and some of his friends might intend to go in procession to-morrow to His Excellency the Viceroy to protest against the appointment of Royal Commission; and draws a picture of the District Magistrate issuing an order under this section against him. I would advise them not to do so, because, I understand, that His Excellency will be absent from Delhi to-morrow. (*Rao Bahadur T. Rangachariar:* "We will wait on you then.") But even if they should contemplate doing so, I do not think they need fear that the District Magistrate of Delhi will issue an order against them; for judging by to-day's confession the band will be so small that he will hardly notice its existence in the street. But seriously even if we had this procedure Mr. Rangachariar desires to introduce, what would happen? The District Magistrate would issue his order to Mr. Rangachariar. Mr. Rangachariar, using our new sections (4) and (5), would go to the District Magistrate and make an application for review. The District Magistrate after making due inquiry, would make his order absolute. The papers would be sent to the Sessions Judge. Clearly, even if Mr. Rangachariar secured the good offices of the Sessions Judge, it would be a long time before he had access to His Excellency the Viceroy.

I have used this illustration to show really how little ground there is for applying this revisionary procedure in the case of proceedings so

[Sir Malcolm Hailey.]

essentially emergent in their nature and temporary in their effect. I do not here again seek to defend any action that we have taken under section 144. I do not again refer the House to the fact that Mr. Rangachariar himself advised us to use section 144. He had, I may say, predecessors in the advice which he gave us. I remind him of the debates in the Legislative Council on the subject of the amendment of the Seditious Meetings Act. On that occasion, there were authorities no less than the late Mr. Gokhale, who advised that we should use the existing sections of the Act, and I remember that it fell from the lips of Mr. Mazrui Huque himself that section 144 was sufficient for all our purposes. But that, Sir, was section 144 as it then stood. When our friends advised us then to use section 141, they contemplated section 144 in its original form; they did not, I think, ever contemplate that it should become a semi-judicial proceeding, liable to a new form of revision at the hands of the Sessions Judge. Regretfully then, in spite of all my sympathy with Mr. Rangachariar in the unhappy circumstances in which he finds himself, I ask the House to re-affirm the decision on this subject which they gave three days ago.

Mr. T. V. Seshagiri Ayyar: Sir, there has been so much good humour in the speeches which have been delivered on this amendment, that I am afraid to sound a note of seriousness in the discussion in regard to this question. Sir, none the less, there is a feeling of consternation in the country regarding the use of section 144 and I do not think I would be justified in keeping the Government ignorant of that feeling. Mr. Rangachariar's amendment would have this effect—it would check the vagaries of the Magistrates; it would enable the Sessions Judge to examine the records and come to a conclusion whether the Magistrate has acted rightly or wrongly. It is for that purpose that my Honourable friend has brought forward this amendment.

Sir, I should like briefly to explain the reason for the enactment of this section and how it is being misused. I think I am right in saying that you do not find a similar power in England, a power similar to the one which is given by section 144. (*The Honourable Sir Malcolm Hailey:* "That is right.") I think I am right in that, and I am glad to hear the Honourable the Home Member supporting me in that. The reason why section 144 has been enacted in this country is this. It was felt that the rights of advancing the ordinary citizen's rights should be secured as against the possible attacks of turbulent and unruly men who may feel tempted to take the law into their own hands. It was felt that in a country like India, where there are numerous sects and numerous religions, it is possible that the rights of one sect may be interfered with by persons belonging to another sect who are larger in number, more disciplined and who have got larger resources at their disposal. Therefore, the object of enacting section 144 was to enable the minority, who have got rights, to exercise those rights without being harassed or put down by the larger section which has got money and influence behind its back. It was for the purpose of giving this facility for the exercise of rights of the minority that this section was introduced, and you will find in the case which was quoted this morning, 6 Madras, that the Judges of the Madras High Court pointed out that the section must be used for the purpose of advancing rights and not for curbing or putting down rights.

Now, that must be the position which ought to be taken up by the Government. But, unfortunately, the section has been so used during

the last two years that Magistrates have begun to forget why it was enacted. They have begun to forget that the object was to advance the rights of citizens; and they have begun to think that the object is simply to put down the exercise of those rights. And you will find all over the country that Magistrates are on the alert and are on the look-out to get police information or some other information for the purpose of preventing the exercise of these rights. Sir, this has gone on too long and it has created, as I said in the beginning of my remarks, a sort of consternation in the country; and it is desirable that the Government should know what the feeling in the country is. I believe they know it and, as we have not the power of saying that this section cannot be used at all, I think we should accept the modest amendment that Mr. Rangachariar has brought forward that there should be a power vested in the Sessions Judge to call for the records and examine for himself as to whether the section has been used for the purpose of advancing justice or for the purpose of stifling it.

Sir, there is only one other word I should like to say and I will sit down, and it is this.

It has been said, and very rightly, in responsible quarters that the Government is doing itself injustice by allowing this section to be used in the manner in which it is used. I believe the Government is aware of what is known as the "safety valve." It would be very much better for the machinery itself, for the proper working of the machinery as well as for the safety of the machinery, that there should be a safety valve. If the safety valve is not allowed to work, the result will be that the machinery itself will break down; and I think that by putting down public meetings, by not allowing persons to speak at public meetings and by not allowing them to have their say, the Government is not doing justice to itself, but are rather impairing the efficiency of the administration. There is already great discontent in the country and I believe the Government can do a great deal to allay that discontent by modifying section 144 in the way we have suggested; and as Mr. Rangachariar would have put it, I implore the Government to see that some safeguard is provided; otherwise I fear there is great danger of the whole machinery of Government being wrecked.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, there is just one aspect of the case which, I think, has not been fully brought out. It is this—several Honourable Members say that the Magistrates are not carrying out the law properly—that is to say, they are taking advantage of section 144 to enforce certain propositions which are not intended by the Code. But I do not find any statement by Honourable Members to the effect that the High Courts have held that the Magistrates were in any way justified in doing anything which would bring the law into contempt. That is to say, the objection taken is chiefly that the Magistrates are not carrying out the law correctly. The High Courts, for instance, have laid down the circumstances calling for an order under section 144. There must, they say, be some emergency, and an order passed when there is no emergency is without jurisdiction. Then again they say that the existence of such an emergency is a condition precedent to the Magistrate having power to proceed. There must be information or evidence to that effect, and the facts must be set forth in the order fully and in detail.

[Mr. P. E. Percival.]

My observations have reference not only to the remarks of the last speaker but also to some previous remarks that have been made. In fact, the High Courts have already laid down certain restrictions. They go on to say that, if no immediate danger is apprehended, the Magistrate should proceed under section 133 and not under this section. So I submit, Sir, that the only remedy is to apply to the High Courts. The High Courts are the proper authority. If the High Courts say that the provisions of the law are not sufficient, it is of course up to Government to amend them. But what we find is the contrary. They say that in certain cases some Magistrates have not acted according to the law. The obvious inference is that the correct action to take is to apply to the High Courts and to get them to keep in check unruly Magistrates who do not act in accordance with the law as laid down by the various High Courts.

Well, Sir, turning to the particular amendment in this case, I am a little surprised that my friend Mr. Rangachariar should again bring up the same point, because it is really very similar to the one which has been decided by this House already. The chief argument, which I ventured to put forward on the previous occasion, I suggest, the Honourable Member has not really replied to. It is simply this, that cases of this sort do not go to the Sessions Judge. The Sessions Judge is quite a separate authority. The two authorities are the District Magistrate and the High Court. So why bring in the Sessions Judge, who is not the authority concerned in the case? The present proposal is that in certain particular cases involving meetings, the matter should go to the Sessions Judge, but that in all other cases it should go to the District Magistrate and the High Court. That was the view I suggested in regard to section 107. It is the same point here. As the Honourable the Home Member said, the case is stronger now. It is an order for two months, while the order under section 107 might be for a prolonged period. But the underlying principle is in either case the same. It is a matter, for the District Magistrate and the High Court. Therefore I suggest that, as on the previous occasion this House threw out the proposal of Mr. Rangachariar, the same course should now be adopted in regard to the present amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadian Rural): Sir, I venture to place certain points before this Honourable House. I stand up in spite of what has been said by my redoubtable friend opposite me and I do so with my courage in my hands. I want to draw the attention of the House to one feature of the proposed amendment. The portion of the amendment which requires special consideration comes last, and there I suppose lies the most contentious point in the whole amendment. I refer to the words "the Sessions Judge may pass such orders as he thinks fit." I take it that thereby a new power is proposed to be given to the Sessions Judge, so far as the revision of the orders prohibiting public meetings, is concerned. Now, Sir, looking at section 435 of the Code, to which I had the honour of drawing the attention of the House the other day, in connection with a similar point, I find that orders passed under section 144 do not come within the purview of that section. I looked at the proposed amendments in the tabled list with regard to this section and I asked myself whether it was contemplated that this section 435 should be amended so as to bring cases under section 144 within its scope. But I found there was no amendment to that effect in the list.

Rao Bahadur T. Rangachariar: There is a proposal to that effect.

Dr. H. S. Gour: I have an amendment about that.

Mr. J. N. Mukherjee: My friend's amendment is to the effect that the whole of sub-clause (iii) in clause 114 be deleted.

Dr. H. S. Gour: That is enough.

Mr. J. N. Mukherjee: That is not enough. If the amendment be carried, and the whole sub-clause is deleted, this section 435 remains as it is in the Code now, and under this section, as it stands now, revision of orders passed under section 144, Criminal Procedure Code, is not permissible. No doubt, an attempt has been made in the Bill to extend to some extent the operation of section 435 by introducing certain other sections, namely, section 143 and so forth in sub-clause (iii), but so far as section 144 is concerned, it does not make any alteration whatsoever even supposing that my Honourable friend, Dr. Gour's amendment is accepted, that is to say, that sub-clause (iii) is omitted. I wish therefore to draw the attention of the House to this point.

Rao Bahadur T. Rangachariar: That is not an insuperable difficulty.

Mr. J. N. Mukherjee: No, it is not. I say if the House agrees to accept the principle of the proposed amendment and decides that revisional powers should exist in the Sessions Judge, with regard to section 144, Criminal Procedure Code, means can be improvised by which that difficulty can be obviated. But the point is one, which, I think I ought to clearly bring to the notice of the House in order that something may be done to avoid the complications and the inconsistencies—if I may say so—which are bound to arise, if my friend's amendment is adopted.

Colonel Sir Henry Stanyon: Sir, I trust that what I have to say on this amendment will not lose me the good opinion which my Honourable friend, Mr. Rangachariar, has been pleased to offer about my judgment.

Rao Bahadur T. Rangachariar: Certainly not.

Colonel Sir Henry Stanyon: The less one deserves a benefit of that kind the more one wants to hold on to it. The pathos in his appeal moved me very deeply, and if I allowed my heart to have any part in dealing with the manufacture of laws I should probably draw my sword and take my position behind the deserted "General".

But in my humble opinion, feelings, emotions and sentiments are out of place in dealing with a measure of this kind. What we have to see is the effect upon the administration of justice of this proposed amendment. The position of the Honourable Mover is quite different here to what it was in connection with a similar amendment which he proposed when we were discussing section 107. But, in my humble opinion it is not any stronger. I have not been impressed by the argument which has been used, more than once, that there is no provision of this kind to be found in the English law. I think it is high time that we understood clearly that what is sauce for the British goose is not sauce for the Indian gander. I do not put that forward as propaganda but merely as my humble opinion. Here we are dealing with section 144, a measure which provides for action, immediate and prompt, to meet an emergency. Any order, however

[Colonel Sir Henry Stanyon.]

absolute, under that section has a life of exactly two months. Now, suppose that this amendment were introduced in the law. Suppose that when, after inquiry, the Magistrate has made his order absolute, he is required to report the proceedings to the Sessions Judge, and the Sessions Judge thought one way, or the other, before he passed any orders. If he acted upon the usual line of Sessions Judges, a judicial line, he would issue notice to one party or the other, or to both parties, to appear before him and argue their respective cases. He would not set aside the order of the Magistrate without issuing a rule to him to show cause. He would not support an order of the Magistrate without issuing a rule to the person against whom that order was made to show cause. How long does this Honourable House think the Sessions Judge would be occupied in completing this procedure? Sir, we have heard it said that there are Magistrates and Magistrates and I myself have accepted responsibility for saying that I have met them "from A to Z." There are also Sessions Judges and Sessions Judges, and I have met them "from Z to A." But, as a general rule, they are authorities who proceed in a judicial manner with care and deliberation and take time. In nine cases out of ten, before the Sessions Judge passed his order, the Magistrate's order itself would have died from efflux of time. Then, another point against this amendment is that it is the one breach of the rule which we find in the Code of not allowing such slow judicial interference with the executive and preventive action of Magistrates; and I think to introduce it here would not do any good to the public or to the administration of justice; but would hamper Magistrates and put Sessions Judges in a position of considerable difficulty. For these reasons, even at the risk which I feared at the opening of my remarks, I venture to oppose this amendment.

Mr. R. A. Spence: I move that the question be now put.

Dr. H. S. Gour: Sir, before this very important question is put to the vote, I should like to say a few words in support of this amendment. I was somewhat surprised to hear my Honourable friend who hails from Bombay (Mr. Percival) saying that the orders passed under section 144 are subject to the revisional jurisdiction of the High Courts. He is right so far that the Chartered High Courts exercise revisional jurisdiction on orders passed under section 144, not by virtue of any power conferred upon them by the Code of Criminal Procedure but despite that power and under the special power of general superintendence which is vested in the Chartered High Courts over all courts subordinate to them. But my friend cannot forget that all the courts in India are not Chartered High Courts and that there are courts which have to act and to derive their power under the Code of Criminal Procedure. Now, Sir, what does the Code of Criminal Procedure lay down. My friend the Honourable Mr. Mukherjee has pointed out that there is a special provision in section 435 which lays down that an order passed under section 144 is not a proceeding within the meaning of that section and what is its effect. The effect is that the order passed by a Magistrate, however wrong, erroneous and perverse it may be, is not subject to the revisional jurisdiction of the non-chartered High Courts. Can this Assembly tolerate this state of things? My friend, the Honourable Mr. Mukherjee, drew the attention of this House to an amendment tabled by me, Amendment No. 321, in which I shall ask the assistance of this House to delete that clause which prevents non-chartered High Courts to revise orders passed under section 144 and other sections of this preventive chapter of the Code of Criminal Procedure. But I do not know when that

time comes whether my friend, the Honourable Mr. Percival or the Honourable Mr. Mukherjee or the Honourable Sir Henry Stanyon will not forge fresh weapons from their copious armoury and find fresh arguments for the purpose of combating my amendment. If I could be sure that Sir Henry Stanyon will draw his sword and go for the Government when this amendment is moved, I shall feel some assurance that there is some hope at any rate on the other side and that they are prepared to listen to reason and give the non-chartered High Courts a jurisdiction over matters contained in section 144 and orders passed in that chapter: but can we be sure of it? Can you be sure of it? Are the Government prepared to give an undertaking that they will not use that small and compact band to vote down this amendment when it is moved and so long as we cannot be sure of it, I think we shall be justified in pressing the amendment of the Honourable Mover on my left to vote. Now, Sir, the Honourable Mr. Percival has given away the whole case by saying that an order passed under section 144 is revisable by the High Court; and when I have pointed out that it is not revisable by all the High Courts, this ground upon which my friend, the Honourable Mr. Percival, perilously stands slips from under his feet. I have not been quite clear as to what my friend, the Honourable Mr. Mukherjee, meant when he wanted to point out some technical or super-technical difficulty in the way of the Honourable Mr. Rangachariar. If I understood him aright, his point of view appears to be that the High Courts possess ordinary criminal jurisdiction over matters of this character, and it would be setting and creating a novel precedent to arm the Sessions Judge with similar revisional powers. Now, Sir, I beg to ask—it has been said this morning and said with a certain amount of cogency—that these preventive sections require a Magistrate to pass an immediate order. If that is the case, the Sessions Judge is nearer to the Magistrate than the High Courts: and I submit, therefore, if we confer upon the Sessions Judge the power to revise an order passed under this section, the procedure may be novel but it is necessary. I was somewhat surprised at that champion of popular rights and ex-Judge, Sir Henry Stanyon, standing up and saying, that though his heart was with the Mover of this Resolution, his head turned away from it. I am sure, Sir, that if he will visualise for one moment the history of the misuse of this section during the last six months or a year, and if he will bring himself to think for a moment of the huge political and public clamour that exists against the misuse of this section, I am perfectly certain, Sir, that his head will second his heart. He has said that there is no doubt that the proceedings of the Sessions Judge are judicial but they involve delay. I ask, Sir, Members of this House, what will they have,—speedy injustice or dilatory justice? I should not be unwilling to sacrifice time, I should not be unwilling even to cause a little delay if in the end the person against whom an order is passed is assured of justice. It has been said that this order is very short-lived, it can only be in force for two months, but I am sure my Honourable friend will remember cases after cases in which this order on the expiration of two months was re-affirmed and repeated, and there is nothing in the Code of Criminal Procedure to disentitle a Magistrate from passing that order again and again—and it has been done, I am told by my friends that it has been done, and I know that it has been done, and then what happens, Sir? My friend will say that if the order was of a longer duration, the Sessions Judge would be entitled to interfere. I ask him, Sir, is not that an argument in our favour for voting for the amendment when we know as a matter of fact that the short period of two months can be prolonged indefinitely by the Magistrate passing the same order on expiry of the

[Dr. H. S. Gour.]

period of two months allowed by the Statute. (*An Honourable Member:* "A separate order is passed each time.") We have been told, Sir, and told with a certain degree of insistence that this is an order calling for urgency, and the Honourable the Home Member has said that this is a preventive section, but I beg to ask what is the difference between a preventive and a punitive section when you repeatedly use this section for the purpose of preventing a man from the lawful exercise of his legal right? The Honourable Mover of this Resolution has pointed out cases in which this section is liable to be abused—and we know as a matter of fact that the magistracy in this country have not wisely used this section on numerous occasions. Knowing that full well as we do, will this House be oblivious of the cries raised during the last year and the year before asking for some redress in the direction of curbing the vagaries of the subordinate judiciary of this country? Are we here, small and scattered a band though we may be, are we here to lay the conviction of our minds and sacrifice our convictions on the shrine of delay, prevention and urgency? I am sure, Sir, that the Members of this House will rise to the height of this occasion. I beg of the Members to remember that this is a section which involves a great principle, and I hope that Honourable Members will conjointly rally to its support. The Honourable the Home Member, when he has a weak case, has a strong humour: not being able to defend a position assailed by a General without any host, he said that the Viceroy won't be here to-morrow,—as if my friend would be undisturbed if he allowed the procession. I am perfectly certain that if the Honourable Home Member had to grapple with the main issue, he too like Sir Henry Stanyon would draw his sword and come to our support. He has invited, Sir, the Honourable Mr. Rangachariar to a seat on the Treasury Benches and promised him the support of his small but consistent cohort. May I, Sir, reciprocate the compliment by inviting the Honourable the Home Member to an honoured place on this side of the House, if only for this occasion and support us not in the name of prestige, delay, prevention, urgency or power, but on the broad ground of commonsense and justice? Sir, I support this amendment.

Mr. H. Tonkinson: Sir, the whole of the remarks of the last speaker were based upon the difference between a High Court of Judicature and other High Courts which fall within the provisions of clause (j) of section 4 of the Code of Criminal Procedure. It is true, Sir, that the Code of Criminal Procedure provides no remedy by way of revision, and that nevertheless the High Courts have held that if a Magistrate exceeds his jurisdiction under this section, then they have power to interfere in the exercise of their powers of general superintendence and control given to them by section 107 of the Government of India Act. Now, if my Honourable friend would refer to the Central Provinces Courts Act establishing the Judicial Commissioner's Court at Nagpur: if he would refer, Sir, to the Lower Burma Courts Act establishing a Chief Court in Lower Burma, and to any other of the Courts Acts in question, he will find that these powers of superintendence are given to all those High Courts.

Dr. H. S. Gour: Sir, may I just rise to a point of order. I can inform the Honourable speaker that there has been a recent decision in the Central Provinces by a Bench of the Judicial Commissioner's Court negating the power of that Court to revise proceedings under this Chapter.

Mr. H. Tonkinson: I would suggest, Sir, that perhaps if the case had been more fully argued before the Judicial Commissioner a different ruling

would have been given. We will proceed, Sir. The basis of the interference by the High Courts with orders passed under this section is that the Magistrate had no power to pass such orders under the section; and I would suggest that there is not a single lawyer in this House who would not be able to go up to any High Court and get that Court to interfere because section 144 does not apply, which is the only reason, Sir, why the High Courts of Judicature have interfered in cases under this section.

There is another point to which I should like to refer and that is the argument that one order could be extended. I see here, Note 49 on page 262, Sohoni, that it was held in Calcutta that a Magistrate cannot by passing successive orders under this section extend the operation of an order indirectly beyond the time limited by sub-section (5).

Rao Bahadur C. S. Subrahmanayam: Sir, if I were satisfied that this clause which my Honourable friend wants to tack on would do any good, I should certainly have supported him. But I am fully convinced that this clause is not going to do any good even if, with the eloquent support it has received, it is passed. Now, the cases in which this section is frequently used are cases in which religious or caste disputes arise. Take a few concrete instances which have come under our own observation. In a place which is a Hindu stronghold a missionary comes and preaches the impropriety of worshipping idols and so on. Some years ago it was not an uncommon thing. That would naturally tend to a breach of the peace: that is, the preaching party being small and in the midst of a Hindu stronghold it would very likely be molested. In a case like that what ought a Magistrate to do? Should he not restrain the enthusiasm of the preacher? (A Voice: "Apply 107.") Well, section 107 applies to individuals, but this applies to the whole meeting. And it so happens that sometimes individuals who are restrained retire but others take their place. Or take the case of two sects of Hindus. That is not an uncommon thing, and you will find such cases reported in the Law Reports of the Madras High Court. They may have very serious differences of opinion which may have led to considerable litigation; one of these sections wants to hold a meeting, or what amounts to a meeting, in the midst of the opposing section. What is a Magistrate to do? Is he to stop it or allow it go on and permit the people to break each other's heads? After all there is a good deal of confusion and error about the right of public meeting and all that sort of thing. Where do we get this right? Which constitutional lawyer has told you that you have a right of public meeting? I can quote you Professor Dicey. He will tell you that what is called a right of public meeting is not the right which you have been describing here in this Assembly and a question like that is not a question which can really be discussed in this Assembly. As for the rights of public procession and public meeting, you have read Professor Dicey just as well as I have. But if for a moment you want to rise to heights of eloquence and appeal to the sentiments and feelings of Honourable Members here, you may, I suppose, say that our rights are being disturbed if action is to be taken under this section. But what will happen? A Magistrate passes an order and you go to the Sessions Judge. What materials will the Sessions Judge have before him for examining the propriety of the order? The Magistrate does not record detailed evidence; he has information and knowledge of all kinds placed before him: many a thing is said before him which helps him in forming an opinion: often he has his own private information and ideas: he knows the district, the area in which he is working and the temperament of the parties to the dispute. Those are the conditions under which an order like this

[Rao Bahadur C. S. Subrahmanayam.]

would be passed: and if you ask the Sessions Judge to examine that order, how can he do it? That is the real point. Suppose the Sessions Judge disagrees with the order of the District Magistrate or the Magistrate who has taken action under this section, and he passes an order saying that the meeting may be held. What will happen? The Magistrate is responsible for keeping the peace, but he is told that a particular act is to be supported in the exercise of its right to hold a meeting. In other words, he has to muster a sufficient force to support these people at a public meeting and so uphold the order of the Sessions Judge who had upset the Magistrate's order. Is that feasible in the districts? Has a Magistrate got sufficient forces under him for these sort of skirmishes? Let us examine both sides of this matter. Do not let us assume hastily that a Magistrate always exercises this power erroneously. That is not a fair assumption to make in arguing on a legislative enactment. If this Assembly were here discussing the particular case of Magistrates, then it would be a different matter. But when a change in the law is proposed, are we to set out with the assumption that a large number of these responsible men are going to use their powers erroneously and that therefore the law must be hedged in in various directions. (A Voice: "Take away all right of appeal.") If there is no right of appeal I think it would be a good thing.

There cannot be a right of appeal. The appellate Courts would not have the proper and fullest materials to judge. Therefore, I think, apart from sentiment, apart from the question of political rights, the rights of public meetings, apart from all these appeals to sentiment, I think this clause, if added to this section, is not going to do any good except probably create a certain amount of protracted litigation, probably the benefits of which will appeal to a certain class of people. Except that, there is absolutely no advantage. It is all very good to talk of the abuse of the section some time ago. Now, there is one effective check on the abuse of these executive powers, that is the check we have been forgetting, viz., the local Councils. If the sections have been misused by any province, the local Councils could have taken action. I ask which local Council has taken action? (Voices: "How?") It has various provisions. It has got more powers than probably you and I are now prepared to mention. No local Council has protested against what you call the abuse of these sections. In my province this section has been used very considerably. Has the local Council said a word about the abuse of this section? And is this Assembly to sit in judgment on the action of Magistrates in my province? What materials has this Assembly, constituted as it is, to judge the action of the Magistrates who have used this section in my province? Now, take any other province. Has any local Council passed a vote of censure against the local Council for the abuse of this section by its executive officers? That has not been done. That is the only constitutional check. Now, you will say that the local Council is so packed with men who do not allow the exercise of rights at public meetings. That is not a point which can be solved by amending this section. Therefore, I think, apart from sentiment, apart from all the patriotic feelings which my friend for the first time has aroused in this Assembly during the discussion of this Code, I think the amendment which my learned friend, Mr. Rangachariar, has put forward is unnecessary.

Mr. R. A. Spence: I move that the question be now put.

The motion was adopted.

Mr. Deputy President: The question is:

"In clause 26 after sub-clause (iii) insert the following sub-clause:

'(iv) after sub-section (6) as renumbered the following shall be inserted as sub-section (7), namely:

'(7) In all cases where action is taken under this section preventing a person or persons from holding or addressing meetings a report shall forthwith be made to the Sessions Judge who may call for and examine the record of any proceeding for the purpose of satisfying himself as to the correctness, legality or propriety of the same, and pass such orders as he thinks fit'."

The Assembly then divided as follows:

AYES—30.

Abdul Majid, Sheikh.
Abdul Rahman, Munshi.
Agarwala, Lal. Girdharilal.
Ahmed, Mr. K.
Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Bhargava, Paridit J. L.
Chaudhuri, Mr. J.
Das, Babu B. S.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.

Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Singh, Babu Ambica Prasad.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Subzosh, Mr. S. M. Z. A.
Venkatapatriaju, Mr. B.
Vichindas, Mr. H.

NOES—41.

Abdul Quadir, Maulvi.
Abdullah, Mr. S. M.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.

Innes, the Honourable Mr. C. A.
Jannadas Dwarkadas, Mr.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sen, Mr. N. K.
Singh, Mr. S. N.
Sinha, Babu L. P.
Spence, Mr. R. A.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. B. Venkatapatriaju: Sir, the next amendment, which stands in Mr. Agnihotri's name, runs as follows:

"(a) In clause 26 insert the following sub-clause (iv):

'(iv) in sub-section (4) of section 143 insert the word 'judge' between the words 'magistrate' and 'may'."

"(b) Add the following sub-clause (v): 'insert the following as sub-section (7), namely:

'(7) The words 'certain act' in this section does not include the making of political speeches or the doing of political propaganda work which would be otherwise lawful'."

[Mr. B. Venkatapatiraju.]

I do not move clause (a); I propose to move clause (b). Now, Sir, after full discussion on the previous amendment it is unnecessary on my part to dwell upon the object of this section, or the scope of this section and the way it is exercised. The Honourable Mr. Seshagiri Ayyar has already pointed out how this section was abused and misused. Now Sir, whatever be the other causes for which it was intended, this section was never intended to shut the mouths of those who wish to speak on the constitutional changes in the Government. If this Bill were to be introduced with that object in view, to put an end to all constitutional agitation, I think it is high time for the Government to come and frankly say they do not want any political agitation in the country. If they do care for the progress of the country, it is absolutely necessary, that so long as there is a foreign Government, so long as there is discontent in the country, that there should be a proper opening for the people to express their views, and they can only express their views in such a way as may not gladden the hearts of the Magistrates, but to point out the defects in the administration, which annoys the Magistrate when stating the matter plainly, but all the same they are acting constitutionally. And when I say constitutionally, though I am aware that there are certain sections which may act unconstitutionally, and that is the reason why the last clause was added. When it is lawful, why should this section be utilised for the purpose of stifling constitutional agitation? I do not wish to take up much time at this hour, but I think it would be well that Magistrates should not use this section for this purpose. Do you know, Sir, that all meetings, even the reception of Members, are prevented by the Magistrates? A Magistrate has been known to issue an order that men should not go to a particular meeting, and that they should not wear Gandhi caps, and that a meeting should not be held in a particular town. Is that at all necessary and is it advisable for the good administration of the country? Is it at all likely to bring contentment to the people? If the Government wish to secure the contentment of the people, I think it is high time that the Magistrates should be deprived of these weapons where they want to exercise against constitutional political agitation, and unless this is safeguarded, I think you may pass any law now and there will be a time when everything will be changed.

Mr. Deputy President: The amendment moved is :

"Add the following sub-clause (v): 'insert the following as sub-section (7), namely :

'(7) The words 'certain act' in this section does not include the making of political speeches or the doing of political propaganda work which would be otherwise lawful'."

The motion was negatived.

Mr. Deputy President: The question is that clause 26 stand part of the Bill.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Friday, the 26th January, 1923.

LEGISLATIVE ASSEMBLY.

Friday, 26th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.

Secretary of the Assembly: I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Rao Bahadur T. Rangachariar then took the Chair.

QUESTIONS AND ANSWERS.

RETENTION OF MINISTERIAL OFFICERS AFTER 55.

262. ***Dr. Nand Lal:** (a) Is it a fact that the rule regarding the retention of ministerial officers in service after the age of 55 years has been liberalised since 1918, and that such officers should now ordinarily be retained in service so long as they remain efficient until they attain the age of 60 years, and even after that age in very special circumstances?

(b) Is it a fact that the retention of ministerial officers in service after the age of 55 years is now the rule rather than an exception as it used to be formerly?

The Honourable Sir Basil Blackett: The reply to second part of the question is in affirmative.

RETIREMENT OF MINISTERIAL OFFICERS IN MILITARY ACCOUNTS DEPARTMENT.

263. ***Dr. Nand Lal:** (a) Is it a fact that in accordance with the rule in Civil Service Regulations, as it stood prior to its revision in 1918, when the grant of extension to ministerial officers after the age of 55 years was treated as an exception scores of officers of the Military Accounts Department were granted such retention, in some cases up to the age of 64 years?

(b) Is it not a fact that in 1921, certain officers in the Military Accounts Department were refused extension of service after the age of 55 years, although they were reported efficient and recommended for retention by the Heads of their offices, the reason for refusal being that "Government are averse to the retention of officers and men after they attain the age of superannuation as this retards the promotion of juniors"?

(c) If the reply to part (b) be in the affirmative, is it a fact that certain other officers at Simla in the same Department and similarly situated as those to whom extension was refused, were granted extension of service at about the same time?

The Honourable Sir Basil Blackett: (a) During the war all retirements, except on medical grounds or on grounds of inefficiency, were suspended in the Military Accounts Department and several officers had to be retained in the Department and granted extensions of service after they had attained the age of 55 years. These extensions were necessary in the exigencies of the public service.

(b) In 1921 certain subordinate officers in the Military Accounts Department were refused extension of service after they had attained the age of 55 years. Under the revised scheme of organisation, which was being gradually introduced in 1921 and which is now in force, officers holding the appointments of Deputy Assistant Controllers are not purely ministerial officers, as they are in independent charge of branches of the office and are also extensively employed on local audit. The reason for restricting extensions of service in the case of officers of this class was that under the re-organisation scheme the number of officers of the superior service in the Military Accounts Department was reduced in spite of a growth in the volume of work, and it was necessary therefore that subordinate officers should possess sufficient energy to discharge efficiently their new responsibilities.

(c) Extensions have been given to subordinate officers in the Military Accounts Department in cases where it was found absolutely necessary to retain their services in the interests of the State.

LOSSES INCURRED BY M. A. DEPARTMENT OFFICERS ON RETIREMENT.

264. ***Dr. Nand Lal:** Is the Government of India aware that the Officers in the senior grade of the Subordinate Accounts Service of the Military Accounts Department who were working as temporary Deputy Examiners and who have been refused extension of service have suffered the following losses in consequence of the refusal of extension to them :

- (a) Immediate loss of between Rs. 450 and 500 per month or between Rs. 5,400 and 6,000 per annum in income, as also of future increments of pay.
- (b) Heavy loss of pay and pension due to loss of promotion to the grade of permanent Deputy Examiner (now Deputy Assistant Controller of Military Accounts)?

The Honourable Sir Basil Blackett: The refusal to grant an extension of service to an officer involves his being placed on the retired list and his income is necessarily reduced as compared to what he would have continued to draw had he remained on the effective list; but the reduction of his income is no reason for his retention in the service when such a course is opposed to the interests of the State.

DIFFERENTIAL TREATMENT ACCORDED TO RETIRING OFFICERS.

265. ***Dr. Nand Lal:** (a) Is the Government of India aware that the temporary Deputy Examiners in the Military Accounts Department who have been refused extension of service have received pension amounting to about Rs. 240 per mensem, but a large number of Accountants whose pensions, with reference to their permanent pay on 1st April, 1920, would have come to between Rs. 60 and 100 per mensem and who were far junior to the former and have been promoted to Rs. 500 per mensem with effect from that date will be entitled to a pension of Rs. 250 per mensem on completion of 3 years service on this pay?

(b) Is it a fact that some of the temporary Deputy Examiners of the Military Accounts Department, who on account of their superannuation were granted leave preparatory to retirement, were subsequently allowed to resume duty, granted extension of service and made permanent Deputy Examiners, thus allowing them the benefit of higher pay and pension and

the advantage of full average salary, whereas representations, even to His Excellency the Viceroy and Governor General of India, of other officers, similarly situated, for extension of service, were rejected?

(c) If the reply to question (b) be in the affirmative, will the Government of India be pleased to state the cause of differential treatment accorded to quite similarly situated officers of one and the same Department?

The Honourable Sir Basil Blackett: (a) Yes.

(b) Yes.

(c) In the few special cases officers have been retained in service after they had attained the age of 55 years in the interests of the public service.

PENSIONS CALCULATED ON INCREASE DUE TO DEARNESS OF LIVING.

266. ***Dr. Nand Lal:** (a) Is it a fact that increase of pay of clerical and Subordinate Accounts Service of the Military Accounts Department, sanctioned with effect from 1st April, 1920, was on account of dearness of food-stuffs and other necessities of life and is it also a fact that this increase equally occasioned proportional increase in their pensions?

(b) If the reply to question (a) be in the affirmative, will the Government be pleased to state whether any increase was sanctioned for the holders of the appointment of permanent Superintendents who were equally affected as others in regard to pay and pension? If not, was there any special reason for this, beyond the abolition of the appointment, and was it taken into consideration that they would be worse off as regards pension, as compared with their juniors?

The Honourable Sir Basil Blackett: (a) The reply is in the affirmative.

(b) It was not considered necessary to raise the maximum pay of accountants in which category Superintendents in the Military Accounts Department were included.

PAY AND PENSION OF RETIRED OFFICERS IN M. A. DEPARTMENT.

267. ***Dr. Nand Lal:** Will the Government of India be pleased to place on the table a statement showing the following particulars in regard to the establishment of permanent accountants and Deputy Examiners (now Deputy Assistant Controller, Military Accounts) in all India, including those who have been made to retire from service since 1921:

(a) Their names.

(b) Rates of permanent pay they were in receipt of immediately prior to commencement of War in 1914.

(c) Rates of permanent pay, their promotion, if any, between August, 1914, and 1st April, 1920.

(d) Rates of their permanent pay fixed on 1st April, 1920, owing to revision of pay.

(e) Approximate rates of pension they would have been entitled to if they had retired on 31st March, 1920.

(f) Approximate rates of pension they would draw if they retire on 1st April, 1923?

The Honourable Sir Basil Blackett: The statement required by the Honourable Member will necessitate special compilation involving labour which would not be justified in the public interest.

EXPENDITURE ON WAZIRISTAN OPERATIONS.

268. ***Mr. P. L. Misra:** Will Government be pleased to lay on the table the following information:

- (a) Expenditure incurred during the last three years (year by year) on the Waziristan operations;
- (b) Loss of life as regards—
 - (1) British officers and soldiers,
 - (2) Indian officers and soldiers?

Mr. E. Burdon: (a) Prior to the year 1920-21, expenditure on the Military occupation of Waziristan was not distinguished in the accounts from expenditure on North-West Frontier operations generally. In 1920-21, the expenditure on Waziristan, including the Wana Column, amounted to approximately Rs. 14,40,00,000 and in 1921-22 to approximately Rs. 6,98,00,000.

(b) The information desired by the Honourable Member is being compiled and when it is ready I will communicate it to the Honourable Member.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): May I ask a Supplementary Question, Sir? Is it not a fact that His Excellency the Viceroy, Sir William Vincent and Mian Sir Muhammad Shafi went to the North-West Frontier Province after we had dispersed when the September Session was over in Simla to review the situation?

Mr. E. Burdon (Army Secretary): The answer is in the negative.

OFFICE ORDER BY MR. DEWAR, A. G., PUNJAB, *re* ABSENCES FROM OFFICE.

269. ***Mr. P. L. Misra:** (a) Is it a fact that Mr. D. Dewar, Accountant General, Punjab, has signed an office order in which it is stated that he is

“Tired of having his hands forced by men who have sick wives and who cannot work just when they are wanted.”

“In future when employing new men we will take only those who sign a declaration requiring that in the event of their wives being ill it will not be an absolute necessity for them to absent themselves as they are able to make satisfactory arrangements for their being looked after while they are at office.”

“No one who is unconfirmed is to be confirmed unless he signs this declaration.”

(b) Will Government be pleased to state if such order is warranted by any sanctioned authority?

(c) If not, do Government propose to have this order rescinded?

The Honourable Sir Basil Blackett: I understand that the facts are as stated in the first part of the question. Accountants General are entitled to use their discretion in the matter of the recruitment of their offices, but there are objections to laying down hard and fast rules of the kind in

question and the Auditor General is communicating with the Accountant General, Punjab, with a view to the reconsideration of the terms of the order.

Mr. N. M. Joshi: A supplementary question, Sir. Did Government enquire from this officer whether he himself will sign the declaration which he wants the other people to sign?

The Honourable Sir Basil Blackett: I trust the officer will do his duty in all circumstances.

Mr. S. O. Shahani: May I ask a supplementary question, Sir? Will Government be pleased to state if there are any European or Eurasian employes in the office of the Accountant General, Punjab?

The Honourable Sir Basil Blackett: I did not catch that question.

Mr. S. O. Shahani: Will Government be pleased to say if there are any European or Eurasian employes in the office of the Accountant General, Punjab?

The Honourable Sir Basil Blackett: That does not arise out of this question and obviously I shall require notice.

ABOLITION OF DIVISIONAL COMMISSIONERSHIPS.

270. ***Mr. P. L. Misra:** (a) Will Government be pleased to state if they have received any opinions from Local Governments on my resolution moved at the Delhi Session last year regarding the abolition of Divisional Commissionerships?

(b) If so, will Government be pleased to lay the same on the table?

The Honourable Sir Malcolm Hailey: (a) Opinions from all local Governments have not yet been received.

(b) Government do not propose at present to lay the correspondence on the table.

Mr. K. Ahmed: One supplementary question, Sir. Are the Government aware that the Retrenchment Committee in Bengal have abolished these appointments?

The Honourable Sir Malcolm Hailey: The Honourable Member has guessed right.

Mr. R. A. Spence: May I ask a supplementary question, Sir? Can Government give any information as to the loss of money caused by the waste of time of this House by the supplementary questions asked by my Honourable friend.

Mr. Deputy President: Order, order.

PERIOD FOR DISCUSSION OF BUDGET.

271. ***Mr. P. L. Misra:** Do the Government propose to allot full 15 days this year for the discussion of the budget in view of the fact that:

(a) The time allotted hitherto was inadequate to discuss the demands; and

(b) The shortness of the time also caused undue strain and inconvenience to the Members?

The Honourable Sir Basil Blackett: I may point out to the Honourable Member that it is the Governor General and not the Government who in the exercise of the powers conferred by rule 47 of the Indian Legislative Rules allots days for the discussion of demands for grants. The Government is not in a position to make any statement on the matter at present.

Mr. N. M. Joshi: May I ask a supplementary question, Sir? Will Government be pleased to approach the Governor General and inform him on behalf of this Assembly that the Members want more days for the discussion of the Budget?

The Honourable Sir Basil Blackett: The matter will be duly considered at the right time.

Mr. Harchandrai Vishindas: Has the Governor General determined the interval that should elapse between the presentation of the Financial Statement by the Honourable the Finance Member and the time to begin the discussion on the Budget?

Mr. Deputy President: Order, order. May I ask the Honourable Member to address the Chair?

Mr. Harchandrai Vishindas: I apologise, Sir.

May I ask a supplementary question? Is Government prepared to state what interval will be allowed by the Governor General in Council, under the rules between the presentation of the Financial Statement and the discussion on it by the Assembly?

The Honourable Sir Basil Blackett: I understand the actual dates have not yet been considered.

Mr. Harchandrai Vishindas: May I ask another question as to when those dates will be considered and information conveyed to the Assembly?

The Honourable Sir Basil Blackett: At the earliest convenient opportunity.

RENTS IN RAISINA.

272. ***Mr. W. M. Hussanally:** (a) Are there any rules for fixing rents on houses in Raisina? If not, what are the determining factors for fixing such rents?

(b) Is the value of land on which such houses stand and the compounds thereof taken into account?

(c) Is the total cost of the buildings, the fittings and the furniture taken into account in fixing such rents?

(d) What percentage is charged as interest upon total investment?

Colonel Sir Sydney Crookshank: (a) There are no rules special to Raisina. Rents are assessed in accordance with the principles enunciated in the Fundamental Rules, which govern the assessment of rents throughout India.

(b) Yes.

(c) Yes, but the hiring of furniture is optional and rent for it is quite separate from the rent of the building.

(d) The percentage charged on account of interest is $8\frac{1}{2}$ per cent. in the case of buildings occupied for the first time prior to 19th June 1922, and 6 per cent. in the case of buildings occupied after that date.

The pooled percentages are as follows:—

I. Officers' quarters.

$4\frac{1}{2}$ per cent. (round) in the case of buildings and electric installation.

$4\frac{1}{2}$ per cent. (round) in the case of special services.

$3\frac{1}{2}$ per cent. in the case of furniture.

II. Quarters for ministerial establishment.

$4\frac{1}{2}$ per cent. (round) in the case of buildings.

4 per cent. (round) in the case of electric installation and special services.

$3\frac{1}{2}$ per cent. in the case of furniture.

In this connection I would refer the Honourable Member to the reply given by me to a question by Munshi Iswar Saran, M.L.A., at a meeting of this Assembly on the 25th instant.

MUNICIPAL COMMITTEE IN RAISINA.

273. ***Mr. W. M. Hussanally:** (a) Is there any Municipal Committee in Raisina? If so, what are the sources of its revenue?

(b) What are its functions?

(c) How are its members chosen?

The Honourable Mr. A. O. Chatterjee: (a) Yes. Apart from a small income from miscellaneous fees and fines, the revenues of the Imperial Delhi Municipal Committee are chiefly derived from grants-in-aid made by the Chief Commissioner.

(b) The Committee performs the usual functions assigned to Municipalities by the Punjab Municipal Act. Owing to the paucity of its resources these are at present confined to education, sanitation, vaccination and the maintenance of cattle-pounds.

(c) The four members of the Committee are officials nominated by the Chief Commissioner.

ROADS, LIGHTING, ETC., IN RAISINA.

274. ***Mr. W. M. Hussanally:** (a) What is the total annual cost of (i) Estate office, (ii) maintenance of roads, lighting and drainage and other services in Raisina?

(b) Do tenants contribute towards the upkeep of the same?

Colonel Sir Sydney Brookshank: (a) The information is being collected and will be furnished as soon as possible.

(b) No, except through general taxation.

RENT OF HOSTELS IN RAISINA.

275. ***Mr. W. M. Hussanally:** (a) Have the rents of the rooms in the two Hostels for Members and the quarters at Windsor Place been recently

enhanced? If so, what were the reasons or circumstances justifying the enhancement?

(b) Have the rents of other houses been similarly revised? If not, why not?

Colonel Sir Sydney Crookshank: (a) A readjustment of the rents of the quarters for Members of the Indian Legislature was originally undertaken in compliance with the recommendations of an informal meeting of the House Committee, held on the 19th March, 1922, as a result of a few individual complaints which had been received by Government in the matter. In this connection the Honourable Member is referred to the reply given by me to a question by Mr. Beohar Raghurib Sinha, M.L.A., at a meeting of this Assembly on the 13th February, 1922. These rents had not been assessed in accordance with the principles enunciated in the Fundamental Rules, and a further revision was undertaken in common with a revision of the rents of all other accommodation in Raisina and Old Delhi. As a result there has been a general enhancement of rents.

(b) Yes, the rents of all other houses and quarters have been revised in accordance with the principles for assessment of rents laid down in the Fundamental Rules.

ALLOTMENT OF QUARTERS TO MEMBERS OF LEGISLATURE.

276. ***Mr. W. M. Hussanally:** (a) Is it a fact that allotment of rooms and quarters to Members of the Assembly for the current session, were made by ballot?

(b) Is it a fact that no such ballot was held for Members of the Council of State, but that they were given a preference? If so, for what reasons?

Sir Henry Moncrieff Smith: (a) The attention of the Honourable Member is invited to the second paragraph of Legislative Department Circular No. LXXXIV, dated the 18th December, 1922, issued to all Members from which it will be seen that the quarters at Windsor Place only were allotted to Members of the Legislative Assembly for the current session by ballot, the reason being that the number of applicants for these quarters far exceeded the number of quarters available.

(b) The Honourable Member will also see from the Circular referred to that Members of the Council of State were not allotted quarters by ballot but that those Members of the Council of State who had applied for quarters at Windsor Place and who could not be accommodated at Metcalfe House were allotted quarters there. The reason for this was that, whereas there was, after allowance had been made for those Members who as a matter of practice make their own arrangements, ample accommodation for Members of the Legislative Assembly, the accommodation in Metcalfe House for Members of the Council of State is inadequate.

OCCUPATION OF ROOMS IN HOSTELS.

277. ***Mr. W. M. Hussanally:** (a) Is it a fact that rooms in the two hostels are not much in demand by Members either of the Council of State or the Assembly?

(b) How many rooms are there in each of the two hostels; and how many in each have been occupied by Members for the current session?

(c) How many allotments have had to be cancelled in consequence of the Members declining the offer?

Sir Henry Moncrieff Smith: (a) It is a fact that some of the quarters in the two hostels are vacant each Session.

(b) There are 55 quarters in the Western Hostel and 44 quarters in the Eastern Hostel. So far 18 quarters in the Western Hostel and 25 quarters in the Eastern Hostel have been allotted to Members but as Members are still arriving in Delhi it is not possible to say how many quarters will eventually be occupied.

(c) Ten allotments of quarters made for the present Session have been cancelled, but in only three cases was the allotment cancelled because the Member concerned stated that the accommodation offered was not suitable for his requirements.

TREATMENT BY CANTONMENT MAGISTRATE, AMBALA, OF A PLEADER.

278. ***Mr. W. M. Hussanally:** (a) Has the attention of Government been drawn to an article in the *Cantonment Advocate* detailing the circumstances under which the Cantonment Magistrate at Ambala drove away a pleader from his Court? Are the facts given in that periodical correctly stated? If not, what are the correct facts?

(b) Is it a fact that the pleader in question has applied to the Punjab Government for sanction to take legal proceedings?

(c) Do the Government propose to take any action in the matter?

Mr. E. Burdon: (a) to (c) The Government of India have seen the article in question but have made no inquiry whether the facts have been correctly stated. The matter would be one which concerns primarily the Punjab Government to whom, as it appears from the Honourable Member's question, the complainant has already made application.

ALLEGATIONS OF CORRUPTION AGAINST CANTONMENT SUBORDINATES, AMBALA.

279. ***Mr. W. M. Hussanally:** (a) Is it a fact that the Government appointed only one Military officer to conduct the enquiry into allegations of corruption against some Cantonment subordinates at Ambala in the first instance; and subsequently on the representation of the Cantonment Association, Government agreed to appoint a second member if the Cantonment Committee agreed to pay his expenses?

(b) If so, is it a fact that the said Committee declined to bear the charge? If they did decline, for what reasons?

(c) Did the Association offer to bear the expenses? If so, did the Government accept the offer? If not, will Government be pleased to state its reasons?

(d) Is it a fact that in the event no second member was appointed?

(e) Is it a fact that the Association applied to the Punjab Government to grant a general pardon to all witnesses who appeared before the Committee of inquiry and gave evidence against the alleged delinquents?

(f) Is it a fact that the Punjab Government declined the prayer?

(g) Is it a fact that the proposed enquiry proved abortive in consequence?

(h) Do Government propose now to hold a departmental enquiry into the matter? If not, what do they propose to do?

Mr. E. Burdon: The facts are as follows :

(a) The Government of India appointed a senior officer of the Cantonment Magistrates' Department to inquire into the allegations in question. The local military authorities later suggested the appointment of a lawyer to assist the investigating officer in his enquiry.

(b) The Cantonment Committee declined to bear the expenses connected with the appointment of this lawyer. They considered that the expenses of the proposed enquiry should not be paid from the Cantonment Fund.

(c) So far as the Government of India are aware, the All-India Cantonments Association did not offer to bear the expenses in question. The Government of India themselves were prepared to accept the liability but in the end the investigating officer found that he did not require a special legal adviser.

(d) Yes.

(e) On the representation of the Association, such an application was made to the Punjab Government.

(f) The Punjab Government declined to grant immunity from prosecution except to witnesses in regard to whom there was good reason for believing that the bribes said to have been given by them, if given, were extorted by pressure.

(g) The enquiry failed to produce any immediate result as no one was prepared to give evidence in support of the charges of corruption.

(h) The matter is at present under consideration.

AUDIT OFFICERS IN RAILWAY SECRETARIAT.

280. ***Rai Bahadur G. C. Nag:** Is it a fact that there are at present no less than three officers of the Indian Audit Department on deputation in the Railway Secretariat and that one of them has been on deputation for over 18 years; if so, (a) what is the period of deputation fixed for each, (b) for what specific work has each been so deputed and (c) what deputation or other allowances each is paid in addition to his pay?

Mr. C. D. M. Hindley: The facts are as stated by the Honourable Member. There is no fixed period for these deputations. The three officers in question are employed as Secretary, Joint Secretary and Assistant Secretary in the Railway Board's Office and receive, in the case of the first two, the pay sanctioned for the posts and, in the case of the latter, the usual duty allowance of Rs. 250 per mensem given to all Assistant Secretaries drawing departmental rates of pay.

CATERING ARRANGEMENTS OF WESTERN HOSTEL, RAISINA.

281. ***Rai Bahadur G. C. Nag:** (a) Will the Government be pleased to state the terms on which the catering arrangements for the Western Hostel, Raisina, were made with the caterers for the years 1921 and 1922?

(b) Were they paid any compensation or contribution by Government to meet alleged losses in those years?

(c) Who were the caterers in those years and which department of Government made arrangements with them?

(d) What are the terms agreed upon for the current year and which Department of Government has made the arrangements?

Sir Henry Moncrieff Smith: (a) Copies of the agreements entered into with the caterers in 1921 and 1922 are placed on the table.

(b) In 1921 the caterers were paid a sum of Rs. 5,000 in full settlement of their claim for compensation for loss in catering for Members. No compensation was paid by Government to the caterers in 1922.

(c) Messrs. Bestoso and Alasia, Kashmir Gate, Delhi, were the caterers in 1921. Arrangements were made with them by the local Public Works Department. Messrs. Hoosain Buksh and Co., of the Elysium Hotel, Delhi, were the caterers in 1922. Arrangements were made with them by the Legislative Department of the Government of India after consulting the House Committee.

(d) A copy of the agreement entered into with the caterer by the Legislative Department of the Government of India for the current year is placed on the table.

AGREEMENT made the 6th day of January 1921 BETWEEN THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called the Government) of the one part and Mr. NICOLA AZZOLLINI, Manager of Bestoso and Alasia, Kashmere Gate, Delhi (hereinafter called the caterers) of the other part.

WHEREAS the Government have appointed the said Mr. Nicola Azzollini, Manager of Bestoso and Alasia, Kashmere Gate, Delhi, to act as caterers at the Western Hostel and Chummeries for officers in New Delhi and whereas the caterers have accepted and are willing to act as such.

NOW IT IS HEREBY AGREED between the parties hereto as follows:—

(1) That in every part of this instrument the terms "The Secretary of State for India in Council" and the "Government" shall be deemed to include the Secretary of State for India in Council, his successors and assigns and the term "the Government" shall be deemed to include also every person duly authorized by the Chief Commissioner of Delhi to act for or to represent the Secretary of State for India in Council in relation to any matter or thing contained in or arising out of this contract.

(2) That the caterers will not unless with the consent of the Government obtained beforehand, in writing, make any sub-contract for the execution of the works hereby contracted for, or any part thereof nor unless with such consent as aforesaid, assign or underlet this present contract.

(3) That this contract shall remain in force for the season 1920-21.

(4) That the caterers shall supply meals to the residents of the Hostel and Chummeries during the period of the Legislative Session at Delhi.

(5) That the caterers shall supply meals on a standard not inferior to the specimen menus given in Schedule A at Rs. 5-8-0 per head per diem as described in Schedule B. The said schedules are annexed hereto and are signed by the parties to this contract the said schedule forming part of the conditions of this contract.

Provided that wines, spirits and mineral waters will be supplied at prices to be determined by the Chief Commissioner of Delhi whose decision shall be final between the parties to this contract.

(6) (a) That the catering service and table equipment shall be in all respects up to the standard of a first class hotel and that the caterers shall maintain a staff of table servants in the proportion of not less than one servant to four residents.

(6) (b) The caterers will either look after the arrangements personally (one of the principals) or will be represented by an European resident manager approved by the Estate Officer, Delhi.

(7) That the caterers will provide fires, free of cost in the public rooms and will arrange to provide bath water and fuel at the rates entered in the Schedule B aforesaid.

(8) (a) That the Government will provide the caterers with free accommodation but that the caterers shall pay hire for any furniture placed therein for the use of the said caterers at the same rates as Government officers pay for hire of the furniture provided to them by the Government, and the amount due on account of such hire shall be payable at the end of the month for which it is due. Government is however under no obligation to provide furniture should there be none to spare.

(8) (b) The caterers will be responsible for the Government furniture in the Dining rooms and service rooms and for keeping these rooms clean and orderly.

(9) That in the event of any dispute arising between the Government and the caterers as to the fulfilment of all or any of the conditions of this contract or as to any matter or thing anywise connected therewith, the said dispute shall be referred for the decision of the Chief Commissioner of Delhi whose decision shall be final and conclusive between the parties to this contract.

(10) That should caterers commit breach of any of the above conditions, the Government will be at liberty to cancel this contract forthwith without payment of any compensation whatsoever. Provided also that the caterers shall be liable to pay to the Government damages for inconvenience caused to the Government on account of the change of the caterers.

IN WITNESS WHEREOF the said parties have hereunto subscribed their names at Delhi on the dates hereinafter mentioned respectively.

Signed for and on behalf of the
Secretary of State for India in
Council by
on the day of 1921. }

(Sd.) A. M. ROUSE,
Superintending Engineer,
2nd Circle.

Signed by the said
on the day of 1921. }

(Sd.) NICOLA AZZOLLINI,
Bestoso and Alasia.

(1) (Sd.) A. H. FAWKES.

(2) (Sd.) F. D. INNIS.

Witnesses.

SCHEDULE A.

Chota Huzri.

Tea and coffee.

Fruit. Toast and butter.

Breakfast.

Porridge or similar dish.

Currey or dal and rice.

Fish.

Tea, coffee, or cocoa.

One grill.

Preserves.

One dish of eggs.

Fruit.

Lunch.

Soup.

Salad.

One hot dish.

Pudding.

One cold dish.

Cheese and biscuits.

Coffee.

Tea.

Tea.

One plateful of bread and butter and cake.

Dinner.

Soup.

Pudding.

Fish.

Savoury.

Entre.

Dessert.

Joint with vegetables.

Coffee.

Ices on occasion, twice weekly.

(Sd.) NICOLA AZZOLLINI,
Bestoso and Alasia.

(Sd.) A. M. ROUSE,
Superintending Engineer,
2nd Circle.

SCHEDULE B.

1. Daily rate Rs. 5-8-0 per head.

This covers the ordinary meals, special teas or special dishes at dinner will be the subject of special arrangements.

2. If meals, (i.e., breakfast, lunch or dinner) are served in rooms, there will be an extra charge of 4 annas a meal except in the case of illness when no charge will be made, in which case the residents must send their own servants for the meals.

Meals if taken to rooms will only be served half an hour before or after the times fixed for regular meals.

3. Hot water—Two annas a four gallon tin. Fuel (coal or wood) at market rates.

4. The caterers will issue to residents such glass, crockery, cutlery, etc., as may be required in their rooms and the residents will be required to give a receipt for the same, which will be returned when the equipment is returned to the caterers.

5. Hours of meals are as follows :

Breakfast	...	...	...	8-30	to	9-30	A.M.
Lunch	...	...	...	1-30	to	2-30	P.M.
Dinner	...	...	...	8	to	9	P.M.

(Sd.) NICOLA AZZOLLINI,

Bestoso and Alasia.

(Sd.) A. M. ROUSE,

Superintending Engineer, 2nd Circle.

26th January 1921.

AGREEMENT made the nineteenth day of December, 1921, BETWEEN THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called the Government) of the one part and HOOSAIN BUKSH trading as and proprietor of the firm of Messrs. Hoosain Buksh and Company of the Elysium Hotel, 2 Underhill Road, Delhi, Hotel Proprietors, Caterers and general merchants (hereinafter called the caterers which expression shall where the context so admits includes his personal representatives and permitted assigns) of the other part.

WHEREAS the Government have appointed the Caterers to act as caterers at the Western Hostel for officers in New Delhi, on the terms and conditions hereinafter mentioned and the Caterers have accepted and are willing to act as such.

NOW IT IS HEREBY AGREED between the parties hereto as follows :

(1) That in every part of this instrument the terms "The Secretary of State for India in Council" and the "Government" shall be deemed to include the Secretary of State for India in Council, his successors and assigns and the term "the Government" shall be deemed to include also every person duly authorised by the Secretary to the Government of India in the Legislative Department to act for or to represent the Secretary of State for India in Council in relation to any matter or thing contained in or arising out of this contract.

(2) That the caterers will not unless with the consent of the Government obtained beforehand, in writing, make any sub-contract for the execution of the works hereby contracted for, or any part thereof nor unless with such consent as aforesaid, assign or underlet this present contract.

(3) That this contract shall remain in force from 7 days before the opening of the Winter Session of the Indian Legislature till 7 days after the closing thereof both days inclusive unless previously terminated as hereinafter provided (hereinafter called the said period).

(4) That the caterers shall during the said period supply messing and all necessary attendance kitchen table requirements, etc., of any kind for the residents of and authorised visitors to the Hostel who shall require messing at the scale and charges hereinafter mentioned.

(5) That the caterers shall supply meals on a standard not inferior to or less than the specimen menus given in Schedule A at the charges given in Schedule B. (The

said schedules are annexed hereto and are signed by the parties to this contract the said schedules forming part of the conditions of this contract) PROVIDED that wines, spirits and mineral waters will be supplied in sufficient quantity and of the best quality at prices to be determined by the Government of India in the Legislative Department whose decision shall be final between the parties to this contract.

(6) (a) All food and drink to be obtained from reliable sources and that the catering service and table equipment shall be in all respects up to the standard of a first class hotel to the satisfaction of Government and that the caterers shall maintain a staff of table servants in the proportion of not less than one servant to four residents dismissing any if so required by Government and seeing that they are properly and cleanly clad.

(6) (b) The caterers will either look after the arrangements personally or will be represented by an European resident manager approved by the Government of India in the Legislative Department.

(7) That the caterers will provide fires, free of cost in the Public rooms and will arrange to provide hot bath water as in Schedule B and fuel at the local market rates.

(8) (a) That the Government will provide the caterers' manager with free accommodation but that the caterers shall pay hire for any furniture placed therein for the use of the said caterers at the same rates as Government Officers pay for hire of the furniture provided to them by the Government, and the amount due on account of such hire shall be payable at the end of the month for which it is due. Government is, however, under no obligation to provide furniture should there be none to spare.

(8) (b) The caterers will be responsible for the Government furniture, etc., in the dining rooms and service rooms and for keeping these rooms clean and orderly.

(8) (c) Government give no guarantee as to the number that will require messing and take no responsibility for the accounts of those requiring messing nor for any stores, etc., the caterers may bring on the premises.

(9) That in the event of any dispute arising between the Government and the caterers as to the fulfilment of all or any of the conditions of this contract or as to any matter or thing in anywise connected therewith the said dispute shall be referred for the decision of the Secretary, Legislative Department, Government of India, whose decision shall be final and conclusive.

(10) That should caterers commit any breach or fail to observe any condition of this contract Government shall be at liberty to forthwith cancel the contract and make other arrangements at the expense and risk of the caterers without prejudice to recovery of any other damages they may suffer.

SCHEDULE A.

Chota Hazri.

Tea and coffee.

Toast and butter.

Fruit. (Including apples if specially asked for by any resident).

Breakfast.

Porridge or similar dish (with cream).

Fish (Sea fish at least twice a week if obtainable).

One grill.

One dish of eggs and bacon.

Curry or dal and rice.

Tea, coffee or cocoa.

Preserves (English).

Fruit.

Lunch.

Soup.

One hot dish.

One cold dish (chicken, ham and tongue on Wednesday and Saturday).

Salad.

Pudding (with cream and sauce alternately).

Cheese and biscuits.

Coffee.

Tea.

Tea

One plateful of bread and butter or toast and cake.

*Dinner.**

Soup.

Fish (Sea fish twice a week if obtainable).

Entree.

Joint with vegetables.

Pudding (with cream and sauce alternately).

Savoury (Asparagus twice a week).

Dessert.

Sweets.

Coffee.

Ices twice weekly.

Condiments, fresh drinking water, toast and small fresh rolls to be available at every meal.

THE SCHEDULE ABOVE REFERRED TO.

1. Daily rate Rs. 6 per head or a married couple Rs. 11 provided that any one who resides at the hostel for at least one month the charge shall be at the rate of Rs. 5.4 a day or in the case of married couple Rs. 10. This covers the ordinary meals that are specified in Schedule A. Special teas or dishes at dinner will be subject to special arrangements between the person ordering the same and caterers.

	Rs.	A.
Children under one year	...	Nil.
.. between one and three	...	1 8
.. between three and six	...	2 0
.. between six and twelve	...	3 8
.. over twelve	...	5 0
European servant	...	4 8
Non-resident guests—		
Breakfast	...	1 8
Lunch	...	2 0
Tea (without cake)	...	0 8
Tea with cake	...	0 12
Dinner	...	3 8

If meals (*i.e.*, breakfast, lunch or dinner) are served in rooms, there will be an extra charge of 4 annas a meal except in the case of illness when no charge will be made, in which case the residents must send their own servants for the meals.

Meals if taken to rooms will only be served half an hour before or after the times fixed for regular meals.

3. Hot water—Two annas a four gallon tin. Fuel (coal or wood) at market rates.

4. The caterers will issue to residents such glass, crockery, cutlery, etc., as may be required in their rooms and the residents will be required to give a receipt for the same, which will be returned when the equipment is returned to the caterers.

5. Hours of meals are as follows :

• Breakfast	...	...	...	...	8-30 to 9-30	A.M.
Lunch	...	...	...	...	1-30 to 2-30	P.M.
Dinner	...	...	...	...	8-0 to 9-0	P.M.

IN WITNESS WHEREOF the parties have hereunto set their hands the day and year first before written.

(Sd.) HOOSAIN BUKSH & CO.

Signature of the said Hoosain Buksh

(Sd.) N. AZZOLLINI,

Witness to signature of Hoosain Buksh,

Manager, Elysium Hotel.

Signed by the Secretary, Legislative Department, Government of India for and on behalf of the Secretary of State for India in Council in the presence of

(Sd.) H. MONCRIEFF SMITH.

(Sd.) W. T. M. WRIGHT,
Legislative Department.

AGREEMENT made the twenty-third day of December one thousand nine hundred and twenty-two BETWEEN THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called the Government) of the one part and BENJAMIN PAUL of Nowshera, (hereinafter called the caterer which expression shall where the context so admits include his personal representatives and permitted assigns) of the other part.

WHEREAS the Government have appointed the Caterer to act as caterer at the Western Hostel for officers in New Delhi on the terms and conditions hereinafter mentioned and the Caterer has accepted and is willing to act as such.

NOW IT IS HEREBY AGREED between the parties hereto as follows :

(1) That in every part of this instrument the terms "The Secretary of State for India in Council" and the "Government" shall be deemed to include the Secretary of State for India in Council, his successors and assigns and the term "the Government" shall be deemed to include also every person duly authorised by the Secretary to the Government of India in the Legislative Department to act for or to represent the Secretary of State for India in Council in relation to any matter or thing contained in or arising out of this contract.

(2) That the caterer will not unless with the consent of the Government obtained beforehand, in writing, make any sub-contract for the execution of the works hereby contracted for, or any part thereof nor unless with such consent as aforesaid, assign or underlet this present contract.

(3) That this contract shall remain in force from seven days before the opening of the Winter Session of the Indian Legislature till seven days after the closing thereof both days inclusive unless previously terminated as hereinafter provided (hereinafter called the said period).

(4) That the caterer shall during the said period supply messing and all necessary attendance kitchen table requirements, etc., of any kind for the residents of and authorised visitors to the Hostel who shall require messing at the scale and charges hereinafter mentioned.

(5) That the caterer shall supply meals on a standard not inferior to or less than the specimen menus given in Schedule A at the charges given in Schedule B (the said Schedules are annexed hereto and are signed by the parties to this contract the said Schedules form part of the conditions of this contract) PROVIDED that wines, spirits and mineral waters will be supplied in sufficient quantity and of the best quality at prices to be determined by the Government of India in the Legislative Department whose decision shall be final between the parties to this contract.

(6) (a) All food and drink to be obtained from reliable sources and that the catering service and table equipment shall be in all respects up to the standard of a first class hotel to the satisfaction of Government and that the caterer shall maintain a staff of table servants in the proportion of not less than one servant to four residents dismissing any if so required by Government and seeing that they are properly and cleanly clad.

(6) (b) The caterer will either look after the arrangements personally and reside on the premises or will be represented by an European resident manager approved by the Government of India in the Legislative Department.

(7) That the caterer will provide fires, free of cost in the public rooms and will arrange to provide hot bath water as in Schedule B and fuel at the local market rates.

(8) (a) That the Government will provide the caterer or his manager as the case may be with free accommodation but that the caterer shall pay hire for any furniture placed therein for the use of the said caterer at the same rates as Government officers pay for hire of the furniture provided to them by the Government, and the amount due on account of such hire shall be payable at the end of the month for which it is due. Government is, however, under no obligation to provide furniture should there be none to spare.

(b) The caterer will be responsible for the Government furniture, etc., in the dining rooms and service rooms and for keeping these rooms clean and orderly.

(c) Government give no guarantee as to the number that will require messing and take no responsibility for the accounts of those requiring messing nor for any stores, etc., the caterer may bring on the premises.

(9) That in the event of any dispute arising between the Government and the caterer as to the fulfilment of all or any of the conditions of this contract or as to any matter or thing in anywise connected therewith the said dispute shall be referred for the decision of the Secretary, Legislative Department, Government of India, whose decision shall be final and conclusive.

(10) That should caterer commit any breach or fail to perform or observe any condition of this contract Government shall be at liberty to forthwith cancel the contract and make other arrangements at the expense and risk of the caterer without prejudice to recovery of any other damages they may suffer.

THE SCHEDULE 'A' ABOVE REFERRED TO.

Chota Huzar.

Tea and coffee.
Toast and butter.
Fruit (including apples if specially asked for by any resident).

Breakfast.

Porridge or similar dish (with cream).
Fish (Sea fish at least twice a week if obtainable).
One grill.
One dish of eggs and bacon.
Curry or dal and rice.
Tea, coffee or cocoa.
Preserves (English).
Fruit.

Lunch.

Soup.
One hot dish.
One cold dish (chicken, ham and tongue on Wednesday and Saturday).
Salad.
Pudding (with cream and sauce alternately).
Cheese and biscuits.
Coffee.

Tea.

Tea.
One plateful of bread and butter or toast and cake.

Dinner.

Soup.
Fish (Sea fish twice a week if obtainable).
Entre.
Joint with vegetables.
Pudding (with cream and sauce alternately).
Savoury (asparagus twice a week).
Dessert.
Sweets.
Coffee.
Ices twice weekly.

Condiment, fresh drinking water, toast and small fresh rolls to be available at every meal.

THE SCHEDULE 'B' ABOVE REFERRED TO.

1. Daily rate rupees six annas eight per head or a married couple rupees twelve. This covers the ordinary meals that are specified in Schedule A—special teas or dishes at dinner will be subject to special arrangements between the person ordering the same and caterer.

Children under one year	...	...	...	Nil.
„ between one and three	...	...	...	1 8
„ between three and six	...	...	...	2 0
„ between six and twelve	...	...	...	3 8
„ over twelve	...	...	...	5 0
European servant	...	...	...	4 8

Non-resident guests.

Breakfast	...	...	...	1 8
Lunch	...	...	...	2 0
Tea (without cake)	...	...	...	0 8
Tea with cake	...	...	...	0 12
Dinner	...	...	...	3 8

2. If meals (*i.e.*, breakfast, lunch or dinner) are served in rooms, there will be an extra charge of four annas a meal except in the case of illness when no charge will be made, in which case the residents must send their own servants for the meals.

Meals if taken to rooms will only be served half an hour before or after the times fixed for regular meals.

3. Hot water will be supplied by the caterer on demand at two annas a four gallon tin and fuel (coal or wood) at market rates.

4. The caterer will issue to residents such glass, crockery cutlery, etc., as may be required in their rooms and the residents will be required to give a receipt for the same, which will be returned when the equipment is returned to the caterer.

5. Hours of meals are as follows :

Breakfast	...	...	...	8-30 to 9-30 A.M.
Lunch	...	...	...	1-30 to 2-30 P.M.
Dinner	...	...	...	8-0 to 9-0 P.M.

IN WITNESS WHEREOF the Honourable Mr. H. Moncrieff Smith, C.I.E., I.C.S., Secretary to the Government of India in the Legislative Department on behalf of the Secretary of State for India in Council has set his hand and the said Benjamin Paul has hereunto subscribed his name at the day and year first before written.

SIGNED by the said Honourable Mr. H. Moncrieff Smith Secretary to the Government of India in the Legislative Department on behalf of the Secretary of State for India in Council in the presence of

(Sd.) H. MONCRIEFF SMITH.

B. M. P. COELLO,
Superintendent, Legislative Department Government of India.

SIGNED by the said Benjamin Paul }
caterer in the presence of }

(Sd.) B. PAUL, Caterer.

S. WEBB-JOHNSON,
Officiating Solicitor to the Government of India, Delhi.

UNSTARRED QUESTION AND ANSWER.

MESTON COMMITTEE'S REPORT.

111. Rai Bahadur G. C. Nag: Will Government be pleased to lay on the table a copy of the Meston Committee's report dated 2nd December 1908 and of the Government of India, Home Department Resolution No. 52-61 (Establishments), dated 21st January 1910?

The Honourable Sir Malcolm Hailey: The Report and the Resolution are not published documents, but I will give the Honourable Member copies.

MOTION FOR ADJOURNMENT.

Mr. Chairman: I have received notice of the following motion from the Honourable Munshi Iswar Saran:

"I beg to inform you that I desire to move the adjournment of the House, on Friday, the 26th of January next, for the purpose of discussing a definite matter of urgent public importance, namely, the situation created by the Despatch of the Secretary of State regarding the Resolution adopted by the Legislative Assembly in September 1921 regarding the re-examination and revision of the constitution at an earlier date than 1929."

Under Standing Order No. 21 at page 14 the matter must be a definite matter of urgent public importance. Having regard to the nature of the subject and the procrastination which has taken place already, I decide it is not a matter of urgent public importance and therefore I cannot allow Munshi Iswar Saran to make that motion.

There are two other motions received—one from the Honourable Dr. Gour and the other from the Honourable Mr. Seshagiri Ayyar. I wish to know from Dr. Gour whether he does not consider his motion covered by the Resolution of which I have given notice already.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I have adverted to the Resolution of which you gave notice and the *ipsum in verba* of which are now before me. The Resolution of which you gave notice, Sir, ran as follows:

"This Assembly recommends to the Governor General in Council that he may be pleased to move the Secretary of State for India to suspend the proposed appointment of a Royal Commission on the conditions and alleged grievances of the All-India Services and that the Government of India be pleased to undertake such inquiry with a view to meet legitimate grievances and limit outside recruitment, and, pending such inquiry and report, recruitment outside India to those Services be limited to the bare minimum proportion of the annual requirements."

This Resolution was tabled by you, Sir, before the appointment of a Royal Commission and it is for that reason that the Resolution is worded to the effect that the Government of India should suspend the proposed appointment of a Royal Commission. The announcement made by the Honourable the Home Member yesterday has settled, so far as this Resolution is concerned, its fate. It is no longer a proposal to appoint a Commission for that is a *fait accompli*, and my motion yesterday to the Chair, followed by a written request addressed to the Chair and to the Secretary, is to protest against not a proposal to appoint a Royal Commission but against the appointment made of a Royal Commission. I therefore submit that there is no Resolution before this House which blocks my motion for leave to grant me an adjournment. I therefore submit, Sir, that my motion is in order.

The Honourable Sir Malcolm Hailey (Home Member): May I say, Sir, on behalf of Government that we regard this as a matter entirely for your discretion and on which we do not wish to argue.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): May I say a word, Sir. If for any reason, having regard to the language used by my Honourable friend, Dr. Gour, his motion is considered as contravening Order 11, Rule 4, I submit, Sir, that, so far as my motion is concerned, that difficulty will not arise. The language of my letter to the Secretary is this:

"I have been asked by the Democratic Party to move the adjournment of the Assembly to-morrow to discuss the announcement made by the Honourable the Home Member on the subject of the appointment of a Royal Commission to inquire into the financial and other conditions of the higher services in India"

It is as regards the announcement made yesterday that I have given notice of this motion. The Resolution, Sir, to which you referred contemplated the possibility of the appointment of a Commission. Here, a Commission has apparently been resolved upon, and it is only the names that have to be filled in. It is that announcement that I want to discuss. Under these circumstances, my motion cannot be affected by the Resolution of which you as a Member of this House, had given notice previously.

Dr. H. S. Gour: May I, Sir, just point out that my learned friend's motion protests against the announcement. My motion protests against the appointment, and I therefore submit that my motion is not only strictly in order but is in full conformity with constitutional practice, and there is absolutely nothing in the language of my notice which contravenes either the letter or the spirit of any rule published in this Manual.

Mr. Chairman: It is with some hesitation that I give my ruling on this matter. I consider Dr. Gour's motion somewhat offending against the rules as it is too general and makes no reference to the decision announced and I consider Mr. Seshagiri Ayyar's motion in order as it relates to the decision recently announced about which no notice has been given. I therefore rule that Mr. Seshagiri Ayyar's motion is in order.

Mr. T. V. Seshagiri Ayyar: Then, Sir, I ask for leave of the House to allow me to move the adjournment of this House in order to consider the announcement made by the Honourable the Home Member yesterday.

Mr. Chairman: May I ask whether the Honourable Member has leave of the Assembly to move the adjournment? Unless any Member objects there is no need to stand. I will read out the motion to the House:

"For leave to make a motion for adjournment of the business of the Assembly for the purpose of discussing a definite matter of urgent public importance, namely, the decision of His Majesty's Government to appoint a Royal Commission on the Services in India."

(No Member objecting) leave is granted and the motion will be taken up at 4 P.M. to-day or at an earlier hour with the consent of the Honourable Member in charge if our business terminates earlier. The House will now proceed to consider the Bill further to amend the Code of Criminal Procedure, 1898.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. B. N. Mishra (Orissa Division: Non-Muhammadan): Sir, the amendment that I propose runs as follows:

"In clause 27 insert the following at the end of sub-clause (i):

'and in the first proviso for the words 'such order' the words 'such report or information' shall be substituted.'"

It is really very short but it relates to a very long section. I am afraid there will be some difficulty in drawing the Honourable Members' attention to my point and I think I shall have to trouble them with section 145. The section is a very long one and contains about seven clauses and two provisos, if the present amendment is allowed it will contain about nine clauses. Section 145 contemplates that whenever a District Magistrate, Sub-divisional Magistrate, or other Magistrate of the first class is satisfied, from a police report or other information, that there is a dispute likely to cause a breach of the peace, he will issue certain proceedings, call upon the parties and declare possession of a party until any of the parties has obtained the decision of a proper civil Court. There you will find after clause (4) there are two provisos. The first proviso is:

"Provided that, if it appears to the Magistrate that any party has, within two months next before the date of such order, been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date."

My amendment relates to this proviso. This proviso contemplates that if the Magistrate finds that a party had been dispossessed two months before the date of the order, which is called the preliminary orders served upon the parties, then the Magistrate will decide the actual possession to be with that party and declare possession to that party. Several cases have arisen where actually between the date the Magistrate issued the preliminary order and the actual dispossession took place, it was about more than two months, or three months or two months and fifteen days, or sometimes there was some difficulty to prove actual possession exactly just before two months. In these cases the Magistrates have always committed an error and have declared possession of the party whom they considered to be in possession at the date of the order and within two months. This has really placed rather a premium on high-handedness and taking forcible possession by some party. I shall illustrate this. Now, Honourable Members many of them have left their homes and have come here and I think will continue to be here from January till the end of March. As soon as I came away say, somebody, my neighbour, trespasses upon my land and perhaps my servant is not able to protest or to bring evidence enough to induce the police or the Magistrate to issue a preliminary order asking the parties to lay their claims about possession. After my return, say, after three months, I find that really my land has been trespassed on. Then I go on my land and the other party comes and a sort of a breach of the peace is apprehended. Then a report is made and the Magistrate issues an order. By that date, by the date the Magistrate issues the preliminary order, as I was absent, the possession had been taken by the other party before three months. The law lays down that the Magistrate will take evidence about the fact of actual possession and this proviso says:

"Provided that, if it appears to the Magistrate that any party has, within two months next before the date of such order"

[Mr. B. N. Misra.]

My point is this. He issues the preliminary order three months after and evidence is taken. He finds that the opposite party, my opponent, has been in possession for three months from the date of the order I am referring to, although some information was given by my servant or some report was made and the Magistrate did not make up his mind to issue the order earlier. It happens in many cases that whenever there is some trespass accompanied by any violence, cases are filed for trespass or for hurt and the Magistrates generally make it a point to await the result of such cases, then go through those records and issue a preliminary order. In such a case also, 3 or 4 months elapse before the actual dispossession and the Magistrate's preliminary order. Strictly speaking, it was practically a delay due to a certain procedure and not due to the party, who was dispossessed, putting forth his case after some delay. If this proviso is allowed to stand, it really does not give power to the Magistrate to go beyond the two months. Unfortunately the Magistrates regard this provision to be a two months' limitation. It is an advice given by the Legislature that they would not go beyond two months. If they find that a man was dispossessed beyond two months from the date of the preliminary order, then he must go to a Civil Court and the Magistrate actually puts in possession the party whom he finds in possession on the date of the order. Really it is doing harm to a man who has been dispossessed wrongfully and it is assisting the highhanded and the oppressive aggressor who had somehow or other taken possession and it may be even without the knowledge of the owner in some cases. There are several cases in the Allahabad Law Journal and in Indian Cases, specially in 19 Indian Cases. I would have read that last case but unfortunately I am told the Legislative Assembly Library has not got that book. It is still at Simla. Therefore I cannot procure the book. In that case it so happened that there were two zamindars. One party was practically absent and the other party tried to collect rent and there was a sort of disturbance and one Magistrate came and told the parties without issuing a formal order not to create a disturbance and so on. They kept quiet for some time and then the situation became rather serious and the parties began fighting. By that time actually four months had passed and then the Magistrate issued a preliminary order in writing. It was contended that as the opposite party was in possession for four months prior to the date of the order, the Magistrate had no power to put that party in possession because we find in the proviso that the Magistrate can put him in possession under section 145 if he finds that the man was dispossessed only within two months. Really this wording gives very often sanction to violence and aggression on one party and if somehow or other a party can manage to get the two months to pass away from the date of dispossession to the date of the preliminary order, the Magistrate finds that he is unable to put the party who was wrongfully dispossessed, in possession. Therefore I have brought in this amendment that instead of 'such order' the words "such report or information" shall be substituted. Take the case of a man who knows the law and he says 'If I somehow or other can manage to be in possession for two months, the Magistrate cannot dispossess me and the other party will be driven to a civil suit' and we know the difficulties of going to a civil court and the expense to be incurred and the long delay to be incurred. Suppose a man wants to buy a piece of land from a man who has encroached on it and the man has somehow or other kept his possession concealed and the other party does not know it. He comes to know after some time and then both parties fight and there

is a dispute. In such a case the report is made but so far as actual possession is concerned, the wrong doer has been already in possession for four months and this entitles the Magistrate to declare actual possession under 145. My submission therefore is that we should give speedy remedy and if the Magistrate finds that if really a man has been wrongfully dispossessed, then he should put that party in possession. The two months criterion should not come in here and the two months should count only from the date on which the information was given or the report was sent. Sometimes mischief is made in the Magistrate's office. Sometimes a man knows that such a report has been made by the police. Somehow or other the record is kept concealed from the Magistrate and the two months pass away. Then the Magistrate sees the record and he issues a preliminary order as is contemplated and then practically the Magistrate has no power under this proviso to put that party in possession. Under these circumstances the two months criterion works as a hardship and causes failure of justice and the object of the section fails. So the words "such report or information" should be substituted for the words "such order." I therefore move:

"That in clause 27, at the end of sub-clause (i) and in the first proviso for the words 'such order' the words 'such report or information' shall be substituted."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): I think this House will be prepared to admit that it is the duty of the House as a whole to examine with great care every amendment that is proposed to be made in the law and particularly is that obligation laid on a Member for the examination of an individual amendment for which he is responsible. When I received notice of this amendment I doubted whether Mr. Misra had considered the effect of his proposal on the law as it stands. After listening to his remarks in support of his motion, I am certain that he has not considered it. I shall now try to explain to the House what the effect will be. The case Mr. Misra contemplates is a case where the Magistrate has been satisfied that a dispute regarding land exists, which is likely to cause a breach of the peace. He has called on the parties to put in their claims regarding possession of the property. Then, when they appear, without reference to claims as to title, he examines their claims as to actual possession on the date of the order. I want the House to bear that carefully in mind. He has to ascertain which party was in possession on the date of his order. That is the law as we have now got it. These three sub-sections (1), (2) and (3) are already on the Statute Book and Mr. Misra does not propose to amend the first part of (4). Therefore the Magistrate is setting out to find out who is actually in possession on the date of his order. Now Mr. Misra comes in and proposes an amendment in the proviso to the effect that if the Magistrate finds that there has been wrongful and forcible dispossession within two months before the date of the information, then he may presume that the party wrongfully dispossessed was in possession on the date of the information. Now, is that going to help the issue at all? What the law lays down is that the Magistrate has to find out the fact of actual possession on the date of his order and any presumption as to possession on the date on which he received information will not enable him to decide the case or issue any order whatever. I suggest a case to the Honourable Member. Suppose that there has not been any forcible dispossession before the date of the information, but after the Magistrate gets information, and before he issues an order one party goes on the land and forcibly dispossesses the other. There

[Sir Henry Moncrieff Smith.]

will be no presumption in that case at all. The dispossession was not previous to the date of the information and though it was previous to the date of the order the Magistrate has to find that the party who had forcibly occupied the land had actual possession on the date of the order and has to confirm him in his possession until the Civil Court ousts him. I think if Mr. Misra had considered the effect of his amendment, he would have saved the time of this House by not moving it.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadian Rural): Sir, I do not think Mr. Misra's amendment is so very unreasonable as Sir Henry Moncrieff Smith's remarks would lead one to believe. I think it is really a good amendment, and I beg to support it. This section relates to disputes about immoveable property in regard to which there is an apprehension that there would be an immediate breach of the peace unless the Magistrate intervenes. Now all that the Magistrate has to find out in this case is, who was in peaceful possession of the property in dispute at a particular time, and he has to keep him in possession of that property until he is evicted by an order of a competent Civil Court. Proviso 1 says that if there is evidence to show that one of the parties who claims possession of the property had been forcibly dispossessed of it within two months immediately preceding the date of the preliminary order the Magistrate may treat the party so dispossessed as if he had been in possession at such date for the purpose of this section. What Mr. Misra proposes is that if the party who had been forcibly dispossessed of the property within two months immediately preceding, not the preliminary order issued by the Magistrate but immediately preceding the complaint made by the party dispossessed the Court should find that he was in peaceful possession either to the police or to the Magistrate. I will quote a probable case. Suppose there is a dispute about a piece of immoveable property between two parties. Suppose that one of the parties which had been in peaceful possession of the property has been wrongfully dispossessed of it. Suppose that that party complains to the Magistrate, and suppose the Magistrate does not feel justified in issuing a preliminary order simply on the strength of that complaint, but sends the complaint to the police for investigation and report. I quote this as a hypothetical case but it is the sort of case which very commonly happens. Suppose the complaint is sent to the police for report. The police take their own time over the matter and then send up the report. Suppose thereupon the Magistrate makes up his mind and issues a preliminary order; and by the time the Magistrate issues the preliminary order, it happens that the dispossession becomes more than two months old. Therefore, the Magistrate cannot give possession to the man that was dispossessed. But the delay in the issue of the preliminary order was not due to the party which had been dispossessed but to the Magistrate or, it may be, due to the police. Why should the party which has been forcibly dispossessed be prejudiced by the delay on the part of the police or on the part of the Magistrate in issuing the preliminary order? What is there sacred about the date of the preliminary order? The law says, if a man has been dispossessed within two months immediately preceding the issue of the preliminary order, he shall be considered to have been in peaceful possession of the property. But why should he not if he comes to the Court within two months after being dispossessed, be considered to be in time? If there is no default on his part, if there is no delay on his part, if he comes and complains before the Court in time, and the Court takes long in arriving at a decision, it is not the fault of the party. Therefore I think it is

quite just that dispossessions made within two months immediately preceding the complaint by the party should be treated as wrongful, and the man who has been forcibly dispossessed should be put in possession of the property. Therefore, I support the amendment.

The Honourable Sir Malcolm Hailey (Home Member): I do not know if Mr. Pantulu has realized that the whole object of this Chapter is, to allow the Magistrate to decide the facts of actual possession of the subject in dispute. I quote the exact words of 145 (4):

"Whether any and which of the parties was, at the date of the order before mentioned, in such possession of the said subject."

That still stands; nobody proposes to amend that; and therefore the object of the Magistrate is to decide simply one point: who was to be considered in possession at the actual date of the order? There is an obvious reason: that the future conduct of parties has to be regulated on that order of the Magistrate. It is of no value to the parties or to anybody else if the Magistrate decides that some three months before—it may be four according to Mr. Pantulu—such and such a person was in possession. That helps no one. What you want for the purposes of this section is that you may get an order which will regulate the position of the parties in regard to the fact of possession as from the date of the Magistrate's order.

Mr. Chairman: The motion before the House is:

"To insert the following at the end of sub-clause (i) in clause 27 'and in the first proviso for the words 'such order' the words 'such report or information' shall be substituted.'"

The motion was negatived.

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatnam; Non-Muhammadian Rural): Sir, on behalf of Mr. Rangachariar I beg to move the following amendment:

"To clause 27, sub-clause (i), add the following:

'and at the end of sub-section 6 insert the following Explanation:

'*Explanation:* A person shall be deemed to be in actual possession where he is in possession of the disputed property through an agent, manager or servant or such other person.'"

Sir, the object of section 145 is to prevent a breach of the peace in order to preserve the actual possession of the party. The question now is, who is in actual possession?—naturally, the person who was in actual possession or any other person on whose behalf the person was in possession, as he was in possession on behalf of the rightful owner; and even in cases where the complaints were obliged to be brought up before higher tribunals on account of a mis-understanding or misapprehension of the rule by the lower Court or Magistrate,—I will quote an authority, not one but a number of authorities wherein it was stated that naturally possession includes the possession of a servant on behalf of his master or of an immediate tenant on behalf of his landlord and of the usufructuary on behalf of the mortgagor. It is not a question whether we have to consider about the rights or wrongs of the parties or the lawful or unlawful possession but in order to make the legislation clear that this was suggested; so that Magistrates may not think that there is an absolute necessity that the person who complains or puts in a petition should be in actual possession while his servant is in possession on his behalf. The complainant should be permitted to state that he was in possession through his servant, and

[Mr. B. Venkatapatiraju.]

therefore, Sir, in order to make the point clear which has all along been accepted by the highest tribunals, I move this Explanation which would serve the purpose of elucidating the point more clearly.

Mr. Chairman: The Honourable Member has not moved the amendment.

Mr. B. Venkatapatiraju: I move the amendment, Sir:

"That in clause 27. (ii), add the following:

"and at the end of sub-section (6): insert the following Explanation:

"*Explanation:* A person shall be deemed to be in actual possession where he is in possession of the disputed property through an agent, manager or servant or such other person."

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, out of compliment to yourself, I should have been very glad if I
12 Noon. could have been able to accept this amendment, but I am afraid that I am not able to do this. I think of the position of the poor Magistrate who has to decide what was the object of the Indian Legislature in inserting this explanation in this section. He will think, that it can scarcely mean merely that the Indian Legislature wished again to affirm the ruling reported in 9 Bengal Law Reporter at page 229, which has already been read by the Honourable Mover of this amendment. In that ruling it was stated that by "actual possession" is meant possession of a master by his servant, the possession of the landlord by his immediate tenant, the person who pays rent to him, the possession of the person who has the property on the land by the usufructuary. Now the Magistrate will say, "this cannot have been the intention. We all know that. We have been brought up on it. There must have been some other reason." He will refer to sub-section (1) and will see that that is the sub-section in which the words "actual possession" are used. He will see that the words have to be applied in determining the parties concerned and he will turn, say, to the Full Bench ruling in 31 Calcutta, page 48, *Dhondhai Singh versus Follet*. That was a dispute relating to an indigo factory. Mr. Follet was the Manager of the factory and Dhondhai Singh was the other party. The case came before a Full Bench of the Calcutta High Court. It was held that there was jurisdiction in the Courts under section 145 of the Criminal Procedure Code to make an order in favour of persons who claimed to be in possession of the disputed land as Agent or Manager for the proprietor when the actual proprietors are not resident within the appellate jurisdiction of the High Court. He will begin to think, "does the word "deem" in this explanation mean that it must be the proprietor who has to be made a party? Is it impossible for the Manager to be made a party? Did the Indian Legislature intend to overrule that Full Bench decision?" Or perhaps, Sir, he will think of the case reported in 32 Calcutta, page 287, *Bhola Nath Singh versus Wood*. Mr. Wood was the Manager for the Nawab of Murshidabad. One point taken in the High Court was that the Magistrate had no jurisdiction to make the Manager a party instead of his employer, the zemindar. As regards this point it was held that the course adopted by the Magistrate was a mere irregularity or at most an error of law which does not affect his jurisdiction. Perhaps, Sir, he will think that the intention of the Indian Legislature was to prevent a tenant being made a party. Then he would think, perhaps, of the case of Beni Prasad Koeri *versus* Shahzada Ojha, reported in 32 Calcutta at page 856. There the Magistrate had

taken possession under section 146 in a dispute between two sets of rival tenants. It was held that it was quite within the law for him to apply section 145 in such a case, and it was held that the Magistrate's attachment under section 146 was an attachment on behalf of those tenants who might subsequently be found to be entitled to the possession. Perhaps, Sir, he would take the other side and think that the intention is that the zemindar, the proprietor, shall never be a party; that we must have the man who is in immediate possession. It is perhaps unnecessary to refer to rulings on the point, but in 25 Calcutta at page 423, it was held that a person who was in possession of land merely as the Manager for the actual proprietor could not be made a party to the proceedings under section 145 when the circumstances are such that the proprietor himself can readily be made a party. Of course, Sir, these proceedings are usually proceedings preliminary to a civil suit, and it is clearly advisable as a general rule that the proprietor himself should be the party, because it is no use, or very little use perhaps, to say that the Manager is the party in possession when in the subsequent civil suit it must be the proprietor who moves. Perhaps, Sir, the Magistrate will have a brain wave and think that the word "Manager" refers to the Manager of a Hindu joint family. He will have heard perhaps that the amendment was made at the instance of an eminent Hindu lawyer and will think he possibly was thinking of such Manager. Well, Sir, I do not think it is necessary to proceed further. I think that if we add this amendment we shall not make the position of the Magistrate any better. He knows quite well the old ruling in Bengal Law Reporter which has been recited to us, and if once he begins to think of what was the intention of the Legislature in putting in the explanation, his last stage will be worse than the first.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, with the gracious permission of the Chair I rise to oppose this amendment. It seems to me that the introduction of this clause, if it was made law, would not merely place Magistrates in great difficulty, but it would be in the direction of carrying the provisions of this section beyond the scope of the Chapter to which it appertains. What is the primary object of this magisterial interference in disputes over immoveable property? This country has a long record of broken heads and bones and lost lives in disputes over immoveable property? The sole and primary object of this section is to prevent breaches of the peace. It does not exist merely for the settlement of disputes, even as to lawful possession. A Magistrate can only interfere when he finds that the dispute is of such a kind as requires immediate settlement to prevent a breach of the peace. Now, the first part of the section requires the Magistrate to inquire into the fact of *actual* possession. There is nothing particularly technical about that word "actual". A good deal of forensic argument and judicial learning no doubt have been expended on the word. But here it means, in my humble opinion, what one would understand it to mean in the ordinary affairs of life. If I go to the club in the evening leaving my house in charge of my servants, my actual possession is not interfered with or disturbed. If I go to Mussoorie for the season and sublet my house to a tenant my actual possession so far as this section is concerned, with all respect for the contrary opinion whether expressed in rulings or elsewhere, is certainly suspended. All that remains is what lawyers call *constructive* possession. I am one of those who think that the clause which allows a Magistrate to interfere with a trespass one month and twenty-nine days old is a clause foreign to the purpose of this section,

[Colonel Sir Henry Stanyon.]

because, suppose even during my short absence at the club, my servant's possession is interfered with by a trespasser, a Magistrate can restore the servant's possession just as well as my own. I need not go and claim; it is quite enough to put up my servant and the Magistrate will restore actual possession and thereby restore my constructive possession. With regard to my friend's illustration in his earlier speech that when a Legislative Member comes to Delhi leaving his land in the possession of his servant or agents and someone dispossesses him, it would involve a hardship not to treat his possession as actual possession for the purposes of this section, I submit that it is quite unnecessary to do so. It does not follow that the apprehended breach of the peace should be with a person dispossessed. The danger of a breach of peace may be with anybody. It may be when a servant is dispossessed that the danger arises when the master wants to get his property back; that will be danger of a breach of peace between trespasser and owner; but the Magistrate will inquire into the actual possession of the servant. If he finds that it has been illegally disturbed, within his jurisdiction, he can restore it. Where a constructive possession is interfered with and a Magistrate is not inclined to use this Chapter, the argument that the owner is left only with the delayed procedure of a regular civil suit entirely overlooks section 9 of Act I of 1877, a suit for summary possession. There need be no delay. But if we introduce here this particular clause, we shall then be giving a particular definition, as it were, to the word "actual" which in practice—especially in magisterial practice—will create tremendous difficulties; and for that reason in support of the principle that these preventive sections should be kept as simple and as straightforward as possible, I would oppose this amendment.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): There is some little difficulty, Sir, in understanding the position of the Government. An earlier decision was referred to by Mr. Tonkinson in which it was pointed out that the possession of the tenant is the possession of the owner, and the possession of the agent is the possession of the owner. Later on there have been some doubts, in Calcutta itself. They have held that the object of the section is not to deal with constructive possession. Unless the section is made clear, it is likely to lead to further difficulties. If the possession is with the tenant and the dispute is between the tenant and the principal, it is doubtful whether this section should be applied. There are authorities which hold that this section should not be resorted to where the dispute is between the principal on the one hand and the tenant on the other. But where the possession is by the tenant on behalf of the landlord and a third party encroaches upon it, then the possession of the tenant will be regarded as the possession of the landlord and the matter should be inquired into. There would therefore be difficulties if we leave the section as it is, and it is, I take it, for the purpose of making it clear that this amendment has been put forward, namely, that where the dispute is between a person who is in possession of the property through one of these subordinate agents of his, *e.g.*, the tenant, and if that possession is sought to be disturbed by a third party, the matter should be inquired into. That would bring the law into conformity with what has been decided in the earlier cases, and it would to a certain extent, weaken the force of the later decisions which point out that constructive possession is not what was intended. I believe, Sir, it is desirable when we are revising the Code to make this position clear. There are two points which ought to be made clear, one is that

where there is possession in the tenant and that possession is disputed by the landlord the section has no application; the other is where there is possession in the tenant and that possession is on behalf of the landlord and a third party disputes it, then this section can be resorted to. That must be made clear. I do not see, with all deference to the draftsman of this amendment, that that position is made clear by him. But it is desirable to clear it up. If that is done, I think, it would avoid much trouble that is likely to arise in the construction of this section.

Mr. Chairman: The question is:

"To clause 27 (ii) add the following:

'and at the end of sub-section (6) insert the following Explanation:

'*Explanation:* A person shall be deemed to be in actual possession where he is in possession of the disputed property through an agent, manager or servant or such other person.'

The motion was negatived.

Mr. B. N. Misra: Sir, I beg to move the amendment which stands in my name, viz.

"Omit the whole of sub-clause (iii) of clause 27."

Sub-clause (7) of the same section 145 runs thus:

"When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding, is, all persons claiming to be representatives of the deceased party shall be made parties thereto; and

My friend is asking me to withdraw the motion. I am sorry my conscience does not allow me to withdraw it without placing it before this Honourable House. The object of this section is to prevent a breach of the peace. Whenever breach of the peace is likely to be caused, section 145 is resorted to. If a man is dead, where is the cause? If a man dies, has the widow to come to fight or has she to mourn the loss of her husband? I am putting it to you. A man has got little children, two or three babies, two or three daughters and sons aged 3, 5 or 10 years, will they not be mourning the loss of their father? Are they going to fight? Will they be able to fight? Why are you dragging these innocent representatives, legal representatives, to be brought on record? The Criminal Procedure Code has never contemplated the civil rights of parties to be decided by Magistrates. If you say in a case like this that the legal representatives must be brought on record, what will be the effect? There are three children; they cannot come. In law, they are minors. They cannot represent themselves. You must appoint a guardian. Then, Sir, the Magistrate will see who will be their guardian. Ten persons might claim to be guardians of a particular minor. The brother will claim to be the guardian; the father's brother will claim to be the guardian; the mother's brother will claim to be the guardian, and so many others will also come claiming to be the guardians. Is the Magistrate to decide that? And without deciding that guardianship, can you bring a minor on record? The greatest legal difficulty will arise to bring a minor on record. Of course you bring in the criminal court such minors as are capable of committing some offence or crime, but in a case like this how can you bring the minor into the record of this case unless you appoint a guardian of that minor? Supposing there is a

[Mr. B. N. Misra.]

family of four or five brothers. One brother is dead, you need not bring the children of the deceased, or his widows because there are the other brothers. Supposing there are five brothers and one of them is a quarrelsome fellow who likes to create a quarrel and the others do not like to quarrel, why should you drag the others in who do not wish to quarrel simply because they happen to be the brothers of the man who is dead? I consider, it is very unjust to drag in such legal representatives who have no reason at all to be represented, because with the death of the man the likelihood of committing a breach of the peace has ceased. Suppose a man is dead who has left some property and there are two or three daughters, what happens ordinarily? One says, the deceased had adopted him and he must be made a legal representative? Is the Magistrate going to decide the question of adoption? If the representatives come to fight there will be a report and this section aims about the likelihood of the breach of peace at bringing such persons on record and nothing but that. You say "and shall thereupon continue the inquiry." If the party who was fighting is dead why should you continue the inquiry? You stop there, unless and until you get others coming forward to fight. Of course the object of the Criminal Procedure Code is never to allow any claims of right to be decided by a Magistrate. Clause (4) of section 145 says:

"The Magistrate shall then, without reference to the merits of the claims of any such parties to a right to possess the subject of dispute, peruse the statements so put in, etc."

In clause (4) you say he will not go into the merits of the claims; now you are going to consider the claims. The one is contradicted by the other. The magistrate is concerned only with actual possession and the likelihood of there being a breach of the peace. I submit if we allow power to the magistrate to consider claims as regards the legal representative, of an adopted son, or illegitimate son, or any relation, or all these conflicting claims, this will be giving a really dangerous civil power into the hands of the magistrates. In these circumstances I move my amendment,* that this clause should be omitted.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Sir, the speech made just now is one against my amendment†, not against the section as drafted by the Government. The Government do not want that there should be any decision by the magistrate, on the other hand they in the draft want everybody to be brought in and want the proceedings to go on. It is I, Sir, who want the magistrate to decide summarily as to who is the legal representative, so that there may be a speedy termination of the proceedings. The reason of my amendment is this. If one of the parties to the dispute takes it into his head to prolong the decision, he can easily set up a third party, and as this section is worded by the Government every objector should be made a party.

* "Omit the whole of sub-clause (iii) of clause 27."

† "In clause 27 (iii) in the proposed sub-section (7) omit all words after the words 'and shall thereupon continue the inquiry' and substitute therefor the following:

'and if more than one person claims to represent the deceased, the Magistrate shall forthwith decide who shall be the representative for the purpose of the proceeding before him; and it shall be open to the Magistrate to remove, add or substitute representative or representatives in the course of the same proceeding'."

Sub-section (7) proposed in clause 27, sub-clause (iii), says:

"When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto."

Therefore once you say the proceedings shall continue, it will be open to one of the parties to the dispute to set up a person who claims to be a legal representative, and thereby prolong the inquiry. The object of this chapter is that there shall be a speedy determination of the dispute between the parties. It is on that ground that I have given notice of this amendment, that where there is a dispute among the legal representatives, powers should be vested in the magistrate to decide summarily as to who is the true legal representative, and to put that representative, on the record to continue the proceedings. I provide that if it is thought by the Magistrate that the legal representative brought in is not the proper one, nothing should prevent him from removing such legal representative and substituting another in his place. I want to bring the rule into conformity with the civil practice in regard to this matter. The old Civil Procedure Code, section 367, says:

"If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit."

It has been made simpler in the new Code, and it has been held that where once a party has been put on the record, the proceedings shall be continued in his presence and the decision shall even act as *res judicata* against the true representative. For that purpose, there must be a summary decision. And having regard to the fact that a proceeding of this nature is not final, and the rights of the parties in the Civil courts are not affected, I think it would conduce to the administration of justice better if we give power to the Magistrate to arrive at a summary decision. My object is as far as possible, to expedite matters, and as the object of Chapter XIII is to give a summary remedy, and as the section, as now worded, will put into the hands of a person who is disposed to prolong the inquiry, the power of bringing in a person who may have a very shadowy right to come in, I have drafted my amendment. It is in these terms:

"In clause 27 (iii) in the proposed sub-section (7), omit all words after the words 'and shall thereupon continue the inquiry' and substitute therefor the following: 'and if more than one person claims to represent the deceased, the Magistrate shall forthwith decide who shall be the representative for the purpose of the proceeding before him; and it shall be open to the Magistrate to remove, add or substitute representative or representatives in the course of the same proceeding.'"

As I said before it is only, Sir, for the purpose of carrying out the object which the Chapter has in view that I have brought forward this amendment. I know at the same time that the Government think that they alone can draft a section rightly and that no one else is competent to do it. There is that difficulty in my way.

Mr. H. Tonkinson: Sir, the Honourable Member proposes to substitute another sub-section for the proposed sub-section 7 of section 145. He suggests, that Government consider that they are the only people who can draft these provisions properly and that he therefore understands that they object to this provision. I would submit, that this provision was not drafted by Government; it was drafted by Sir George Lowndes' Committee

[Mr. H. Tonkinson.]

(Mr. T. V. Seshagiri Ayyar: "It was a Government Committee.") Not a Government Committee at all, Sir. Sub-section (7) of the present section 145 provides that "proceedings under this section shall not abate by reason only of the death of any of the parties thereto." Sir George Lowndes' Committee noted:

"We have expanded this sub-section, which deals with the death of a party while the proceedings are pending, in accordance with sub-clause (iii) of the Bill."

That is to say they thought their amendment was an obvious one, and I suggest that that is strictly the case. The Bill says:

"All persons claiming to be representatives of the deceased party shall be made parties thereto."

I suggest, Sir, that that is entirely in conformity with the spirit of the whole section. If we look at sub-section (1) it will be seen that the Magistrate requires all the parties concerned, all the persons claiming, to put in written statements of their claims. For example, take a recorded case, two parties had been summoned and appeared in Court. A tenant happened to be present; he claimed to be put in as a party and he was allowed to be put in as a party. All persons who have a claim are allowed in these proceedings to put in their respective claims. Further, if we adopt the suggestion of my Honourable friend, we will only be prolonging the proceedings. I remember, Sir, the papers about the amendment to the Code of Civil Procedure, which was passed in 1920, relating to the steps taken to do away with the delays in appeals to the Privy Council. One of the main reasons for delay that was referred to in those papers was the delay in putting in legal representatives. I have here, Sir, the letter received from the Madras High Court on the subject. They say: "Much of the delay is incurred in bringing on the record the legal representatives of deceased parties."

Sir, we have a summary proceeding provided for in this section and we do not want to lengthen those proceedings by adding to the labour of the Magistrate the question of deciding who is the legal representative of the deceased party.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I also oppose this amendment. In addition to the reason given by the Honourable Mr. Tonkinson, I would point out to the House that, if the amendment is permitted, it would in some cases tend to destroy the effect of the order passed under section 145. Suppose A and B both claim to be legal representatives and the Magistrate in a summary inquiry holds that A is the legal representative and passes an order against him. B institutes a civil suit and says that he is the legal representative, being, let us assume for the sake of argument, the adopted son of the deceased. Will this order bind B who is excluded under the inquiry made under section 145? (A Voice: "Not at all.") Not at all. Very well. The order therefore would be rendered nugatory if all the persons who claim to be legal representatives are not brought on the record. That is my additional objection to the amendment.

Lastly, I ask what is a legal representative? The present Civil Procedure Code defines a legal representative in very wide language. Any person who is in possession, even in wrongful possession, of the property of the deceased is a legal representative, and, if my friend's amendment prevails, there would have to be a definition of a legal representative

and then an inquiry as to who is a legal representative. If the definition is enlarged to the extent it has been by the Code of Civil Procedure, it will let in all comers, real and pretended claimants to the property, and the inquiry, however small, is bound to be a protracted one.

I therefore submit, Sir, that this amendment should be negatived.

Colonel Sir Henry Stanyon: Sir, the question raised by this amendment is by no means free from difficulty, and the amendment is not one to be lightly brushed aside by this Honourable House. As section 145 stands at present, we have these words only as sub-section (7):

"Proceedings under this section shall not abate by reason only of the death of any of the parties thereto."

These words do not bind the Magistrate in any way. A Magistrate has reached a point in his proceedings where he finds in a dispute between A and B that A was in actual possession of the property on the date of the order. B's death would not prevent the Magistrate, without taking any steps to bring any representative of B on the record from passing the order maintaining A's possession. Now, the framers of the Bill propose to amplify this clause so as to make it necessary in every case, where one of the parties dies, to bring his representative or all persons who claim to be his representatives, jointly or in rivalry, upon the record. A tenant is in possession of a plot of land which his landlord claims to have been obtained by trespass. Within two months of the date on which, at the landlord's instance, the Magistrate made an order under section 145, that tenant dies. From the four points of the compass come four claimants to represent him, each perhaps armed with the usual *lathi*, and each is thereupon brought on the record under this new clause by the Magistrate. What is the Magistrate going to do?

I think, Sir, that in a case like that he will have a case within a case. He will have, first of all, to settle the peace between these four threatening *lathials* before he goes on with the original case. Not only that, but it is a difficult thing at all events, it strains my imagination too much,—to understand how the heir of a deceased person, except in the limited cases where he was joint with that deceased person, was, on the date of the Magistrate's order, in actual possession of the property so as to be entitled to get an order in his favour. The whole of this arrangement of representation is out of place, whether (as put in the amendment) it be on the basis of a summary decision in favour of one person, or lets in, temporarily, everybody who claims to be a representative. I fail to understand how such procedure carries out the original purpose and object of the section. The man who was, or claimed to be, in actual possession on the date of the order is dead. If there is another person on the spot who claims to have been with him in joint possession or claims to have acquired possession at the moment of his death, one can understand the proceedings being continued, though even in the latter case you would be dealing with the actual possession of a new person and not the original possession upon which the matter came before the Magistrate. But why should they be continued for heirs or claimants not in actual possession. Therefore, without absolutely committing myself to the amendment proposed by the Honourable Mover, I would strongly suggest to Government that this point of introducing representatives in a preventive case of this kind should be very carefully considered.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I would not have stood up unless I was of opinion that there are certain points in this very difficult matter which require to be cleared up. I should like to make my position clear by stating at the outset that I am rather inclined to support the amendment of my Honourable friend Mr. Seshagiri Ayyar and that I do so upon a balance of all the difficulties that seem to me to exist on one side or the other of the question. Now, Sir, my Honourable friend Sir Henry Stanyon has pointed out some of those difficulties. But it seems to me, that this section 145 Criminal Procedure Code, as it is, was enacted with a view to obviate some, at any rate, of the difficulties which crops up in connection with the proceedings under it, and which require speedy solution, in case of death of one of the parties to a proceeding during its pendency. Now, Sir, I will take up the question of actual possession, first. In this connection, the difficulty that was pointed out is a difficulty which has not been created by the proposed amendment itself, but it is a difficulty which already exists within the four corners of section 145 itself in enacting that the proceedings under this section shall not abate by reason only of the death of any of the parties thereto. The Legislature evidently contemplated that there should be some sort of decision as to representations after the death of one of the parties to the proceedings, and it evidently contemplated that the actual possession of the person in respect of whom proceedings were drawn up, and who was arrayed either on one side or the other, was the actual possession contemplated by the proceedings. The possession of his legal representative is practically a continuation of the possession of his predecessor in such cases. The next point for consideration is—who should carry on the proceedings, and adduce evidence in support of the case for the party who is dead? There must be some sort of adjudication on that point, and I suppose, the legal representatives of that party must be considered to be the persons who are likely to be interested in the matter and are calculated to adduce proper evidence in support of the possession of the person who is dead. Here again, Sir, I would point out to the House that if my Honourable friend Mr. Misra's amendment had been carried out, what would have been the effect? Supposing there is a powerful party who contests the possession of the opposite party and the latter dies during the pendency of the proceedings and after the death of the original party his successor in *de facto* possession, happens to be his widow, who may be in her bereavement, crying and shedding tears, and being busy with taking care of the fatherless children may feel helpless in asserting her possession. What would be the effect if the proceedings abated by reason of such death? The strong party, though wrongfully attempting to assert his possession, would at once take possession of that land in dispute. . . .

Mr. Chairman: Order, order. We have disposed of that amendment. The Honourable Member must speak to this amendment.

Mr. J. N. Mukherjee: I am coming to that, Sir. I submit the law as it stands contemplates that there should be some sort of adjudication as to representatives upon the death of a party pending the proceedings. Now, I will pass on to the point raised by Sir Henry Stanyon. He pointed out some of the difficulties. We have here according to him a case within a case under the circumstances because the Magistrate will be called upon to come to a decision as to representative of a deceased party. Suppose there are four persons who are trying to assert possession in respect of the land or immoveable property of a deceased party. Now questions which

such contentions raise have to be decided, under the existing law, first of all, between the sets of contending persons amongst the four claimants to the property left by the deceased, the original party now dead, and the Court, in order to do justice, must decide that question, and it must be decided, not in the presence of fictitious claimants, but of persons who have a real interest in the matter. Therefore it will be necessary to find out who is the legal representative of a deceased party to a proceeding under this section 145. "We cannot in the instance in point admit all the four contending claimants because thereby they would succeed in getting a footing as regards the property in question, by reason of the assertion of their false claims, which they would never be able to do, if left out of the proceedings. If all the four claimants were allowed to represent the deceased, they might all be declared to be in possession, in the event of the Magistrate deciding that possession was on the side of the party who is dead.

Dr. H. S. Gour: How?

Mr. J. N. Mukherjee: The case as to possession has to be decided amongst two contending parties. On the one side is the original party who is not dead. On the other side is a party who is dead. Three false claimants have sprung into existence and the fourth happens to be the rightful claimants. Now what happens? By declaring possession, to be on the side of the deceased party, all the claimants get a footing as regards possession. That is a result which the amendment of my Honourable friend Mr. Seshagiri Ayyar deprecates. That is to say, instead of giving indiscriminately all the false claimants a chance of asserting a false claim through magisterial declaration of possession, the proposed amendment suggests that a third party, however summarily it may decide the question, come to a decision as regards the legal representative of the person who is dead. Now, balancing all the inconveniences and difficulties, it seems to me, that although the determination of the question as to who the legal representative of a deceased party may be, may cost a little time and a little energy on the part of a Magistrate, it is better to have that done at that little cost, than to bring into existence a fresh dispute, among contending claimants to a deceased person's property and to give a footing to wrongful claimants, in that way. Therefore, Sir, I submit that if a third party,—a Court or a Magistrate,—be vested with powers to give some sort of decision as to who the legal representative of a party is, that, on the whole, will secure to the people better justice than in the case of all persons rightfully or wrongfully claiming as legal representatives, possession of the property which is the subject matter of the proceedings.

These are considerations which lead me to think that my Honourable friend, Mr. Seshagiri Ayyar's amendment solves the difficulty to a larger extent than in the case of the Government proposal.

Sir Henry Moncrieff Smith: Sir, I wish to refer very briefly to a portion of the speech of my Honourable friend, Sir Henry Stanyon. I understood him to deprecate any revision of the law at all for bringing the legal representative on the record. I think the House has expressed its opinion on that point by the very emphatic manner in which it threw out Mr. Misra's amendment,—the House decided that we should have some provision in this respect. Sir Henry Stanyon, if I understood him aright, suggested that there would be very great difficulty in the Magistrate's mind, after the heir of a deceased party had been brought on the record, in holding that the heir was in actual possession. Of course, Sir, the heir himself, unless he was a member of a joint family, could not have been in actual

[Sir Henry Moncrieff Smith.]

possession on the date the Magistrate passed the order; but the sole idea in providing for bringing the representative on the record is that the Magistrate shall not give an *ex parte* decision in the case. The House will remember that at an early stage of the proceeding the Magistrate has to serve a notice upon all persons that he knows to be interested and to have one copy posted in the locality where the property is situated. A person appears with a claim to have been in actual possession on the date of the order; that person dies; is it right that thereafter his interest should not be represented? If the Magistrate finds that the person who has died was in possession on the date of the order, he will put that person in possession through his legal representative who has taken the trouble to appear.

Mr. Chairman: The question is:

"That in clause 27 (iii) in the proposed sub-section (7) omit all words after the words 'and shall thereupon continue the inquiry' and substitute therefor the following:

'and if more than one person claims to represent the deceased, the Magistrate shall forthwith decide who shall be the representative for the purpose of the proceeding before him; and it shall be open to the Magistrate to remove, add or substitute representative or representatives in the course of the same proceeding'."

The motion was negatived.

Mr. J. Ramayya Pantulu: Sir, my amendment is that in clause 27, sub-clause (iv), omit the words 'and natural' and after the word 'decay' insert the words 'or cannot be conveniently kept in store pending final decision.' "

The clause in the Bill reads as follows:

"(8) If the Magistrate is of opinion that any crop or other produce of the property the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and upon the completion of the inquiry shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit."

The words used are "speedy and natural decay." It seems to me that the word 'speedy' will meet all the cases. I do not really understand the necessity of introducing the word 'natural' there. If the property is subject to speedy decay that ought to enable the Magistrate to sell it; whether the decay is natural or unnatural is immaterial and I do not see that any purpose is served by the use of the word 'natural.' If the property is liable to decay and speedy decay the Magistrate will have power to sell it. That is the first part of my amendment. The second part of my amendment is to add the words 'or cannot be conveniently kept in store pending final decision' after the word 'decay.' Sometimes the produce may not actually decay but it might be extremely difficult and inconvenient to keep it; take a case—which is common in my part of the country—where the property in dispute is a cocoanut tope; suppose there are several thousands of cocoanuts that are plucked from the trees and they have to be taken care of. It would be extremely difficult to find a suitable place where to store all those cocoanuts so that they might not be spoilt. If they are not properly taken care of they will be subject to decay; therefore, you may say you can bring it under the head 'decay' but I think it will be more straightforward to say 'because they cannot be properly stored pending final disposal'; they may be sold. This is my reason for the amendment.

Mr. Chairman: I think it will be for the convenience of the House that we take the amendments separately. The question is:

"That in clause 27 sub-clause (iv) omit the words 'and natural'."

The motion was negatived.

Mr. Chairman: The question is:

"That in the same sub-clause after the word 'decay' insert the words 'or cannot be conveniently kept in store pending final decision.'"

The motion was negatived.

Dr. H. S. Gour: My amendment, Sir, is a very simple one; it simply corrects what I think is a clerical error and if the Government do not accept that improvement, I think the House should unanimously vote them as wholly incorrigible. I only want to restore the numerical sequence of these various clauses and object to the interposition of 8-A where 9 will serve an equally useful purpose, and convert 9 into 10. I do not think I need waste much time over my amendment and the least I can ask the Government is to thank me and accept it.

I therefore move:

"That in clause 27 (iv) renumber the proposed sub-section 8A and 9 as 9 and 10."

Sir Henry Moncrieff Smith: Sir, we should be very reluctant to be condemned by the whole House as incorrigible; we have to admit that Dr. Gour's amendment is a most proper one. Dr. Gour's eagle eye has discovered what may be described as for the time being a blot on the Bill. I am surprised, however, that he has not discovered something like a hundred other similar blots throughout the Bill. The point is simply that we did not re-number the clauses, we did not re-number the sub-clauses and the sub-sections of the Code when the Bill was amended by the Joint Committee and when the Bill was passed by the Council of State, for this reason merely, that if this House had had before it another Bill with the clauses differently numbered from the Bill that was introduced and passed by the Council of State, the confusion would have been intolerable. This blot on the Bill which Dr. Gour's eagle eye has discovered we intend to remove by a general motion when the consideration of the Bill is finished, that all the necessary consequential re-numbering be made. I would, therefore, suggest that my Honourable friend withdraws his amendment.

Dr. H. S. Gour: I withdraw it, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Clause 27 was added to the Bill.

Mr. B. N. Misra: Sir, the amendment standing in my name reads
I.F.M. thus:

"In clause 28, in the proposed proviso after the words 'District Magistrate' insert / the words 'or the Magistrate who made an order under section 145.'"

The proposed clause reads as follows:

"Provided that the District Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute."

I have simply added to this that not only the District Magistrate but the Magistrate who made the order under section 145 may also be given

[Mr. B. N. Misra.]

the power. I think the proper wordings should be "The District Magistrate or the Magistrate who has attached the subject of dispute", etc. It has been suggested to me that if I move my amendment in this fashion Government will accept it. So, I move, Sir:

"That in sub-clause after the words 'District Magistrate' the words 'or the Magistrate who has attached the subject of dispute' be inserted."

Mr. Chairman: The motion before the House is:

"That in clause 28 in the proposed proviso after the words 'District Magistrate' the words 'or the Magistrate who has attached the subject of dispute' be inserted."

The Honourable Sir Malcolm Hailey: We do not intend to use the bludgeon of our vast majority in this case, and we accept the amendment. The motion was adopted.

Mr. T. V. Seshagiri Ayyar: Sir, the amendment of which I have given notice is intended to enlarge the powers of the District Magistrate. New power is given to him by the proviso for cancelling an order passed by the Magistrate, on the ground that there is no longer any likelihood of a breach of the peace. Now that the matter will be before the District Magistrate, I want to give him powers to consider whether the original order was properly passed. If he comes to the conclusion that the original order was not properly passed or that there is no necessity for continuing the order, he would cancel it. I want to give him larger powers than are given by this section, because it is not desirable that his discretion should be fettered in the way the section proposes to restrict it. If the matter is once before him, he should be able to decide whether the order was properly passed or whether there is any necessity for continuing the order. For these reasons I move the amendment standing in my name, namely:

"In clause 28 (1) after the words 'satisfied that' in the proposed proviso, insert the following 'there was no reasonable ground for taking action in the matter or'."

Sir Henry Moncrieff Smith: Sir, I was rather surprised to hear my Honourable friend saying that the intention of his amendment was to introduce a revision of the whole proceeding. If that was his intention, I should have expected him to move an amendment to section 145. He has in fact moved an amendment to section 146. This section merely says:

"If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute he may attach it until a competent Court has determined the rights of the parties thereto, etc."

To that the Bill adds a proviso:

"Provided that the District Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute."

Therefore, my Honourable friend Mr. Seshagiri Ayyar merely proposes to enable the District Magistrate to revise the order of the Subordinate Magistrate who has attached the subject of dispute where he could not find that any party was in possession. Now, Sir, as far as that goes, I think that these words are unnecessary. What are the facts? The Magistrate has found for reasons he must have had before him that in regard to the subject matter of dispute there is likely to be a breach of the peace. He cannot discover himself which of the parties was actually in possession, but the fear of a breach still continues, and the Magistrate thereupon

attaches the property until the parties go to the Civil Court. Mr. Seshagiri Ayyar then comes in and says that if the District Magistrate finds there was no reasonable ground for taking action in the matter, he may withdraw the attachment. But surely that is inconsistent. The Magistrate's preliminary order stood. He was satisfied that a breach of the peace was likely to occur. He cannot find who is in possession. They are reasonable grounds which no court can upset. Therefore, I would suggest that this limited revision of the order of attachment in the special circumstances of section 146 is quite unnecessary and inadvisable.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Sir, my next amendment seems to have found favour with the Government. I am thankful for small mercies. But they want as usual, their own language and not mine. I am willing to accept their language; and I do not insist upon my language. The object of my amendment, as the House will understand, is to enable the Magistrate to stay his hands when a Receiver has been appointed by the Civil Court. The proviso as drafted by the Government is in these terms:

"Provided that, in the event of a Receiver of the property, the subject-matter in dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the Receiver appointed by the Magistrate, who shall thereupon be discharged."

Now, Sir, I have had something to do with civil work: very often Receivers are appointed, but they do not take charge at once because there is the question of giving security and if in the meanwhile the Magistrate takes action by a subsequent order, it should not be binding on the parties. If there is a previous order appointing a Receiver, that ought to be enough, and the Magistrate should not interfere in matters of this nature, because a Civil Court receiver is likely to do his business much better than a Receiver appointed by the Magistrate.

Sir, the language used by the Government is this: and I move it in their words:

"That in sub-clause (2) of clause 28 for the words 'to sub-section (2) of the same section' the following be substituted, namely:

'In sub-section (2) of the same section after the words 'think fit' the words 'and if no Receiver of the property the subject matter in dispute has been appointed by any Civil Court' shall be inserted and to the same sub-section'."

I move my amendment as Government wants it.

The motion was adopted.

Clause 28, as amended, was added to the Bill.

Mr. B. Venkatapatiraju: Sir, I beg to move:

"In clause 29 in the proviso to sub-section (2) of proposed section 147, insert the words 'within three months as aforesaid or' between the word 'exercised' and the word 'during'."

The proviso would then run as follows:

"Provided that no such order shall be made where the right is exercisable at all times of the year unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised within three months as aforesaid or during the last of such seasons or on the last of such occasions before such institution."

Of course, Sir, this clause inserted by the Joint Committee is a very useful addition but as you find that they have already provided that in cases

[Mr. B. Venkatapatiraju.]

where the right can be exercised at all times of the year three months' grace is given to them in order to complain against the invasion of their rights, my amendment only goes to show that three months' grace should also be allowed where right is exercised on particular occasions or at particular seasons along with the other provisions already in the clause. I don't think, Sir, I need argue the point further because the point is very clear. I only ask you to admit to the seasonal exercise of rights the grace of three months also, so that my amendment will be in conformity with the object of the introduction of this clause. Therefore, I move this amendment, Sir.

Mr. Chairman: Amendment moved:

"In clause 29 in the proviso to sub-section (2) of proposed section 147, insert the words 'within three months as aforesaid or' between the word 'exercised' and the word 'during'."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—29.

Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Das, Babu B. S.
Gour, Dr. H. S.
Iswar Saran, Munshi.
Jamnadas Dwarkadas, Mr.

Jatkar, Mr. B. H. R.
Muhammad Ismail, Mr. S.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Singh, Babu B. P.
Sinha, Babu Ambica Prasad.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—34.

Abdul Rahim Khan, Mr.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.

Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Pyari Lal, Mr.
Sen, Mr. N. K.
Singh, Mr. S. N.
Sinha, Babu L. P.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: I want, in clause 29, in sub-section (4) of proposed section 147 to delete the words "in subsequent" and substitute the word "the." The clause, as it is, reads as follows:

"An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction."

Supposing on the same day the order is passed, there is also a civil court decision which is not known to the Magistrate. Why should it be held

that, unless there is a subsequent decision, the Magistrate's order should prevail? If there is a Civil Court's decision, it stands to reason that the Magistrate's order should give way. I think in those circumstances it is desirable to delete the words "in subsequent" and substitute the word "the" there. Suppose the decision which has been passed is taken in appeal or in revision. Then the appeal may be withdrawn. Under those circumstances, if you allow the word 'subsequent' to stand, it is likely to lead to difficulties. Therefore I move that the words "in subsequent" be deleted and the word "the" substituted therefor.

Mr. Chairman: Amendment moved:

"In clause 29 in sub-section (4) of proposed section 147 for the words 'in subsequent' substitute the word 'the'."

Sir Henry Moncrieff Smith: Sir, I feel truly sorry that I am not in a position to accept the amendment of my Honourable friend. The point is quite a simple one. If the matter has been decided by the Civil Courts already, then the Magistrate should not act under section 147. It has been held by the Courts that if the question of title has already been decided, then there is no dispute between the parties as to the title. The question of title has been set at rest by a judicial decision and the Magistrate cannot conscientiously say that a dispute still exists. But, if, on the other hand, he still fears a breach of the peace, that the parties are not going to observe and follow the decision of the Civil Court, then the High Courts have said that, though he cannot take action under section 147, it is always open to him to take action under section 107. That is the simple reason why this clause does not provide that the decision of the Magistrate should be subject to a previous decision. In any case I much regret to point out that I do not find Mr. Seshagiri Ayyar's drafting quite satisfactory. Surely it is not quite correct to say that the order which the Magistrate has made should be subject to a decision which has been previously passed. He could not make the order. As I have already pointed out, the Courts have laid down that when the Civil Courts have decided the question of title the Magistrate's jurisdiction under section 147 is ousted and he should not proceed at all under that section; if he does, his order would be set aside by a superior Court; he must take action under section 107.

The motion was negatived.

Clause 29 was added to the Bill.

Rai N. K. Sen Bahadur (Bhagalpur, Purnea and the Santhal Parganas: Non-Muhammadan): I move:

"In clause 30 before the words 'In sub-section' insert the following:

'In sub-section (2) of section 148 for the words 'read as evidence in the case' the words 'proved and used as evidence in the case' be substituted'."

In a proceeding under section 145 the Magistrate practically exercises a quasi-civil jurisdiction and the parties thereto are arrayed more or less as plaintiffs and defendants in civil suits. In clause (4) of that section you will find that the Magistrate has to take evidence, *viz.*, such evidence as may be produced by the parties to the proceeding. I understand "such evidence" to mean such evidence as is adduced according to the procedure laid down in the Indian Evidence Act; that is to say, if the evidence is oral evidence, witnesses have to be examined, cross-examined, and re-examined, and if the evidence is of the nature of a document, it has to be proved in

[Rai N. K. Sen Bahadur.]

accordance with law. Now, in a proceeding under section 145, if a Magistrate considers that a local inquiry is necessary he may depute any subordinate Magistrate to make the inquiry and he may furnish him with such written instructions as may seem necessary for his guidance. What generally happens is this, that a Magistrate deputed by the trial Magistrate goes to the spot, gathers all sorts of information, measures the land and submits his report and that report generally consists of a measurement paper, a map and his opinion regarding the question of possession as he finds on the spot. This report as laid down in section 148 (2) is used as evidence without any legal proof against the party against whom the report stands. It has so happened that in certain cases the Magistrates have decided proceedings under section 145 merely on such reports, and I may cite a case in I. L. R. 31, Mad. page 82 where this was actually taken. This mischief is due to the provision in this section 148. I beg to submit to this Honourable House that I have not been able to find any justification as to why such a report should be only read as evidence when in the same proceeding a Magistrate is required to take the evidence of both the parties in accordance with the procedure laid down in the Evidence Act. There is a section in the Code of Criminal Procedure to which I would like to refer. That is section 288, where certain evidence is allowed to be taken in without proof in a Sessions court but there that evidence is taken in the presence of the parties and in the presence of the accused. He may or may not have cross-examined the witnesses, but still that evidence is recorded by the committing Magistrate in the presence of the accused. I find further in the new amendment of section 288 the following words added, "shall be treated as evidence in the case, for all purposes subject to the provisions of the Indian Evidence Act." This is the new amendment in section 288. I shall be very thankful if the Honourable Member in charge of this Bill will be pleased to explain to us the justification or the necessity of such a provision as this which has done more harm than good up to this time. If the only plea is that it has stood for a very long time, I may submit that it has not justified its long existence or long life. With these submissions, I propose to move the amendment.

Sir Henry Moncrieff Smith: Sir, it seems to me that the Honourable Mover of this amendment has got somewhat confused between a report and evidence. He has cited the case of section 288. That is a case, as he himself pointed out, of evidence taken in the presence of parties by a Magistrate. Now this section 148 (2) contains no idea whatever of enabling evidence taken by a Magistrate making the inquiry to be brought on the record as evidence. It is merely the report of the Magistrate which is going to be brought on the record. What Mr. Sen desires is, that the report should be proved and used as evidence. The present law says that it may be read as evidence. What will proving the report of the Magistrate consist of? The Magistrate at headquarters has thought a local inquiry necessary. He has sent directions to the Magistrate of the Tahsil or sub-division, perhaps 50 or 80 miles away, to make a local inquiry. The Magistrate inquires and sends his report to headquarters. Mr. Sen desires that that report should be proved. What will happen? The Magistrate will be asked to suspend work for two or three days and come up to headquarters and all he will say is "This is my report. I wrote it." You are not going to require the Magistrate to prove every fact in the report that he has had deposed before him. I would suggest to the House that the only effect of this amendment is to drag Magistrates to headquarters solely to

make a statement that the report is his. Everybody knows that it is the Magistrate's report and to bring him to headquarters would be futile and a waste of time for all concerned. This is no new provision in the Code. I would invite the attention of the House to sections 509 and 510. Section 510 lays down that the report of a Chemical Examiner shall be taken as evidence in the case. It is not required to be proved. It is solely a report of the Chemical Examiner's opinion but it goes on the record as evidence and I see no reason why if a Chemical Examiner's report is allowed to be read as evidence, the report of a Magistrate should not also be allowed to be read.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): After hearing Sir Henry Moncrieff Smith, I think this amendment is superfluous and not needed. From my experience as an Honorary Magistrate I say that ordinarily the report of a Magistrate is read; and if he lives at some distance, the procedure will be cumbrous if you ask him to come simply for the purpose of proving that. I therefore think that this amendment is altogether superfluous and uncalled for.

Mr. Chairman: The question is:

"In clause 30, before the words 'In sub-section' insert the following:

'In sub-section (2) of section 148 for the word 'read' the word 'proved' shall be substituted'."

The motion was negatived.

Mr. Chairman: The question is that clause 30 do stand part of the Bill.

The motion was adopted.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. Chairman (Rao Bahadur T. Rangachariar) was in the Chair.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, my amendment is a very simple one. It arises under section 157 as now amended. Now the clause in question relates to two cases. Under proviso A, section 157, sub-section (1) there are two cases,—one when the officer in charge of the police station does not consider the offence to be of a serious nature, and the other when he thinks there are not sufficient grounds for investigation. Now the amendment in the Bill proposed is that in the latter case when there are not sufficient grounds the informant should also be informed of the same. I do not see any reason why that should not apply to the first clause A also. My amendment is intended to supply that deficiency, that is, that in either case the fact should be notified to the informant where the offence is of a serious nature or where there are not sufficient grounds for investigation. My object is that the same reason which induces the amendment of the clause should also apply to the other case, the object being that whosoever has given information to the police officer should have an opportunity of knowing that his information has not

[Mr. Harchandrai Vishindas.]

been acted upon so that he can get an opportunity of taking further action. With these remarks, Sir, I move my amendment which runs thus :

"That in clause 31 (ii) delete the words 'in the case mentioned in clause (b) such officer'."

so that both the clauses will be treated in the same way.

Mr. Chairman: The amendment moved is :

"That in clause 31 (ii) delete the words 'in the case mentioned in clause (b) such officer'."

The Honourable Sir Malcolm Hailey: Sir, Mr. Harchandrai Vishindas will, I think, admit after he has heard our explanation that his amendment is moved under a misapprehension. Clause (a) (i) provides for two cases: in the first, if the offence is not of a serious nature, the officer in charge of the police station need not proceed on the spot or depute a subordinate officer to make an investigation on the spot, but, of course, he will make an investigation though not on the spot. Clause (b) provides that if there are no sufficient grounds for making an investigation, he will not make one at all. Now in our sub-clause (2) we provide that if he does not intend to make an investigation at all, he shall notify the informant, if any, of the fact. It is, I think, quite unnecessary that he should notify the informant of the fact that he proposes to make an investigation but not on the spot. The point is, I think, quite clear.

Mr. Harchandrai Vishindas: After this explanation I ask for leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Chairman: The question is that clause 31 stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clause 32 stand part of the Bill.

The motion was adopted.

Mr. J. Ramayya Pantulu: Sir, my amendment is :

"In clause 33 for the words 'for any purpose' substitute the words 'as evidence' and omit the words from '(save as hereinafter provided)' to the words 'such statement was made'."

Mr. H. Tonkinson: Sir, may I suggest that the amendment be taken in two parts, and that we take as the first part :

"In clause 33 for the words 'for any purpose' substitute the words 'as evidence'."

Mr. Chairman: I think it will be for the convenience of Members to take your amendment in two parts.

Mr. J. Ramayya Pantulu: I think the two parts stand together, but I have no objection to moving them separately. I propose that :

"In clause 33 the words 'as evidence' be substituted for the words 'for any purpose'."

This clause relates to section 162 of the Criminal Procedure Code. Sub-section (1) of that section as it stands runs thus:

"No statement made by any person to a police officer in the course of an investigation under this chapter shall, if taken down in writing, be signed by the person making it, nor shall such writing be used as evidence:"

For this the Bill substitutes the following:

"No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:"

My arguments with regard to both parts of my amendment are indivisible. I, therefore, find it somewhat difficult to argue on the first part of my amendment only and I shall state the whole of my argument.

The principle underlying sub-section (1) of section 162 is that, although every witness who is examined by a police officer is bound to answer the questions put to him, he is not bound to speak the truth to him; so that a statement made by a witness to a police officer cannot be used as evidence of the truth of the statement itself. Therefore, the law as it stands takes care to lay down that the statement made by a witness to a police officer shall not be used as evidence in any case whatever. But the section as amended in the Bill says:

"It shall not be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made."

That greatly qualifies the effect of the section as it stands, which states that such a statement shall not be used as evidence for any purpose whatever. The amended section limits the prohibition of the use of the statement only in connection with the inquiry or trial arising out of the investigation at the time. It is therefore greatly to the disadvantage of a man making such a statement; for there is a chance of his statement being used as evidence against himself in some other proceeding, or as evidence against other persons in some other proceeding. The principle being that nobody is obliged to speak the truth to a police officer, just as he is obliged to speak in a Court of law, a statement made to a police officer should not be taken to be such as can be used as evidence in any case except as already provided for in the proviso to the section. It can be used for the purpose of contradicting that witness in further proceedings. Therefore, I think, Sir, that the section as amended in the Bill will take away the safeguard which the existing section provides against statements made to the police being made use of to the annoyance or inconvenience of the public; not only of the person who makes the statement, but also of other people. I therefore think the amendment made in the Bill encroaches greatly upon the liberty of the people and is altogether unwarranted. I therefore propose, Sir, that the amendment which stands in my name. . . .

Mr. Chairman: On further consideration, I think the amendment, if it is limited to the first portion, will not be quite intelligible to the House. I think therefore that it is but right that the Honourable Member should move the whole amendment as it stands. If he desires to say anything more on that he may do so now.

Mr. J. Ramayya Pantulu: My objection to the section in the Bill as it stands is that it greatly restricts the effect of the existing law, which lays down that a statement made to the police is not to be used as evidence:

[Mr. J. Ramayya Pantulu.]

it can only be used for the purpose of contradicting that man in the course of the same proceeding. And I submit that such a statement should not be capable of being used as evidence against the man making it or any other person in any proceeding whatever. I submit that the law must stand as it is and the proposed section is bad. Therefore I move the amendment which stands in my name.

Mr. Chairman: The motion before the House is :

"In clause 33 for the words 'for any purpose' substitute the words 'as evidence' and omit the words from '(save as hereinafter provided)' to the words 'such statement was made'."

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, the portions of this clause which my Honourable and learned friend's amendment seeks to delete may be divided for our purposes into three parts. The first portion seeks to substitute the words "as evidence" in place of "for any purpose" and the second portion seeks to delete the words within the brackets. Now, in regard to . . . (Mr. J. Ramayya Pantulu: "To the end of the paragraph.") No. I am dividing your proposal into three parts because our position in regard to the first two portions is different from our position in regard to the third portion. So far as the substitution of the words "as evidence" in the place of "for any purpose" and the deletion of the words within brackets is concerned, Government is prepared to accept these two modifications of the clause proposed by my Honourable friend. "As evidence" was no doubt the expression in the old Act. That was also, as far as I recollect, the phrase used in the Bill as originally drafted. The expression "for any purpose" was substituted by the Lowndes Committee, so that so far as the Government is concerned, the words "as evidence" having been the original expression proposed by them, they are willing to accept the amendment in so far as this substitution is concerned. We further agree that the retention of the words within the brackets, viz., "save as hereinafter provided" is unnecessary, for the proviso being a portion of the section itself, the repetition of these words in the first part of the sub-section is redundant.

But as regards the elimination of the concluding words of this clause, it seems to me that the position has not been well understood by my Honourable friend; otherwise, I fancy that he would not insist on the elimination of those words. It is quite true that if those words are eliminated from this clause, the result would be that neither the statements nor the record of statement referred to in this clause would be admissible as evidence in any case whatever; that is to say, neither in the trial of that case nor in the trial of any other case against that particular accused or against anyone else would those statements and the record of these statements be admissible. It is a well known rule of law that a special enactment providing for particular set of facts overrides the general provisions of a general enactment and in consequence if these words were to be left out, the clause would exclude the applicability of the Indian Evidence Act to these statements and to this record would make these entirely inadmissible in evidence. But is that conducive to the administration of justice? That is the question which the House has to bear in mind; I submit not. Now, let me give you but one or two instances, instances which I feel will appeal to those Honourable and learned gentlemen who are members of the profession to which I am proud to belong. Let us assume a case in which a Sub-Inspector of Police had concocted a false charge against a person

residing within the jurisdiction of his police station who had given him some cause for offence. Or take another case. Suppose a rich and influential person residing within the area of a police station had induced the Sub-Inspector to concoct a false case against an enemy of his. Suppose yet another case; a rich and influential zemindar or other person brings about the murder of an enemy of his through one of his own dependents or through a hired villain and then greases the palm of the Sub-Inspector to let the real culprit off and substitute in his place some other person, possibly another enemy of this rich and influential zemindar. Imagine yet another case in which a murder has been committed and the real murderers have remained untraced. Honourable Members are aware that a serious offence of that kind if untraced is counted to the discredit of the Sub-Inspector in charge of a police station. It results in a blackmark against him. We have come across, those of us who have practised at the bar and have had to do with criminal cases, have occasionally come across cases in which in order to avoid the resulting censure or disgrace the Sub-Inspectors of Police run in innocent persons. Now, in all these cases where a Magistrate subsequently trying the case finds that the Sub-Inspector of Police has concocted a false case against the accused and the accused is able to establish his innocence at the trial, even though the Sub-Inspector of Police may have prepared false diaries, may have not recorded statements of witnesses produced by the accused before him or even the statement of witnesses who are subsequently produced in Court as witnesses for the prosecution correctly, yet if the law is to be amended, as my Honourable friend would have it amended, the result would be that in case the Court ordered the trial of the Sub-Inspector for having concocted a false case, for having prepared a false record, all these statements and the records of those statements in the handwriting of the Sub-Inspector of Police himself, and therefore constituting the most valuable evidence in the subsequent trial of the Sub-Inspector for having concocted a false case or prepared false documents, would be absolutely inadmissible if the amendment proposed by my Honourable friend were to be accepted. Surely that would not be conducive to the administration of justice. Indeed by the acceptance of this amendment you would be excluding from admissibility most valuable evidence which could be produced against dishonest police officers, and I submit that that is in the highest degree undesirable in the interests of justice. Other cases can also be conceived in which a sweeping provision like the one that my Honourable friend wants to retain in the Code by the elimination of the last words of the clause would be highly detrimental to the interests of justice. It should be remembered that the retention of these words which we have produced does not make these statements or records of these statements admissible in all other cases. It does not override the provisions of the Indian Evidence Act. All it says is that these statements shall not be admissible in this trial, in the trial of the case in connection with which the inquiry has been held. In order to make these statements or this record of evidence in a subsequent case, you would have to look at the provisions of the Evidence Act. Now, section 5 of the Evidence Act lays down in express terms:

"Evidence may be given, in any suit or proceeding, of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant, and of no others."

These words "and of no others" are very significant, so that the result of the provision embodied in section 5 of the Indian Evidence Act is this.

[Dr. Mian Sir Muhammad Shafi.]

The statements recorded under section 161 referred to in section 162 of the Code of Criminal Procedure would be evidence in a subsequent case only if they were either themselves facts in issue or facts relevant to the issue.

Now in a case such as I have already mentioned to the Assembly, that is to say, if a Sub-Inspector of Police were charged with having fabricated a false case or false documents the record of those statements and the statements would be facts in issue, and at any rate, these certainly would be relevant to the issue at that trial. But in another case it is obvious that they would not be admissible, they would not be admissible against a third party. And the reason is very simple. Unless those statements are dying declarations, they would not be admissible in any of those sections which relate to previous statements section 32 etc. It is obvious therefore that the circle of admissibility if I may use that expression of these statements and of this record in any subsequent case is very limited and limited only to such cases in which their admissibility is conclusive to the best interests of justice. In those circumstances I submit that the elimination of these concluding words of this clause would result not in the interests of justice, but would be highly detrimental to the administration of justice. The one case which I can think of in which these statements and this record would, without any doubt, be admissible is the case of the sub-inspector of police and in that very case the acceptance of this amendment would make these documents and these statements admissible in the subsequent case against the sub-inspector of police. I submit therefore there is not only no *a priori* reason justifying the elimination of these words, but on the contrary the elimination of these words would be in the highest degree detrimental to the administration of justice.

Mr. Chairman: I think before the discussion proceeds further in view of the remark which fell from the Honourable the Law Member I propose to put the first portion of the amendment namely

"In clause 33 for the words 'for any purpose' substitute the words 'as evidence' and omit the words 'as hereinafter provide'

which are purely verbal changes. I put them to the House now, so that the discussion may proceed on the rest of the amendment that is "nor shall such statement be used as evidence."

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions Non-Muhammadan) Sir, I wish to oppose the amendment and give some reasons for doing so.

Mr. Chairman: You want to oppose the verbal change?

Mr. K. B. L. Agnihotri: Yes and show why the change is undesirable. I rise with some hesitation to oppose the amendment moved by Mr. Pantulu to substitute the words "as evidence" for the words "for any purpose." Sir, the word "evidence" is rather more restricted in its meaning than the phrase "for any purpose." This by itself is a sufficient reason for not substituting the words "as evidence," for "for any purpose." It is better to have under this section a word of a wider meaning than of a restricted one. If we look to the object of section 162 we find that this section was inserted in the Code to provide as a safeguard against an unscrupulous police officer. As Mr. Pantulu has pointed out, a witness is not bound to state the true facts to the police, he may come and state anything he likes to. It may be false or it may be true, or it may be only to

please the police officer, or it may be with some ulterior motive to implicate some person. It was therefore thought necessary that such a provision should be included in the Code and that the evidence of such a person should not be an *ipso facto* evidence before the court, and the accused should not be convicted on such statements. It has also been pointed out by the Honourable the Law Member, that there may be certain unscrupulous police officers who may take advantage of the want of such a provision and may have such evidence brought on to the record in order to implicate certain persons. We therefore find that the insertion of section 162 in the Code of Criminal Procedure is an essential one to do away with the mischief of the police officers or of an untruthful witness. The words "for any purpose" as put into the Bill, seem to be very desirable and guard against all possible injury to accused. For instance, a man is summoned by a police officer to make a certain statement before him. He goes and makes a statement to please that police officer, and to avoid the trouble which may otherwise be the result if he refuses to state that which the police officer wants him to state. He states that such and such a man has committed this offence. Now if we do not admit this portion as evidence, that person against whom he has made a statement may not be liable to be convicted, and at least the truthfulness or the veracity of the witness could not be challenged and the witness could speak the truth before the Magistrate. Supposing I have made a statement before a police officer, and I am a witness for the defence. A police officer comes forward and says "this witness has made a different statement before me, and therefore the statement he has made in the court is contradictory and should not be believed." On that statement made by the police officer, or on that statement recorded in his diary, the judge will be perfectly justified in holding that I am not telling the truth, even though I have stated the truth on oath and I may have spoken a falsehood before the police officer to please him. So if we retain these words "for any purpose," in this section the prosecution can not produce such a statement and challenge my veracity on the ground that I had made a different statement before the police officer. Therefore the words "for any purpose" should be retained in this Bill, and should not be substituted by the words "as evidence," because in that case the police diary may be brought before the Magistrate to contradict the witness and show that he had stated something contradictory before the police officer. That would not be promoting justice and would be encouraging unscrupulous police officers and would fail in its very object. I therefore oppose the amendment.

Colonel Sir Henry Stanyon: I also rise to oppose the amendment. It has been sufficiently demolished by the illuminating exposition of the clause in the appeal made by the Honourable the Law Member, and I rise only to draw attention to one point in connection with this clause.

The clause reads:

"Nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided)"

The only point I think which requires to be made clear, so that the House may vote correctly on this amendment, is whether these words "hereinafter provided" refer only to that proviso, because, if they do, then a most important use of these diary statements provided for by section 172, clause (2) is shut out. I see no amendment in this Bill to section 172, clause (2), which provides that for the purpose of aiding any

[Colonel Sir Henry Stanyon.]

inquiries in trials the Judge may use the police case diaries. The words "save as hereinafter provided" are ambiguous. "Herein" may refer to the Code or it may refer to the section. That is the only point I have to make.

Mr. Chairman: The question before the House is to substitute in clause 33 the words "as evidence" for the words "for any purpose (save as hereinafter provided.)"

The Assembly then divided as follows:

AYES—3.

Muhammad Ismail, Mr. S.
Ramayya Pantulu, Mr. J

Samarth, Mr. N. M.

NOES—47.

Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Asad Ali, Mr.
Ayyar, Mr. T. V. Seshagiri.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Blackett, Sir Basil.
Bradley Birt, Mr. F. B.
Burdon, Mr. E.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Gulab Singh, Sardar.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.

Jatkar, Mr. B. H. R.
Ley, Mr. A. H.
Misra, Mr. B. N.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Percival, Mr. P. E.
Pyari Lal, Mr.
Sarfaraz Hussain Khan, Mr.
Sarvadikary Sir Deva Prasad.
Sen, Mr. N. K.
Shahani Mr. S. C.
Singh, Babu B. P.
Singh, Mr. S. N.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Srinivasa Rao, Mr. P. V.
Stanyon, Col. Sir Henry.
Subzposh, Mr. S. M. Z. A.
Vishindas, Mr. H.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. Chairman: The rest of the clause is now under discussion. I must read it to the House so that Honourable Members may follow it. It runs:

"Nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided)."

We are carried so far.

The further words thereafter, viz.:

"at any inquiry or trial in respect of any offence under investigation at the time when such statement was made";

the proposal now is that all those words be omitted.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, with your permission I should like to say a few words. My Honourable friend, Mr. Seshagiri Ayyar, and other Honourable gentlemen having agreed to the retention of the concluding words in this clause, we have, as must have become clear from the division which has just taken place, agreed to the retention of the words "for any purpose" instead of "as evidence";

and I understand the position now to be that Honourable Members are prepared to accept the clause as it originally stands in the Bill. But I must make it clear that this will not in any way affect the provision embodied in section 172.

Mr. T. V. Seshagiri Ayyar: Subject to any further amendments.

The Honourable Dr. Mian Sir Muhammad Shafi: Yes, quite.

Mr. K. B. L. Agnihotri: Sir, I have been placed in a somewhat false position. The leader of my party has accepted a certain compromise with the Government. I do not question that compromise, but at the same time I wish to put before the Members of this Honourable House my difficulties in the matter, and if on re-consideration the Honourable Members still agree to the compromise, then I shall be satisfied. My reasons for moving for the omission of those words are, Sir, that it may happen that an unscrupulous police officer may know that a statement made by a certain witness before him is not admissible for the offence under investigation at that time, but may be admissible in respect of some other offence that may be before him but may not be under investigation at that time,—and with this knowledge this unscrupulous police officer may record that evidence which, as the clause now stands, will make it admissible later on. This would be a very real danger if we allowed the clause to stand as it is. The Honourable the Home Member said if an unscrupulous police officer were to behave in this way he should be prosecuted. That certainly is a real difficulty, and if the Government were to make special provision to that effect, that in the case of a police officer making a false diary just as they have done in respect of section 32 of the Indian Evidence Act, such statements should not be admissible; if the Government were to make such a provision, it would I think satisfy the purpose and solve some of the difficulties. I have known a case under the Arms Act in which a man was prosecuted for not having intimated to the police about the transfer of certain arms. The police were investigating this offence—that is, his omission to report the matter to the police; but under this offence they also recorded evidence in the same diary about the arms having been exported by another man from a Native State into British territory, without a license with a view to compromise that man if the prosecution for omission to report failed. If this clause is allowed to stand, that evidence would be certainly admissible and will create additional hardships. Therefore it would be better if this clause were omitted and the Government might except the case of police officers in the second sub-clause of section 162. I therefore move the amendment that:

“In sub-section (1) omit the words ‘under investigation at the time when such statement was made.’”

Mr. Chairman: The question before the House is:

“That the words ‘at any inquiry or trial in respect of any offence under investigation at the time when such statement was made’ be omitted from sub-clause (1) of clause 33.”

The motion was negatived.

Mr. Chairman: Amendments Nos. 129 and 130 (a) fall through.

Mr. K. B. L. Agnihotri: Sir, I beg to move that:

“In clause 33 in the proviso to sub-section (1) insert the words ‘allow inspection to the accused and’; after the word ‘shall’ omit the words ‘may then if the Court thinks it expedient in the interest of justice,’ and omit the words ‘if duly proved.’”

[Mr. K. B. L. Agnihotri.]

Sir, the proviso as it stands in this Bill is to the effect that if the accused requests a Magistrate to go through the statements of certain witnesses before the police, the Magistrate shall go through the statements and if he finds that in the interests of justice a copy of such statements be provided to the accused for purposes of the defence, the copy of the statements will then be given. Sir, the statements that are taken by the police are generally made in the absence of the accused, and the accused cannot be in a position to know the statements that any particular witness may have made before the investigating officer. It therefore generally happens that though the accused knows nothing about the statements still he requests the Court to go through the statements and to find out if there was any contradictions and the Magistrate has thus to waste his time unnecessarily in going through those statements to find subsequently that the statements made by a particular witness before the police were exactly the same as he made before the Court. This procedure involves much waste of public time that could very well have been avoided had the statements of the witnesses appearing before the Court been supplied to the accused beforehand and the accused would then have found out for himself any statement contradictory to that made before the Court, and could then ask for permission from the Court to contradict that witness on that statement. I think the proposed amendment will be more wholesome and will save much of the public time than will otherwise be the case if the clause is allowed to remain as in the Bill. Secondly, Sir, there is a provision in the proviso—"and may then, if the Court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof." . . .

Mr. Chairman: The Honourable Member might perhaps put his amendment in three parts—first, allowing inspection to the accused—that will be better.

Mr. K. B. L. Agnihotri: I therefore submit that the inspection of the statement ought to be allowed and with this view I beg to move that in the proviso to the same sub-section insert the words "allow inspection to the accused and."

Dr. H. S. Gour: Sir, I strongly support this amendment. Honourable Members will observe that this clause has been the battle-ground for the last thirty years that I have been practising at the bar. In the old Code copies were furnished to the accused; later on in the consolidating Act this proviso was modified and found its place as it does in the current Code of Criminal Procedure. Ever since this proviso was inserted I have had numerous cases in which I have asked the Judge or the Magistrate as the case may be to refer to the statements of witnesses made before police; he has looked at it and he says to me "I have referred to it and thus complied with the provisions of this proviso." But I was none the wiser by the Judge's reference to the police diary, and the result was that I was not able to cross-examine witnesses with reference to their previous contradictory statements which in the appellate Court was a revelation to me, because when these very statements were read out I found in several cases that they were diametrically opposed to the statements made in the lower Court. I therefore submit that it is a perfectly innocuous provision which does nobody any good and is calculated to lead to a dereliction of judicial duty to say that the Judge or the Magistrate as the case may be shall refer to the statements made by a witness to the police, on a request being made to that effect to the Court. In the statement of objects and reasons which

heralded this proviso it was stated that as the statements of witnesses to the police were very inaccurate and were not taken down by persons accustomed to the recording of evidence, therefore it was unsafe to treat them substantially and practically as pieces of evidence. On the other hand, it was pointed out that in a very large number of cases witnesses go back upon their own statements either because they are tutored to do so, or because they feel that by going back upon their statements they will improve the case of the side they represent, and if the counsel for the accused exercises his power and asks the Court to refer to the case diary, the Court does not look at the case diary from the same point of view as the accused and his counsel. He has got certain things in his mind, the Court has got quite a different thing in its mind, and the result therefore is that the object with which this latitude was allowed in the present Code has been practically neutralized by reason of the fact that the Court is not bound to give a copy or to allow the inspection of the statements of witnesses made to the police on a request being made to that effect to the Court concerned. I therefore submit, Sir, that the insertion of these words in this provision, namely, "to show the statements to the accused and to allow inspection to the accused," would be a salutary improvement and I hope the Honourable the Law Member and his colleagues on the Treasury Bench will see the strength of our arguments and accede to the amendment proposed by the Honourable Mover.

Colonel Sir Henry Stanyon: Sir, I also rise to support this amendment very strongly. Perhaps my experience of this proviso has not been as great as that of other Members of this Honourable House, but I have had a certain amount of experience in its working. The existing proviso has been absolutely useless. In many places it had been the habit for investigating police officers to write in one book their diaries interpolated by statements of witnesses examined by them during the investigation. The diary is a sealed book in such cases to the accused; yet under this proviso the accused is expected, by some process of divination which I cannot understand, to make a request to the Court to examine the statements of certain prosecution witnesses; and then discretion was left to the Court to give him a copy of those statements for the purpose of cross-examination. Now in actual practice a date is fixed for the Sessions Court to begin its labours. It starts to follow the procedure for trials laid down in this Code. I do not remember one single instance in 7 years' work as a Divisional Sessions Judge in which I was ever asked to delay the trial so that copies of these statements might be prepared and handed over to the accused. The thing was really unworkable. What I found it necessary to do and what I dare say a great many other Sessions Judges have found it necessary to do, was, where the witness's statement in Court differed widely from his statement made at the police investigation, to ask him questions on it myself. Well, that is not carrying out the section. The clause which is now proposed to be substituted is no better. Once again, it leaves the initiative in the matter to the accused person who knows nothing whatever about the contents of the statements recorded by the police. I have never been able to understand why these statements, which in a proper investigation should be recorded quite separately from the case diary but which are not so recorded in many cases, why the statements should be put any more behind the veil than that important document—the first information. They are merely statements made by witnesses in the course of an investigation—sometimes they are made publicly, sometimes they are made very privately. But they are there, whatever they are worth. Why not

[Colonel Sir Henry Stanyon.]

let the accused person see them and then, when he finds that certain of the prosecution witnesses have gone right away from what they said to the police, let him have copies and leave the cross-examination to him and relieve the Sessions Judge or the Inquiry Magistrate from the duty of cross-examining Counsel. Therefore, I urge that this amendment is entitled to the support of the House. It asks for nothing more than this that these statements which are recorded and should be recorded, apart from the diary, may be shown to the accused in order that he may be in a position. . . .

The Honourable Dr. Mian Sir Muhammad Shafi: *Shall be shown, not may be shown.*

Colonel Sir Henry Stanyon: I still think that he ought to be allowed to inspect these statements because there is no question that they do influence decision. Section 172, clause 2 refers only to *deposes*; but Courts and Judges who look at these diaries under that clause, though they do not use them as formal evidence, are still very much influenced in their judgments by what is written there in the form of statements of witnesses. Therefore, I think that this amendment ought to have the support of the House.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, I venture to point out to the House that the position taken up by my friend, Dr. Gour, is materially different from the position of the Honourable the Mover of this amendment. Honourable Members will recollect that my Honourable and learned friend emphasized the fact that, when the Court had a discretion in the interests of justice to furnish the accused with a copy, there was no reason why similar discretion should not be given to the Court to allow inspection of these statements if the accused wants that inspection. There is something in that position taken up by my Honourable and learned friend. But what the Honourable Mover asks for is this that the House should introduce into this clause the words, "allow inspection to the accused" and, if you look at the proviso, the only place where these words do fit in at all is after the word "shall" "shall allow inspection" and so on. Now, if I may venture to say so, this is a case in which it would not be conducive to the interests of justice if it were to be made obligatory on the part of the Court to allow inspection in any and every case. As a matter of fact. . . .

Dr. H. S. Gour: That was in the Code of 1882.

The Honourable Dr. Mian Sir Muhammad Shafi: With all deference, I would remind my Honourable friend, Dr. Gour, of what he said only a short while ago. It seems to me, Sir, that just on the very grounds on which the Code of 1898 and the present clause makes it discretionary for the Court to permit copies of these statements, on these very grounds it would be in the highest degree detrimental to the interests of justice if it were made obligatory on the part of the Court to allow inspection. In fact, the two portions of the clause would almost become contradictory of each other. To say that in one case the Court is bound to give inspection and in the very next breath to say that the Court shall have discretion to direct that a copy of that statement be given to the accused would become self-contradictory. Had the Honourable Mover chosen to move an amendment to the effect that just as the Court is given a discretion to allow copies of these statements being furnished to the accused, similarly it

may be allowed discretion to allow inspection, that would have been quite a different matter,—a position with reference to which possibly the Government would have been prepared to meet him halfway. But as he makes it obligatory on the part of the Court to allow inspection, I regret that the Government cannot accept that proposition. It seems to me that in cases of this kind the Court ought to be allowed discretion, for these statements really are not part of the judicial record at the trial. Of course, if they were part of the judicial record at the trial, every accused person would be entitled as of right to demand inspection and to demand copies. But when these statements do not form part of the record at the trial but form part of an entirely different record, record prepared by the police during the police investigation, it is only where the Magistrate thinks that in the interests of justice the accused ought to be furnished with copies or ought to be allowed inspection that the Legislature ought to allow him that discretion; but to make it obligatory on the part of the Magistrate to allow inspection, I submit, would be going beyond what is required by justice as well as by the equities of the case.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, to put this matter in ordinary common language is better I think than using legal phraseology. When an offence is committed, an investigation proceeds. That is, policemen come there, examine the various people, take down their statements, write down what those men tell them. So they go on for a number of days. Latterly, they believe that a particular man is guilty of the offence and put him up before the Magistrate in the first instance in serious cases. When the accused person comes before the Magistrate, he or his pleader wants to know on what materials he is placed before the Magistrate, on what materials he is charged with this serious offence. He asks the Magistrate. The Magistrate says, "I do not know. You will learn. Witnesses will speak in Court and then you will learn." The witnesses do speak. The accused or his adviser believes that the witnesses at that time have improved their story, or to fit into other circumstances, are giving an altogether different story from what they told the police at the earlier stages, that is, before they had time to cogitate, to think and to find out the consequences of their statements. That is they make their story fit in with other circumstances, from the unimpeachable circumstances, which have transpired. Now these are the conditions in which often times an accused person is placed. Then it becomes very important and material to know what these witnesses had in the first instance told the police and it is then that an application is made to the magistrate to see the originals, that is the statements where these depositions are recorded. Now looking at that position, I think in the interests of justice an accused person must have the right, not as a matter of discretion of the magistrate, to see what is it in black and white made at a very early stage, when there was no opportunity to coach up the witnesses or to improve or to embellish their statements. Now, I ask, apart from all technicality and apart from other arguments, is it or is it not fair to give the accused person a chance, as much chance as the prosecution has at that stage. Now what is the harm. If your policemen have been doing their duty honestly what is the harm in telling the accused what they have done. Should the law be made enacted in a manner to shield a slovenly policeman or a dishonest policeman or an over-zealous policeman? Why should you give that opportunity? I say nothing will be lost. Justice will not suffer if you show the accused person the earlier statements recorded in writing by the policeman

[Rao Bahadur C. S. Subrahmanayam.]

who made the investigation of the offence and if those witnesses have swerved from what they had said substantially, well the magistrate or the court will be in a position to judge of their veracity. If the swerving is slight in some matter of minor detail, then also the Court will see that the change is not of substance. Therefore it seems to me on grounds of ordinary justice it is fair that the accused person should have the right, not merely at the discretion of the magistrate which will vary and which we have never found exercised properly on occasions like this, to inspect these statements. Now, Sir, I have for a large number of years had direct experience of trials and inquiries. I know this was one of the sore points in every magisterial inquiry and in every Sessions trial. Some judges used to read these diaries, those who have some patience. These statements are recorded in the vernacular. Most of the judges are not able to read the originals in the vernacular. They would not therefore take the trouble to read these early statements and to ask a judge to read those statements and then tell me whether in the interests of justice I should get it or not is too much to ask of a judge in the hurry, in the hustle and in the pressure of a trial. You cannot ask a judge to read all these illegible manuscript documents and tell you whether they are important or not. You cannot ask that. Therefore, I think this provision has been very considerably misused. The accused person till a very very late stage is not in a position to know what the materials against him are,—and what is the good of a trial like that? And what happens? Justice fails in the original Court, and in the appellate Court, by the help of counsel and others there, things are raked up, re-trials are ordered, or convictions are upset, and all this delay, all this annoyance and worry is caused. Therefore I think in the interests of justice it is better to give the right to the accused person. There is one other argument which I feel strongly, and it is a strong argument in support of this request, and it is this: you will make the policeman write down, take down statements with greater care; he will not write them out in an indifferent manner. He will know that these statements will be brought up before the Magistrate, and therefore in taking down these statements he will take them down with care, with precision. And now what happens now in these times? Things are mixed up; there is one paragraph of the statement, and two or four paragraphs of information, opinion and suspicion,—and all to the prejudice of the accused person. And when the judge reads it all, he naturally gets prejudiced against the accused because there are so many things against him, which cannot be evidence in a Court, embodied in that diary. He is told, the accused is a notoriously bad man; he is a great gambler. All these impressions are formed. So it is a salutary thing if you will allow, as a matter of right, the inspection of these documents, for then the police will enter in these statements only useful matter, and if he has got opinions and impressions, he will record them in another place, and so the two will be separated, and what the accused gets will be a mere statement. What is a confidential document will be a confidential document and no inspection of it will be claimed. It will work in the interest of the efficiency of the police, for the integrity of the work, and also it will save a lot of unnecessary worry and annoyance to the accused.

Mr. T. V. Seshagiri Ayyar: I move, Sir, that the consideration of this section be adjourned.

Mr. Chairman: It will automatically be adjourned at Four.

Mr. Jannadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I move that the question be put. (*Cries of 'No, no.'*)

Dr. H. S. Gour: I understand, Sir, that the matter will automatically close for the day as soon as it is Four of the Clock.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I venture to make a suggestion which will cut short this discussion,—that 'shall' should be changed into 'may.'

Dr. H. S. Gour: I rise to a point of order. I understood the Honourable the Law Member to indicate a desire to compromise this matter with Members on this side of the House; and if I understood him aright, he was in a compromising mood. We also are anxious that there should be a settlement, so that the official bludgeon may not descend upon the non-official Members on this side of the House; and I therefore submit that we should give the Government a little more time to think. They will come better prepared to meet our wishes at the next sitting. I therefore submit that it is one of those cases in which nothing is lost in giving time.

MOTION FOR ADJOURNMENT.

APPOINTMENT OF A ROYAL COMMISSION ON CIVIL SERVICES.

Mr. Chairman: Order, order. The Council will now proceed to discuss the motion for adjournment of the House to discuss a definite matter of urgent public importance, namely, the decision of His Majesty's Government to appoint a Royal Commission on the Civil Services in India.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I rise, Sir, to move the adjournment of the House to consider the announcement made yesterday by the Honourable the Home Member that His Majesty's Government in England have decided to appoint a Royal Commission to inquire into the financial and other conditions of the Civil Service.

Before I proceed very much further, Sir, I should like to advert to a sentence in the letter of Mr. Montagu—one of the greatest friends of India—which he addressed to the London "Times" on this subject. Speaking of the Legislature in relation to the Civil Services, he says, that the Legislature has very often exhibited hostility to that Service and has occasionally used violent language towards it. I am sorry that such a good friend of India should be so unfair to the Members of the Legislature. Sir, during my career as a Judge of the High Court I have worked with many Civil Servants. I have very many friends among them even to-day; I have supervised their work. I say with confidence that they are good friends, loyal colleagues and willing subordinates. They have done exceedingly good work in the past and I have no doubt they will continue to discharge their duties as efficiently and as willingly in the times to come. In fact, Sir, when I look at the Treasury Bench, which contains such a large number of Civil Servants in this House, which is supposed to be a popular Assembly and when I find how wholeheartedly they give their time and intellect to the work, I have every hope that the Civil Service in the years to come will discharge their duties even better than they did in the past. Therefore, Sir, I do not expect that any friends of mine, certainly not myself, will use any language which will be hostile to the Civil Servants and which would show that we are not willing to treat them justly and generously. Sir,

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I doubt whether this move on the part of His Majesty's Government is in the interests of that Service. I am inclined to think that the best minds in that Service do not like an inquiry of this nature as that would antagonize the Indian people and would probably not result in any good to them.

Look at the matter, Sir, from the point of view of the mode in which this announcement has been made; look at the time of the announcement; we have been asking for the Indianization of the Services; a Circular has been sent round for eliciting opinion on that question. It is only yesterday, or day before yesterday, that a bombshell was thrown by the Secretary of State's decision not to make any further advance in regard to constitutional reforms. The financial position of the country is very unfavourable; and at this period, and at this time to have resolved upon appointing a Commission with the avowed object of making the position of the Civil Servants better financially is a step which is calculated to damp the ardour of the most earnest amongst us who want to befriend the Civil Service. Sir, is there any country which enjoys self-Government in which such an idea has been entertained? I think I am right in saying, Sir, that the idea of appointing a Royal Commission is opposed to the pronouncement made, time after time, in the Houses of Parliament; it is opposed to the Preamble of the India Act; it is opposed to the language used by Mr. Montagu at the time when he made the famous pronouncement. What does the Preamble to the Act say? It says that Indians should be increasingly associated with Europeans in the service of the country. It also says that the object of the Parliament is to develop the self-governing capacity of the people with a view to progressive realization of responsible Government in this country. Now, Sir, I ask the question, is it possible to have progressive realization of responsible Government in this country if the Indian Government and the Indian people are not to consider the pay and prospects of the services, but that Parliament should appoint a Commission to consider the grievances and the conditions of service of the Europeans. What does it come to? It means this, that these European Civil servants will have their pay fixed by a body outside India, although they will have to work under Ministers who represent the people of this country. Now, is that a position which can be contemplated with equanimity—a service which will be irremovable, which will have its pay fixed by an outside body, to work under the people's Ministers? That would mean that the Ministers can have no control over them. Certainly that is not the way by which you can facilitate “progressive realisation of self-Government in this country.” I began by asking is there any self-governing country in which such an idea has been entertained or could be entertained? Certainly you do not find in the self-governing Colonies any attempt made by the British Parliament to impose a civil service on them. I was reading, Sir, the other day an interesting debate in the House of Lords on the question of the civil service in Ireland. An amendment was moved in these terms by Lord Glanaway.

The amendment was:

“The civil servants in Ireland should have a statutory right to compensation on retiring owing to the change of Irish Government.”

This was opposed by the Government, and there were not half a dozen Peers to stand up for this proposition. That shows that in the House of

Lords such an idea was considered to be too ridiculous to be pressed for a division. In this country however without consulting the Legislature, without understanding our views on this matter, already a decision has been come to that there must be a Royal Commission to examine into the grievances of civil servants. Sir, I must point out at this stage that if a Commission is appointed the inquiry will be practically one-sided. The whole country has been against the appointment of a Commission and it is not right to expect that we, the representatives of the people, would co-operate with a Commission which may come out here for the purpose of making such an inquiry. It is impossible to think of any co-operation being given to a Commission which has been forced on us. The country from one end to the other has raised its voice against this step and if against our will, notwithstanding our protest, a Commission comes, it will find that we are not prepared to co-operate with them; the whole inquiry will be one-sided and will have no effect upon the people or on the Government. Sir, if a Commission is necessary, there are means by which it can come into being. Why should not the powers given under the Government of India Act be availed of? There is section 96B. (A voice: '96C.') yes, 96C' things which enables the Government to appoint a Public Services Commission which can go into the question of pay, prospects and pension, etc., of the services. If that is done, the Legislature will have a voice in the matter; then there will not be as much grievance as we have now. Instead of availing themselves of the powers given under the Government of India Act, against the teeth of that very power, an outside body has resolved upon appointing a Commission which the people do not want and which the Legislature resents. Sir, as there are a large number of my friends who wish to speak on the subject, I do not want to take up much more time. But I must say this that there has been a feeling in this country, and the feeling is growing, that the Conservative Government at home is not friendly to Indian reforms, Indian progress. The practical dismissal of Mr. Montagu was at the instance of a large number of Conservative Members of the House of Commons. Ever since his disappearance from the India Office, we have heard of attempts being made by Whitehall to limit and to resist any attempt made by the Government of India to give to the people of this country more privileges. It has been said, times without number, that mandates have come from Whitehall to stop attempts made by the Government on the spot to take the people into their confidence and to invest them with larger powers. These apprehensions exist, and the people call to memory that in the old days the Conservative Government have never shown itself friendly to progress in this country. Sir, this attempt on the part of the present Government to force upon us a Royal Commission which the people do not want is another instance in point. They want to prevent, as far as possible, all attempts at reforming the constitution. They may say, Sir, that they will not go back on the pronouncement made by Mr. Montagu. They may say that the preamble of the Act is there and that they will give effect to it. They may keep themselves within the letter of the law, but the spirit to carry the people with them, the spirit to assist the people in obtaining responsible self-government is certainly not in evidence, and I am sorry that Lord Peel should have fallen into the mistake of appointing this Commission, which is certainly ill-advised and uncalled for. For all these reasons I move that this House shall adjourn as a protest against the appointment of the Commission which was announced yesterday.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, in supporting this motion, I desire in the first instance to convey our

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thanks to the Honourable the Leader of the House for making as early an official announcement here as he could and thus giving us an opportunity of entering a strong, I shall not add indignant, protest at the way that this Commission is proposed to be appointed. It emphasizes Lord Curzon's pronouncement that the Government of India is but a subordinate branch of the British Government. Well, I rubbed my eyes hard when I got a copy of the pronouncement, thanks again to the courtesy of the Home Member, and I asked myself what the authority and the constitution was under which this Commission was going to be appointed. At one time it had occurred to me that the authority was what Mr. Seshagiri Ayyar has referred to—section 96 (c) of the Government of India Act. Well, whoever is responsible for the decision, and we are considering the *decision* now because the appointment has not yet been made, was however wide awake. Section 96 (c), clause (2), gives authority to the Public Services Commission mentioned there to discharge in regard to recruitment and control of public services in India such functions as may be assigned thereto by rules made by the Secretary of State in Council. The bomb thrown two days ago has been spoken of by Mr. Seshagiri Ayyar. That is the Despatch of the 2nd of November, published here on the 24th. But it was a bomb that was well expected. In that Despatch occurs memorable advice to the Legislature to explore the structure of the present elastic constitution for development within the limits of what would be probably called expanding conventions. The Secretary of State himself however did not explore what was provided for under the Government of India Act. Though near upon three years have elapsed the rules contemplated in section 96C and the Commission suggested there have yet to come. Supposing, Sir, this Commission and the rules were there, as they should have been long ago, and if the Services made their grievances known through the usual channels, what would there have been to prevent "two people sitting down of a morning," as Lord Islington puts it and setting right those grievances in the light of growing exigencies and changing circumstances, economic and otherwise? In 1915, at the expenditure of near upon six lakhs of public money, and three years of time, the Public Services Commission made recommendations which were published in 1917. What has happened since? The question of percentage whether of 25 or 33 per cent. or something else has been somehow dealt with. Though we are not satisfied with the percentage, we are waiting and watching. That is not what is troubling those who are responsible for this Royal Commission. Questions of pay and prospects, statutory security, thereabout and, adroitly enough, the question of Indianisation have been more or less vaguely introduced in this scheme which probably could not be done by the machinery under section 96C of the Government of India Act. The country will probably be called upon to pay another six lakhs. I should like to know what the Honourable Sir Basil Blackett or the House will have to say in regard to that or whether the charges are to be borne by the Secretary of State or the British Treasury. Sir, the Retrenchment Committee is sitting. Supposing, like the Bengal Retrenchment Committee, this Committee were to suggest a lower scale of pay right through and the Royal Commission makes other recommendations, where shall we be? How are these not unlikely extremes to meet? It is more than inopportune, therefore, it is unfortunate that, without taking all these circumstances into consideration, without invoking in the first instance the machinery at the disposal of the Secretary of State, this Royal Commission should have

been decided on. Who is in its favour? Is the public opinion in India in its favour? Is the thinking public opinion, as voiced in the Press—Indian and Anglo-Indian—in its favour? Are men who know all about these things, men like Lord Islington, who has dealt with the question of the public Services, here, fully in its favour? No. Mr. Montagu has no doubt indicated that an investigation is necessary; that may be in his own justification. But there is other machinery for investigation than a Royal Commission. Why, for example should not that investigation have been made by a Committee like the one which your (Mr. Rungachariar's) intended motion in this House suggested that the Government of India should undertake as the Secretary of State has failed to appoint his Commission under section 96C of the Act. Are we quite sure again that the Services like it? My friend, Mr. Seshagiri Ayyar, has suggested that they do not; that is my belief also. The chances on the other hand are that under the Fundamental Rules and many other rules which we very little understand they are really not doing badly, some of the gain may not bear examination.

Then, Sir, there is the question of reconciling public opinion. We had only two days ago the dictum about its being "too early to think of revising or going back upon what has been done." The very significant word "now" comes in this announcement. Within two months of the Secretary of State's pronouncement that certain other things of a revisionary nature are not to be undertaken because of things that are not before the public.

Is the Government of India in favour of this Commission? Of course, the Government of India will never tell us. Yesterday, however, in another place, not very far from here, it was suggested that the Government of India did not like this Commission and was in fact opposed to it, and I believe that that was not denied, certainly not stoutly denied. (Mr. N. M. Samarth "Not categorically denied.") Not categorically denied. I am thankful to my Honorable friend for that suggestion. If my reading of the situation is correct, if the Government of India is opposed to it, if the thinking Indian public is opposed to it, if men like Lord Islington are opposed to it, if the Service itself as some of us think, is opposed to it, where is the necessity, or justification, where is also the authority under the constitution for this Commission?

Sir, belittling of and constant interference with the Government of India does not and cannot make for progress. Mr. Seshagiri Ayyar has spoken of likely non-co-operation. When the Commission come I hope he and others like him will not take up any attitude like that but will, when the Royal Commission comes place all materials before the Commission, and make them see that much of what is proposed cannot be done. But there are other and real non-co-operators. Will not this sort of action be strengthening their hands? Will they not be able to say and say with great force: "Here is your machinery; you have been toiling hard; you have been given a constitution which is not to be interfered with for 10 years (as we were told in November last) and now here is an attempt to go back upon the whole question, because the scope of the reference is to be wide enough to permit question of organisation, general conditions, financial and otherwise of a certain Service, being gone into and for ensuring and maintaining satisfactory recruitment of such numbers of Indians and Europeans respectively as may be 'now' decided to be necessary." The go by is thus to be given if possible to the previous agreement—I shall not call it decision—about percentage and various other questions relating to the Services. What has happened since November that we are told now that for the purpose of

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maintaining the standard of administration in conformity with the responsibilities of the Crown and the Government of India, a new step has to be taken. Has anything happened within the last twelve months that this new departure is necessary, or has the Crown *now* had further responsibilities imposed upon it that it had not, when the Government of India Act was passed?

Then, Sir, we have a reference in this announcement about the necessity of promoting the increasing accession of Indians to every branch of the administration. It is put in a way that will prove acceptable from certain points of view. I do not know whether the Military Service also is going to be taken up by this Commission or not. It would depend on the actual terms of reference, but we have in the announcement a widely suggestive indication. There is certainly nothing according to this announcement to prevent even the Military Services being taken up, because there also we want increasing association of Indians. Sir, the right way of looking at the question, the practical way is as Lord Islington has put it. No inquiry will get rid of what is the real trouble in the mind of the people agitating for the Commission. What does Lord Islington say:

"It is inevitable that the gradual pruning of political power of the service shall come."

No inquiry can get rid of that possibility for that is in the day's work under the Reforms. Whoever suggested or can suggest that the pay or prospects or even the status in the ordinary sense of Indian Civilians are or will be in jeopardy, unless the Government of India become absolutely Bolshevik and revolutionary,—who is going to say that section 96B of the Government of India Act is to be inoperative? Time will not permit my drawing the attention of the House to the details of the guarantee provided in that section—every possible safeguard is there, when Parliament or Government in England or here is powerless in enforcing these statutory regulations there will be more than chaos. What jeopardy, earnestly and seriously speaking, does the Superior Civil Service as it is called in the announcement apprehend that it requires to be protected against? I desire to associate myself with every word that Mr. Seshagiri Aiyar has said with regard to the members of the Civil Service and with feelings like those animating the Legislature, no harm can come to it. We have our differences. We have our grievances. We are trying to put them right and square; there are, I believe, many who will remain with us and earnestly and loyally co-operate with us. What is the good of upsetting all this friendly and amiable feeling and why should the situation be forced upon them and upon us which will put us on the defensive. (*An Honourable Member*: "What about their convictions?") They will take care of their convictions whatever that may mean. We are here to speak upon our convictions and to put the case before the country and the Government here and the Government and the public in England in the best of our light.

Sir, it will take a whole sheet of foolscap paper to enumerate the various Commissions and Committees we have had of late. Lakhs and lakhs of rupees have gone on the Decentralisation Commission, the several Financial and Exchange Commissions, Public Service Commissions, Railway Commissions, University Commission, Industrial Commission and Fiscal Commissions. What has come of them? What will come of this Commission particularly. I repeat if the Retrenchment Committee does its duty and lays down dicta that no Royal Commission will be able to reconcile themselves

to? If any revision was necessary and it is undoubtedly necessary in some ways why could not they do it by the machinery permissible under the Act? Supposing—I am assuming it—Lord Ronaldshay comes out as the President of the Commission, does he not know all about the situation? He was a member of the Public Services Commission; he was a very successful Governor of Bengal; he knows Indian conditions and Service conditions; his articles in the Magazines show that he is in touch with the country. Supposing he comes as President—I am only supposing it—would he advance matters here—would he not have been able to help the Secretary of State with advice which would be in addition to what a Commission under section 96C of the Government of India Act would have and had to secure? Therefore on constitutional grounds, on financial grounds, on grounds of public opinion, on grounds of expediency, on grounds of the need of keeping up the status and prestige of the Government of India, we oppose, if we can oppose, a Royal Commission. Certainly we protest against its appointment, and its appointment in the way that has been indicated. We shall be doing less than our duty if this House as far as possible, unanimously—because we cannot expect the Government to vote with us—if this House does not unanimously voice the opinion of the country that this Royal Commission is unnecessary, unfortunate and undesirable.

Dr. H. S. Gour (Nagpur Division, Non-Muhammadan): Sir, I should like to take the House through a few facts for the purpose of demonstrating to it not only the utter futility of the Royal Commission but of its intrinsic and inherent illegality considered in its unconstitutional aspect. Honourable Members will remember that only two days back the Honourable the Home Member read out the Secretary of State's despatch on the subject of further reforms. In that despatch occurred these pregnant sentences:

"The new constitutional machinery has to be tested in its working as a whole. Changes have been made as the results of the Act of 1919 in the position, powers and responsibilities not only of the legislature but also of the executive government."

Then later on His Lordship says:

"It is clear that sufficient time has not elapsed to enable the new machinery to be adequately tested."

This was written on the 2nd of November 1922. And now mark the language of the Communiqué published to this House yesterday by the Honourable the Home Member:

"It is contemplated that the Commission will be required, having general regard to the necessity of maintaining a high standard of administration in conformity with the responsibilities of the Crown for the Government of India, and to the declared policy of Parliament in respect of the increasing association of Indians in every branch of the administration and having particular regard to the experience now gained of the operation of the system of Government established by the Government of India Act."

The experience had not been gained on the 2nd of November when the Secretary of State dated his despatch. Within six weeks the experience has been gained and has so accumulated that a Royal Commission has been appointed. I ask, Sir, is this not a contradiction in terms? The Secretary of State assured this House that the reforms cannot be re-examined until sufficient time elapses and experience is gained, and within a few weeks we have the announcement of the decision of His Majesty's Government to appoint a Royal Commission to re-examine the question of the superior Civil Services. Honourable Members will note the wording of the Communiqué:

"Having general regard to the necessity of maintaining a standard of administration in conformity with the responsibilities of the Crown."

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Now, Sir, I ask the Honourable the Home Member what are the responsibilities of the Crown, and are not the responsibilities of the Crown in a state of transition? We have been told that the reforms are an experiment, and it was explained that the experiment means that it is in a state of transition. Further reforms will be conceded to this country after the statutory period. If so, I ask, is it not a fact that the responsibilities of the Crown to this country will vary from time to time, and has not the Secretary of State himself pointed out that we have not yet fully exploited the existing Reforms Act? If further progress under the Reforms Act is to be achieved, the responsibilities of the Crown must correspondingly diminish. How is a Royal Commission, then, to inquire into the condition of the Imperial Services without at the same time inquiring into the responsibilities of the Crown? How is the financial question to be dissociated from the political question? That, I submit, is the crux of the whole question. The Secretary of State says that so far as the political side of the question is concerned it is not time yet, but when it comes to the question of the pay and promotion of the superior services, he says the time has arrived for a further inquiry.

Then, Sir, I said at the outset that I have a shrewd suspicion that this Royal Commission has not only been forced upon the people of this country but also upon the Government of India. Only the other day, I think only yesterday, the Honourable the Home Member was challenged to deny a statement that the Government of India had opposed the appointment of a Royal Commission.

The Honourable Sir Malcolm Hailey (Home Member): The Honourable Member will, I am sure, excuse me in interrupting him. No such challenge was made to me.

Dr. H. S. Gour: If such a challenge was not made, Sir, in another place, I make it here and now. Is the Honourable the Home Member prepared to deny that at no time and at no stage the Government of India resisted the appointment of a Royal Commission?

I say, Sir, I shall assume, till a direct categorical contradiction is given by the Honourable the Home Member, that the Government of India did resist the appointment of a Royal Commission. If that is so, it raises a grave constitutional issue. It imperils the reforms. When these reforms were inaugurated, we were told by high personages of authority that the reforms will be worked alongside of the report of the Joint Parliamentary Committee which annotates them. In clause 33 of the Joint Parliamentary Committee's Report it has been said that, whenever the Government and the Legislatures are in agreement, the Secretary of State should not ordinarily interfere. Now, Sir, the Government of India are not unaware of the strong feeling in this country against the appointment of a Royal Commission. They could not have been unaware of the strong feeling in this House against such an appointment. I take it, therefore, that the Legislature and the people of this country were opposed to the appointment of a Royal Commission. And I further state, Sir, the Honourable the Home Member has not yet contradicted me,—I further state, Sir, that the Government of India were opposed to the appointment of a Royal Commission. There being, therefore, an agreement between the Government of India and the Legislature on the question of the appointment of a Royal Commission, the appointment by the Secretary of State of this

Commission is unconstitutional and contravenes the recommendations of the Joint Parliamentary Committee. This, I say, Sir, raises a grave constitutional issue. And I further submit that it is not really a question of necessity, expediency or of general policy—it is a question which cuts at the very root of the fundamental principle upon which the Reform Act is based. Then, Sir, passing on to the question of the utility of the Royal Commission, we have had Royal Commissions galore. We have had Royal Commissions after Royal Commissions, but what is their result? Is it not, in fact, ordinarily said, if you wish to shelve a question appoint a Royal Commission? And I ask Honourable Members in this House what are the Royal Commissioners to do? The grievances of the Civil Services in this country are known and well known. If you wish to redress them, redress them. If you do not wish to redress them, do not appoint a Royal Commission. We have been told that the appointment of a Royal Commission is a costly luxury. One Honourable Member of this House has lent me a copy, Sir, of a communication he received from the Home Department, the purport of which is that, though they have no figures showing the cost of Royal Commissions, they can say (1) that the cost of the Royal Commission of 1912-15, debited in the accounts of the Accountant General, Central Revenues, was Rs. 5,91,874—roughly speaking six lakhs. And that was a smaller Commission. This is going to be a much larger one. And we shall be told that the cost of a Royal Commission—we may safely say that the cost of a Royal Commission will run into several lakhs. This raises another grave constitutional issue. Who is going to pay for it? Is it to be included in the Indian Budget? Will it be submitted to the vote of this House? If it will be submitted to the vote of this House, it would be adding insult to injury. You have not been consulted on the subject of the appointment of a Royal Commission and you are made to pay for it. I submit, Sir, on every conceivable ground the people and the representatives of the people of this country should oppose the appointment of a Royal Commission, and I have no doubt that the Government of India must be sympathising with the people of this country in this year of financial stress when every effort is being made to economise in national expenditure. It has been said . . .

Mr. Chairman: Is the Honourable Member intending to proceed to another point? His time is very nearly up.

Dr. H. S. Gour: My speech also is very nearly over. We have been told Sir, in another place that we should welcome this Royal Commission, because the terms are large and liberal. We have been told that it is not merely to inquire into the general condition of service, financial and otherwise, but it will also inquire into the "best methods of ensuring and maintaining the satisfactory recruitment of such numbers of Indians and Europeans respectively as may be decided to be necessary in the light of the considerations above referred to." I beg to ask, Sir, how is this reconcilable with the statement made in the Montagu-Chelmsford Report which lays down the programme of progressive Indianisation of the superior services for the next ten years? Are we to go back upon that report? Are we to scrap it? Are new problems to be presented to the Royal Commission, and if they are, they would be inconsistent with the Montagu-Chelmsford Report, inconsistent with the Government of India Act, inconsistent with the recommendations of the Joint Parliamentary Committee. I therefore support the motion on the ground that the appointment is unconstitutional, it is unnecessary, it will serve no useful purpose and will unnecessarily antagonise the people.

Mr. R. A. Spence (Bombay : European): Sir, the need for Englishmen in the various services of the Government, not merely in the Indian Civil Service, but in the Public Works, the Police, and the other Services of Government, and the necessity of securing to them due recognition of their services and security of tenure, are, I think, recognised by every thinking man in India. The Secretary of State has full power to appoint a Royal Commission for any purpose which the Government at Home considers right, but if this is not desired by the Government of India, if it is not desired by the people of this country, one can but deprecate the appointment of a Royal Commission which is bound to disturb public opinion. The various tributes, the various just tributes which have been paid to-day and which are daily paid throughout India to the work done by Englishmen in the services in this country are surely a justification to us that their services will be recognised and looked after by the Government in this country without the appointment of a Royal Commission.

Mir Asad Ali, Khan Bahadur (South Madras : Muhammadan): Sir, it is my policy, that I should not speak on every subject in or out of season except when there is need for it. Now, I think, Sir, that it is essential to say a few words on this occasion. After hearing the best speeches of the Presidents of the Democratic and National Parties and the case made by them, and after hearing Mr. Spence's speech, there is very little for me to say on this subject. As one of the representatives of the Mussalmans of Madras, it is my duty to join with the sentiments expressed and to protest on behalf of myself and my community against the Provincial Royal Commission on the services.

Lieut.-Colonel H. A. J. Gidney (Nominated : Anglo-Indians): Sir, it was last year when I entered into the discussion of the Budget, I likened this House to a married couple, the Legislature as the husband and the Government of India as the wife and I foresaw in the Sessions of 1921, evidence of family disturbance which almost ended in a divorce in 1922 and I also said to this House, "what the Honourable Edwin Samuel Montagu had joined together, let no Budget put asunder." It seems as if the marriage bond is being put asunder by that very man who brought it about and I am very doubtful which way to view this proposition which involved the appointment of a Royal Commission; whether it spells the obituary notice of Mr. Montagu, or the I. C. S. or the Indianisation of the Services. I think it will be viewed from this triangular point. There is no doubt, Sir, that it has dealt a severe blow to Mr. Montagu, for the idol of this House seems to have fallen. I have heard the views expressed to-day by some of the leading Members and it seems to be very unnecessary for me to offer a wail in the wilderness opposing those views, especially after hearing what my friend, Mr. Spence, said. There may be something more than meets the eye in the case of this Royal Commission. The Indian Civil Service has certainly a lot to complain about. We accept that and one Member said "Why not institute an inquiry in this country so as to remedy these grievances?" How can you institute that inquiry and at the same time dissociate from that Committee the official element? There is no doubt that the Indian Civil Service has not been viewed as it should have been since the last Public Services Commission of 1913. There is not the faintest doubt also that in the minds of many members of this Service there exists a feeling of insecurity mainly in regard to their pension. It is very nice to publicly state here that no fear need be entertained on that score. But

has the Government made that pronouncement? Have the Government at Home made that pronouncement and allayed this fear? Then there are certain other difficulties which present day living has forced upon the Civil Service. Has that Service been treated in the same generous way as other Services in this country? I submit with all respect we must prove in this House that it has not been treated with such generosity. If that Service needs certain revision, is it the duty of this House to oppose the appointment of a Commission that is going to remedy it? And again is it the duty of this House to oppose a Commission whose object may be—the furtherance of Indianization, or may not. We have nothing to go upon. The point is that it may decide for greater Indianization, or it may say it is against it. Nobody knows. It may be that the intention of this Commission is to seek out the root of the dissatisfaction that exists—and it does exist to a large extent among the members of the Indian Civil Service—and it may be that this Commission will be more productive of good to India than anything else. I desire to ask in this House why are we afraid of the Commission coming out? If the Commission is going to investigate the condition as it exists to-day in contradistinction to what it existed in 1913 when the last Commission sat, why should we as a body oppose it simply on the ground of not having been consulted, in the first instance. It must be remembered that the Home Government has the power to appoint a Royal Commission. I repeat why are we not prepared to give it a chance? Let us see what it is going to do. Rs. 5 lakhs 6 lakhs is nothing, is nothing if it gives you Indianisation. Whatever it costs, if it is going to do any good to India—and I should like to see whether it is going to do any good to my community,—why object? I therefore, Sir, do not oppose this, but at the same time I think there is another side to this picture. Honourable Members may say it is the wrong side, but I say it may be the right side, and therefore I do not oppose it.

Sir Montagu Webb (Bombay : European): Sir, I desire to join my voice to that of those who have protested against the appointment of this Committee. I cannot myself understand at present the necessity, or even the desirability, of the appointment of a Commission of this kind. I find it still more difficult to conceive that the Government of India can possibly have demanded the appointment of a Commission of this character; and that being so, it seems to me that the appointment of this Commission merely lends a weapon to those hostile and adverse critics who suggest that the Government of India and the Legislature are being discredited, or overruled by the Secretary of State. It seems to me, Sir, that the appointment of a Commission at this particular juncture is particularly unfortunate. It can but create suspicion in more directions than one, and I myself cannot see that it can possibly do any good, at this stage. Reference has been made to the anxiety which some members of the Services may feel with regard to their position or their pensions. Well, to me, Sir, I confess it is inconceivable that any Legislature in this country, or that Government here or at Home could do otherwise than carry out Government's obligations to all the Services strictly and to the very last letter. In these circumstances, Sir, I agree with the previous speakers, that the appointment of this Royal Commission is inopportune and ill-advised, and I have no hesitation in supporting the motion now before this House.

The Honourable Sir Malcolm Hailey (Home Member): I recognize that I have at this moment a difficult task, for I have to meet not arguments but an atmosphere, not facts but suspicions: not definite statements,

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but insinuation based on no surer ground than prejudice. See the words in which Mr. Seshagiri Ayyar described the object of this Commission. Its avowed object, he said, is the improvement of the conditions of the Civil Service. The House has heard the terms of the announcement: is that statement of the scope of the Commission within even measurable distance of the truth? Again; the consequence of the appointment of this Commission, he says, will be that the pay of the services will be fixed by an outside body, and as a result, that Ministers will have no control over them. So then, a Royal Commission is appointed to advise as to conditions of services, as Royal Commissions have been appointed to advise in the past; and his conscience actually allows him to describe it as an outside body which will exercise authority over the transferred subjects. That is his suggestion, and it is the atmosphere created by unfounded suggestions of that nature which I have to meet;—an atmosphere further vitiated by imputations that the Government of India itself has been, aye, and still is opposed to this Commission. Dr. Gour vociferated a demand that I should state categorically, here and now, whether the Government of India had or had not opposed such a Commission. Yet Dr. Gour knows as well as I know, and as well as the House knows, that as a matter of practice we never do, and I would add that we never ought, to yield to demands to reveal either difference of opinion, or consensus of opinion between ourselves and the Secretary of State on topics which can be held to be controversial. For if on demand we reveal a consensus of opinion, we expose ourselves to the implication that in other cases such consensus of opinion does not exist. It is for this reason, proper and sufficient in itself, that we habitually maintain the practice of refusing demands for information whether we do or do not agree with the views of the Secretary of State on any particular topic. But because I will not break a long-established and a most reasonable practice, because I have no intention of revealing to him what the Government of India said on this occasion and what it did not say, because I am as equally impervious to his request that I should state that the Government of India disapproved as I am to his demand that I should make confession if the Government of India approves of this proposal, he proceeds to raise a monstrous fabric of his own concoction, and, standing on the pedestal of that unsavoury and unreliable structure, he preaches to me that His Majesty's Government are breaking a constitutional convention; he states that the Government of India and the Legislature being in full accord and against this proposal, the Secretary of State is guilty of an illegal breach of the constitution in overriding them by the appointment of this Commission. I say, Sir, that this breach of convention is a figment of his own imagination. He is as little entitled to raise prejudice by this assumption, as he is to declare that this Commission is the creation of an ultra-conservative Government and a reactionary Secretary of State. Is Mr. Montagu also now among the reactionaries? For Mr. Montagu has endorsed if he did not actually anticipate the demand for this inquiry.

The limits of time allotted to me by the Rules of the House are narrow; I cannot attempt to destroy the whole unsubstantial fabric of prejudice that we have heard to-day. I must limit myself to speaking of the necessity or otherwise of an inquiry of this nature, and the question of the agency which it is intended to employ. I cannot touch on more than bare essentials. But I must remind the House that the history of India

for the last hundred years has been the history of an administration—of a great administration—far more than the development of a political entity. Activities which in other countries have been left to private enterprise or which have matured under the impetus of individual effort, have in India depended for their development on the activity of the State. In every sphere of life, material, scientific, educational, or intellectual, the main impetus or development has come from the administration. History may be left to say whether that development has been on right lines or not; I am not now on that point. Nor am I concerned with the causes which have produced this result; the fact remains that Government activities have penetrated into every sphere of life and work; and the State acts, and can act only through the vast body of servants which those manifold activities have called into existence. Further, because in India there has not hitherto been a ready recruiting ground, from which we could engage State servant on a temporary or contract basis, we have everywhere had to engage them on practically a life tenure; in other words to create a vast and organized system of Services. Now India was still at that stage when the reforms were inaugurated; we are still indeed at that stage; but the reforms will have the effect of changing a purely administrative Government into one of another type. I am not here speaking of the adequacy of the advance already made. Those who stand upon the bank and watch the running of the waters are perhaps better able to judge of the direction of the current than we who are swimming in it; they realize that the new channel is every day widening and deepening and that every day the new current is taking a more definite and determined course. A new development of this nature, though primarily political in its aspect, nevertheless in a body constituted such as the Indian administration connotes much more than a political change. It involves an adjustment of the administration itself and consequently an adjustment also in the services which are so integral a part of the structure of that administration. Looking back, I think it might have been well if when the constitutional change was carried out, an inquiry had been made at the time as to the changes which would be necessary in the structure of the services. But there were difficulties; at that time attention was focussed on the character of the impending political changes. There are references to the matter in the Montagu-Chelmsford Report; and there were at the time doubts expressed in the services whether we could safely proceed without consideration of this question for it was felt by many that the political changes involved as a corollary changes so great in the whole structure of the services that the organisation and future development of the latter should come under review. But if inquiry had then been made, it would inevitably have had the disadvantage that its decisions would have been taken on *a priori* grounds; and again we might in any case have been compelled to revise its conclusions by the light of our subsequent experience. But as to the necessity of such an inquiry, either at the time, or later in the light of the experience we have gained of the Reforms; I have no doubt, and I believe that few people who consider the question earnestly and soberly will differ from that view. I have heard references to the late Public Services Commission; but it is one of our misfortunes that its conclusions, arrived at in a different atmosphere and envisaging different developments, were already becoming out of date at the moment at which they were introduced. Admitting, then that such an inquiry is necessary, what is to be its proper scope? Let me begin only with a minor problem. It will be necessary to decide in regard to our services

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whether the continuation of the services at all is necessary in many technical departments; whether you could not, that is, substitute short-term service or contract officers, particularly in departments controlled by Ministers. I emphasise these because it is there if financial conditions permit, that progress must be most rapid, and novel experiments most quickly worked out. That, as I say, is a minor point. But I come to more important question, less one of organization than of personnel. I need not dwell on the insistence of the demand for further Indianisation of the services. If I deal with it here, it is not to argue its merits, but to state some of its implications, which have perhaps escaped some of those who have voiced the demand most strongly. It is not a mere question of arithmetic. It is not a question of taking a present rate of 33 per cent. of recruitment and increasing it to 50 or 60. It goes far beyond that. Everywhere in India the question is now being discussed whether in view of a larger recruitment of Indians, we ought any longer to recruit them on an all-India basis. The growing sense of provincial independence and individuality, the necessity for satisfying Provincial aspirations, seems to demand that they should be recruited by the Province for service in the Province and at Provincial rates of pay. Burma has already made this demand in the most emphatic form; I see an equally emphatic demand coming from other Provinces in their turn. Here is a question to find the solution of which you will have to dig deep into the roots of our present system, and I say you cannot do this, and you cannot solve the large question of what numbers of Europeans and Indians respectively are required in the light of experience of the Reforms without a thorough, an independent and far-reaching inquiry. Let me pause for a minute; I pause because I remember, as no doubt the House will remember, what Dr. Gour said on the latter subject. He suggested that this Commission is likely to go back on the proportions laid down in the Montagu-Chelmsford Report. Well might I refer to the creation of an atmosphere of prejudice, and the difficulty of my task in meeting it. I ask anybody here whether they feel themselves honestly able to join with Dr. Gour in such a suggestion? We have already gone far beyond what the Montagu-Chelmsford report laid down. Our percentages are far higher; not only are our percentages far higher, but our rate of recruitment is in excess of those percentages. (Mr. Jannadas Dwarkadas: "Because you cannot get candidates in England.") I shall come to that presently. Yet Dr. Gour finds it in his conscience to suggest that the Royal Commission may now go back on the Montagu-Chelmsford percentages.

Here then are two outstanding questions which you must solve before you can make progress with the consideration of the Indianisation of the services. The consideration of those questions will involve an inquiry far beyond the scope which has to-day been assigned, but wrongly assigned, to the reference to a Royal Commission. I do not say that it will not also have to consider the question of the conditions under which the services are now working. It is not true, as was stated, that the sole purpose of the Commission was to go into the pay and prospects of the services. I claim emphatically to have proved that this is not the case. But, equally, the circumstances regarding the services must be considered. I take, for I must be as brief as I can, one or two points only. In the debate on the Indianisation of the services, more than one speaker declared that he and his friends did not wish to exclude entirely the European element in the services. For my own part, I sincerely believe that in thinking India at

large there is on the contrary a firm determination that a strong European element in the services should be maintained. But what are the facts at present? We are failing to obtain recruits. I could support that statement with figures, but I do not desire to take up the time of the House, and the House may safely take the fact from me. There are two reasons. The first is the economic condition of the services out here which re-acts on recruitment at Home; secondly, the doubt that exists in the minds of those who might be candidates as to their future in India. Now, I agree with Sir Montagu Webb that it is unthinkable that any Indian Parliament would seek to repudiate its obligations in respect of pensions and the like. I welcome the recent declaration made by Mr. Seshagiri Ayyar, speaking on behalf of the largest party in this House that they regarded any such suggestion as damaging and pernicious. But that is not the whole of the case. The case is that men who are entering on life now desire to know what is to happen to them if, as a result of the recommendations of the first Parliamentary Commission, it should be necessary for Government to dispense with their services, some six or seven years hence. I do not think they ask for funds to be set aside in trust to provide for such a contingency. They merely desire to know, and it is a reasonable request, what the conditions of compensation will be if, after some years' service their careers out here are brought to a close. Then again, as regards the economic conditions under which present servants of the State are suffering and which, as I say, are re-acting on recruitment. There is no more tangible proof of these difficulties than the heavy list of premature retirements which are every month depleting our services of some of their best men. It has been admitted here to-day by Dr. Gour—and I thank him for the admission—that the services have difficulties; it was admitted by others to-day; it was stated in our Indianisation debate that India was prepared to see those difficulties adjusted. I desire to say nothing more than to refer, Sir, to your own Resolution, which stated that those difficulties should be inquired into though you preferred to have them inquired into here. But there is a final factor in regard to the services which I am bound to mention. If one can accept what one hears here, what one sees in the reports of Provincial Retrenchment Committees, or what one hears again in such bodies as our own Standing Finance Committee, it is clear that we now have to face a different atmosphere in regard to Indian pay to that which was represented before the Public Services Commission. Everywhere now we hear Indians complain that we have left them an onerous legacy; we have fixed the pay of our services on a European basis and on European requirements, and, insensibly, the pay of Indian members of those services has crept up towards the European standard. It is suggested that we must revise the whole scheme of emoluments from a different aspect. We have to lay down a basic pay which will be appropriate to India, to Indian requirements, and Indian conditions. We are told that if India has to employ Europeans, it is prepared to face the necessity of paying them their market value, but is not prepared to pay Indians emoluments in excess of those which a man should expect who is serving his own country and in his own country. We hear that view expressed, everywhere, and I think I can claim that I have stated the proposition fully and fairly. But, Sir, that proposition is not an easy one either for the Indian Government, or for Local Governments to investigate or to carry into effect, for they would have a very powerful body of vested interests against them. Yet, unless, that can be investigated fairly and independently, unless the body which investigates is so authoritative as to carry the utmost weight, any

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new basis of remuneration cannot be carried into effect; and if so, what becomes of the Indianisation of the Services—at all events as an economic proposition? It may be well enough to satisfy national aspirations or national feelings by Indianising your services, but unless that process is carried out on a purely Indian basis of pay, you will lose the whole of the financial saving which has been held out as a principal attraction to the scheme.

Mr. Chairman: Your time-limit is up.

The Honourable Sir Malcolm Hailey: I ask indulgence for one minute more. I claim that at all events I have established the necessity for an authoritative investigation of these grave problems on wide and liberal terms of reference. And if it is admitted that such an investigation as I have outlined is necessary, then three-quarters of the opposition to the Royal Commission should go. For let us face the facts. It is admitted that we need an enquiry. It might be that an inquiry undertaken entirely by the Government of India might be more rapid, less expensive and perhaps under influences which would appeal to this Assembly as more suitable. But would it carry the necessary authority? I say again, there is no use shutting our eyes to the facts. You have to meet two influences, and satisfy two elements. You have not only India to consider. It was Parliament that was associated at every stage with the inauguration of the Reforms. Parliament has an equal right—nay, an equal duty—to associate itself with an inquiry into those changes in the structure of the administration which the Reforms have necessitated. The Indian public can safely banish any suspicion that this inquiry has been dictated by unworthy motives, that its sole object is to retard the Indianisation of the Services—to me an unthinkable suggestion; or that its sole or main purpose is to satisfy the existing members of the services. And so far from the appointment of this Commission being unconstitutional, I take the opposite ground. Parliament, I say, initiated the Reforms; His Majesty's Government equally has a duty to associate itself with an inquiry into administrative changes which are corollary to the Reforms; and it has a duty to ensure not only that the development of our services shall comply with the requirements of the Government of India Act, but that the constitution and conditions of service for all branches shall be such as to give members of our great services, so far as the new conditions permit, as full opportunities as in the past of exhibiting the character, the independence and the high sense of duty which have done so much for India.

Rai Bahadur G. C. Nag (Surma Valley *cum* Shillong: Non-Muhammadan): Sir, I move that the question be now put.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I rise, Sir, further to support the motion for adjournment so ably placed before the House by my Honourable friend, Mr. Seshagiri Ayyar; and I feel bound to say that the splendid advocacy of my Honourable friend, the Leader of the House, has left me absolutely unconvinced as regards the necessity and wisdom of the appointment of this Commission. I do not find fault—no one in this House or outside can find fault—with the splendid advocacy of the Honourable Sir Malcolm Hailey but in this case he had the misfortune of advocating a very, very bad cause. What has Sir Malcolm Hailey told us to justify the appointment of this Commission? Sir Malcolm Hailey says the terms are wide and liberal. They may be

wide, but there is not the slightest doubt that the terms are vague also, and the existence of this vagueness makes us suspect that the vagueness is due to the fact that a lot of harm may be done to the interests of this country by raising the emoluments of the services and a set-back may be given to the cause of Indianisation. My Honourable friend, Colonel Gidney, suggests "Who knows? The Commission may make a recommendation which might accelerate the pace of Indianisation." Is it likely, Sir, I ask, that a Commission appointed by the reactionary Government of Great Britain at the present moment could ever help the acceleration of the pace of Indianisation? Why, Sir Malcolm Hailey himself said one of the reasons why a Commission is being appointed is that you cannot get recruits in England; you cannot get away from that fact; Sir William Vincent replying to my own Resolution here said it was a fact that you cannot get recruits in England to-day. The reasons assigned by Sir Malcolm Hailey are in the first place economic and secondly that a doubt exists among the present incumbents as regards their own and their successors' prospects. Colonel Gidney says the pace of Indianisation may be accelerated. In order to attract recruits for the Indian Medical Service this very reactionary Government has just given out special terms and thirty appointments have been made on special terms in the teeth of the opposition of the whole country. In answer to a clamour for further advance, this very reactionary Government through the Secretary of State for India has given us a Despatch which is—although it pretends to have been written after very careful consideration—hardly worth the paper on which it is written; and we are told that we should expect that a Commission appointed by this Government is going to accelerate the pace of Indianisation. Sir Malcolm Hailey has given two reasons for not being able to find recruits in England. May I give a more substantial reason, not a reason which is a concoction of my own imagination, to us: his words, but a reason given in the letter of Mr. Montagu himself to the London "Times"? This is the reason that he assigns. He says: "Some of those who lament the difficulties of recruitment most vociferously are apt to forget how much a bearing the altered circumstances of the day have on this question. Commercial enterprises are enlisting more than they ever did before the assistance of University graduates. For those who seek Government employment the opportunities for such employment have increased at Home and the over-riding factor of all this is to be found in the destruction of a generation as the price that was paid for victory in the war."

The Honourable Sir Malcolm Hailey: Nevertheless he advocates a Commission.

Mr. Jamnadas Dworkadas: That may be, on that we differ from him; this is the last paragraph of his letter that he sent to the "Times." Let us not forget that of all the reasons the greatest reason why you cannot get recruits in England to-day is that the flower of your community has yielded to the necessities of the war, and perished fighting for its country. Those that are left they have the best prospects in England itself and no one while he has prospects at Home would ever like to go out to a foreign country under the present circumstances. Then, Sir, is it merely the economic reason that prevents recruits from coming to India, to appear as candidates for the Services? There is one more additional reason and that reason is this: after the establishment of representative institutions in accordance with the Government of India Act, however

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much you may increase the salaries of the Services, you can never give to the Civil Servant in future that amount of power which he enjoyed in the pre-reform days. Is not that perhaps the reason? Can that reason be remedied by any one, and if it is the intention of the Commission to remedy that reason, then, Sir, our protest against the appointment of the Commission is all the stronger than it ever can be. For, while we do not in any way run down the Services,—we appreciate, and we have never failed to appreciate in this House the services they have rendered in the past and are still rendering. We fail to understand how, consistently with our demand for self-Government at an early date, we can ever again restore the power that they used to enjoy in the pre-reform days. In this very House many Members including myself have re-asserted that if the present incumbents of the Civil Services have any grievance with regard to lack of social amenities or have economic grievances, the reasonable among them will be handled sympathetically and generously, if I may say so, by the Members of the Legislature. What other grievances can there be? Sir, the cause of Indianisation can never prosper at the hands of a Commission appointed by a reactionary Government. So far as the grievances of the Services are concerned, they can never be remedied except by the Members of the very Legislature who are prepared to go into the legitimate grievances of the Services and remedy them. So far as their political power is concerned, it is beyond any one, even the Royal Commission, to remedy it. So far as the recruitment of Englishmen is concerned, you have the solid reason given by the late Secretary of State himself that it is difficult to find recruits in England now, that the war has taken away so many, and of the others that are left, many are attracted to the Services in England, and others to commercial enterprises. What, then, Sir, I may rightly ask, is this Commission going to do? What is the use of appointing this Commission in the teeth of the opposition of the whole country? Is it not because the forces of reaction have been triumphing ever since the resignation of Mr. Montagu? You have a demand made by the whole country, represented to the Government through its Legislature for a further advance. That demand is summarily dismissed. You have another blow thrown at the country in the appointment of those 30 men to the Indian Medical Service on special terms, and now, here is a third. I ask if the Home Government is helping those that have stood by the Constitution at the most critical moment to carry out their duties in the face of the strong opposition that prevails in the country? I submit, Sir, as one who has always spoken plainly in this House, and as one who has always stood for the maintenance of the British connection, at any cost, I feel that it is acts like these that render our task most difficult; it is colossal blunders, political blunders of this character resulting from ignorance of men who sit six thousand miles away that will make the position of constitutionalists difficult. Sir, I support this motion.

(Loud cries of "The question be now put" from all sides of the House.)

Khan Bahadur Zahiruddin Ahmed (Dacca Division: Muhammadan Rural): Sir, I oppose this Resolution moved against the appointment of a Royal Commission tooth and nail, fully knowing that my Honourable friends, the intelligentsia of the country, the Honourable Non-Officials of this Assembly will call "shame" on me. Here is my humble explanation for my conduct. To me the truth, however unpleasant, is very dear

and must be told, the duty, however thankless, must be done. It is imperative, in my opinion, that a Royal Commission is most needed to find out the reasons why these lions' cubs are not coming or refusing to come to the Indian jungles as they used to do before. It is better that the Majestic lions' cubs should be the masters of the Indian jungles rather than the pack of wolves or that of the wild dogs. I boldly assert that misgovernment by my countrymen is no proper substitute for good Government by the Britishers. Some of my Honourable friends argue: "Let us fail one hundred times and even after that, if we succeed, that is something." But I humbly submit that each failure may end in a great catastrophe to the country, may bring endless sufferings to countless millions. I shudder to think of it.

I emphatically say that any extravagance on the British portion of the Indian Civil Service at the present moment is the greatest economy for the country at large in the interests of the millions of the masses. Even for the success of these reforms we need the services of the British portion of the Indian Civil Service. I may admit that Indian-born Civil servants may be suitable in some respects but a poor substitute for the British-born ones, just as a square peg will suit as nearly as may be a round hole, just as a wooden leg suits a legless man.

I appeal again and again to the good sense of my countrymen composing the Honourable Non-Official Members of this Assembly not to sacrifice the interest of the masses in the interest of a few intelligentsia of the country, though that intelligentsia may be our kith and kin.

It was my sad experience for years that in whichever district an Indian becomes a District Magistrate and Collector, the efficiency in the administration suffers, the bribe and corruption increase. This is very, very unfortunate, but this is a fact. Honesty compels me to admit this sad truth and I do so in the interests of the millions of the dumb masses.

May I quote in conclusion a Persian proverb *Khattai bojurgan gireftan khata-ast* which means "To find fault always with superiors is also a great fault."

The Honourable Mr. C. A. Innes (Commerce and Industries Member):

Sir, I came down to the House this evening without the slightest intention of intervening in any way in this debate. I would not have done so had it not been for Mr. Jannadas Dwarkadas' intervention—his intervention, I may say, in his very best style. He stood up and he tore his passion to tatters before us. He flung his papers about and in his usual way he appealed to the emotions of the House. But, Sir, in the excitement of the moment, he made just one or two statements which I should like to contradict. He referred to the reasons why we cannot get Englishmen to come out to the Indian Services. He explained the reluctance of the Englishman to come out to the Indian Services to his own satisfaction and he quoted Mr. Montagu. He stated that one reason was that England had lost practically a generation in the war. He stated that the flower of the English youth was now going in for commerce and was refusing to enter the Services in the way that they used to. And he said also that another reason why the young Englishman could not come out to India was owing to the changed conditions under which the Indian Civilian works and the fact that he does not now exercise the same power as he used to exercise before the war. Now, Sir, let me state my views on this point. I come from a family which has served India from father to son for over

[Mr. C. A. Innes.]

3 hundred years. (*Sir Deva Prasad Sarvadhikary*: "May the race go on.") My grandfather joined the Madras Presidency about 1830. My father served in this country for 20 years. I myself have served in this country for 4 and 20 years. And I have got four sons. One of these sons is now at Oxford. He is just the sort of boy who in the ordinary course would have followed in his father's footsteps in the Indian Civil Service. He writes out to me and asks me: "Shall I go into the Indian Civil Service?" And he tells me what they are saying about the Indian Civil Service at Home. He has no desire—there are many other lads at Oxford in like case—no desire at all to go in for commerce. They would like to do as their fathers have done before them and serve the country and serve India in accordance with the traditions of their family. But there are the obstacles in the way. What do they know about the position of the Civilian out here? They know absolutely nothing. What they do know is that India at the moment is in a transition stage. As Sir Malcolm Hailey pointed out, in 1929 there must be a Commission and there may be great changes and they want to know. "Supposing I come out to India, am I going to lose my appointment five years hence?" That is the obstacle which is keeping these young boys from coming out to India. That is what paralyses them, and that is the feeling which is common in Oxford and Cambridge. That is the main reason why you cannot get the English boys now to come out to the Indian Civil Service. It is common, and that is one of the reasons why it is not sufficient merely to have an inquiry out here, either an inquiry by Members of this House or of the Indian Government. You must have the sort of inquiry which will carry conviction to the people at Home, and I assure you that that is the only reason—to remove these fears and to get the English boy of the right stamp to come out to India in the future in the way that he has done in the past, and I think that I may assume that every one in this House does want the English boy of the right stamp to come out and serve India in the service of this country.

There is only one other remark. I do not propose to traverse all the grounds which have been so ably covered by my Honourable friend, Sir Malcolm Hailey. There is only one word, there is only one remark that I wish to make. Mr. Jamnadas Dwarkadas referred more than once to this reactionary Government at Home. He tried to create again that atmosphere which I had hoped, fondly hoped, Sir Malcolm Hailey had succeeded in dissipating. What is all this cry about a reactionary Government? Reactionary Government merely because they have appointed this Royal Commission? (*Cries of "No, no."*) Why? Mr. Montagu himself, a friend of India—Mr. Montagu also asked for a Royal Commission of this kind. (*Cries of "Let the question be now put."*)

Mr. Chairman: The question is that the question be now put.

The motion was adopted.

Mr. Chairman: The motion before the House now is: "That the House do now adjourn."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Monday, the 29th January, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 29th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

The Honourable Sir Malcolm Hailey (Home Member): I hope, Sir, that you will allow me to draw aside for one minute that veil which hides the personality of the Chair and to express, as I am sure I may do on behalf of the House, its great pleasure at your return to your duties. (Hear, hear.) It is not, Sir, that we have not had in your absence able lieutenants, trained in the traditions which you have inaugurated in this House, and to them our gratitude is due. Nevertheless, we feel the keenest pleasure in your return. We feel pleasure in your return not only because you are our President, but because, since you are also the friend of the House, we have to congratulate you on your recovery from an illness which at one time filled us with grave anxiety. (Hear, hear.)

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, on my own behalf, and on behalf of my friends, I very wholeheartedly join in what has fallen from the Honourable the Leader of the House. We welcome you back here and hope that there will not be occasion for the same anxiety again. In the strenuous times before us good sense and good temper, of which good health is always the basis, should prevail all round. The Honourable Sir Malcolm Hailey has told you of the anxious time that we had and we do not want it repeated.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I beg to associate myself with everything that has been said by the Honourable Sir Malcolm Hailey in welcoming you back amongst us. He has told you, Sir, that, during your absence, we have been served by very able lieutenants. That, Sir, is a compliment not only to their ability, but is a compliment to yourself for having trained them to lead us in your absence and for the atmosphere which you have created in this House. Therefore, Sir, we are happy to see you back once again amongst us and, as Sir Deva Prasad Sarvadhikary has said, we hope the occasion may not again arise of welcoming you back in the way in which we have done, but you are always welcome and we are always glad to see you amongst us.

Mr. President: Gentlemen, I need hardly say that the words used by the Leader of the House and by my two Honourable Colleagues have greatly touched me and I have to thank them and the Assembly for the manner in which they have received me on my return from what was, after all, though a somewhat prolonged, yet not in any sense a dangerous illness. I have followed with great interest the proceedings of the House from a distance and I am glad to have the endorsement by the Leader of the

House himself of the opinion which I had myself formed that my presence here was not in the least necessary. (Cries of "No, no.") And though of course duty compels me to return to the Chair, I should very willingly have returned in the form and habit of a private Member in order to sit under those able Chairmen whose services you have all enjoyed.

Gentlemen, once more I thank you.

MEMBERS SWORN:

Captain Ellice Victor Sassoon, M.L.A. (Bombay Millowners' Association: Indian Commerce).

STATEMENT LAID ON THE TABLE.

Sir Henry Moncrieff Smith: Sir, I lay on the table the information promised in reply to questions by Dr. H. S. Gour on the 16th January, 1923 regarding amounts drawn by Members of the Council of State and the Legislative Assembly on account of travelling and halting allowances

Statement showing the amount drawn by Members of the Council of State who travelled in reserved compartment.

Serial No.	Names of Members.	Amount.
	DELHI SESSION, 1921.	Rs. A. P.
1	Hon'ble Diwan Bahadur V. Ramabhadra Naidu	708 8 0
2	" Rai Bahadur Lala Ram Saran Das, C.I.E.	117 12 0
3	" Mr. C. N. Seldon	849 0 0
4	" Raja Moti Chand, C.I.E.	369 0 0
5	" Colonel Sir Umar Hayat Khan, K.C.I.E., C.B.E., M.V.O.	177 0 0
6	" Mr. G. S. Khaparde	617 0 0
7	" Raja Sir Harnam Singh, K.C.I.E.	85 14 0
8	" Sir A. H. Froom, Kt.	649 0 0
9	" Sir Dinshaw Wacha, Kt.	649 0 0
10	" Maharaja Sir Manindra Chandra Nandy, K.C.I.E., of Kasimbazar.	786 4 0
11	" Maharaja Bahadur Keshava Prasad Singh, C.B.E., of Dumraon.	415 8 0
12	" Mr. Lalubhai Samaldas	324 8 0
13	" Mr. K. V. Rangaswamy Aiyangar	1,338 6 0
14	" Mr. F. S. Lloyd	1,245 0 0
15	" Sir M. B. Dadabhoy, Kt., C.I.E.	659 0 0
16	" Mr. Abdul Majid	232 8 0
17	" Maharaja Soshi Kanta Acharjya Chaudhury of Muktagacha	447 2 0
18	" Sardar Jogindra Singh	170 4 0
19	" Raja Pramada Nath Roy of Dighapatia	800 0 0
20	" Sir Alexander Murray, Kt.	677 8 0
21	" Mr. Altaf Ali	81 2 0
22	Right Hon'ble V. S. Srinivasa Sastri	622 8 0
23	Hon'ble Sir Edgar Holberton, Kt., C.B.E.	677 8 0

Statement showing the amount drawn by Members of the Council of State who travelled in reserved compartment—contd.

Serial No.	Names of Members.		Amount.		
			Rs.	A.	P.
SIMLA SESSION, 1921.					
1	Hon'ble	Mr. P. C. Sethna	971	0	0
2	"	Raja Moti Chand, C.I.E.	670	8	0
3	"	Dr. Gangauath Jha	588	8	0
4	"	Maharaja Sir Manindra Chandra Nandy, K.C.I.E., of Kasimbazar	1,073	0	0
5	"	Haji Chowdhury Muhammad Ismail Khan	1,211	4	0
6	"	Mr. E. S. Lloyd	1,815	0	0
7	"	Sir M. B. Dadabhoj, Kt., C.I.E.	1,011	4	0
8	"	Mr. Altaf Ali	649	8	0
9	"	Sardar Jogendra Singh	458	8	0
10	"	Colonel Sir Umar Hayat Khan, K.C.I.E., C.B.E., M.V.O.	217	12	0
11	"	Raja Sir Harnam Singh, K.C.I.E.	221	8	0
12	"	Sir Dinshaw Wacha, Kt.	1,013	0	0
13	"	Sir A. A. Froom, Kt.	1,069	8	0
14	"	Sir Alexander Murray, Kt., C.B.E.	100	4	0
15	"	Rai Bahadur Lala Ram Saran Das, C.I.E.	172	4	0
16	"	Sir R. C. Mitter, Kt.	1,637	0	0
17	"	Mr. K. V. Rangaswamy Aiyangar	2,148	14	0
18	"	Maharaja Soshi Kanta Acharjya Chandhuri of Muktagacha	1,194	0	0
19	"	Diwan Bahadur V. Ramabhadra Naidu	2,101	0	0
20	"	Sir Zulqar Ali, Kt., C.S.I.	354	8	0
21	"	Mr. Lalubhai Samaldas	1,043	0	0
22	"	Lala Sukhbir Sinha	202	8	0
23	"	Maharaja Bahadur Keshava Prasad Singh, C.B.E., of Dumraon	775	0	0
24	"	Sir Edgar Holberton, Kt., C.B.E.	549	14	0
25	"	Raja Prannada Nath Roy of Dighapatia	1,128	8	0
DELHI SESSION, 1922.					
1	Hon'ble	Diwan Bahadur S. B. M. Annamalai Chettiar	1,409	0	0
2	"	Mr. G. S. Khaparde	363	4	0
3	"	Mr. K. V. Rangaswamy Aiyangar	1,017	0	0
4	"	Mr. E. S. Lloyd	826	0	0
5	"	Khan Bahadur Anisul Islam	752	8	0
6	"	Mr. H. T. S. Forest	388	4	0
7	"	Raja Sir Harnam Singh, K.C.I.E.	114	8	0
8	"	Mr. Chandra Dhar Barua	376	4	0
9	"	Maharaja Bahadur Keshava Prasad Singh, K.B.E., of Dumraon	490	8	0
10	"	Rai Bahadur Lala Ram Saran Das, C.I.E.	154	8	0
11	"	Colonel Sir Umar Hayat Khan, K.C.I.E., C.B.E., M.V.O.	433	0	0
12	"	Sir Dinshaw Wacha, Kt.	746	8	0
13	"	Hon'ble Sir A. Froom, Kt.	746	8	0
14	"	Mahamahopadhaya Dr. Gangauath Jha	223	0	0
15	"	Dewan Tek Chand, C.B.E.	133	0	0
16	"	Raja Moti Chand, C.I.E.	446	8	0
17	"	Diwan Bahadur V. Ramabhadra Naidu	1,733	12	0
18	"	Raja Prannada Nath Roy of Dighapatia	832	8	0
19	"	Sir M. B. Dadabhoj, Kt., C.I.E.	768	0	0
20	"	Mr. P. C. Sethna	1,119	13	0
21	"	Maharaja Soshi Kanta Acharjya Chandhuri of Muktagacha	1,021	0	0
22	"	Haji Chowdhri Muhammad Ismail	954	0	0
23	"	Khan Bahadur Ibrahim Haroon Jafar	865	8	0
24	"	Sir Alexander Murray, Kt.	782	8	8
25	Right Hon'ble	V. S. Srinivasa Sastri, P.C.	1,119	8	0
26	Hon'ble	Rai Bahadur Lala Ram Saran Das, C.I.E.	556	6	0

Statement showing the amount drawn by Members of the Council of State who travelled in reserved compartment—conold.

Serial No.	Names of Members.	Amount.
	SIMLA SESSION, 1922.	Rs. A. P.
1	Hon'ble Raja Sir Harnam Singh, K.C.I.E.	238 0 0
2	" Maharaja Soshi Kanta Acharjya Chaudhury of Muktagacha	1,531 12 0
3	" Sardar Jogendra Singh	308 8 0
4	" Nawab Sir Bahram Khan, K.C.I.E., K.B.E.	236 0 0
5	" Sir A. Froom, Kt.	1,268 0 0
6	" Colonel Sir Umar Hayat Khan, K.C.I.E., C.B.E., M.V.O.	630 0 0
7	" Raja Vengunadvasuda Raja, C.I.E., of Kollangode	2,589 12 0
8	" Sir Alexander Murray, Kt., C.P.E.	510 14 0
9	" Sir M. B. Dalabhoj, Kt., C.I.E.	948 12 0
10	" Maharaja Bahadur Keshava Prasad Singh, C.B.E., of Umraon	987 8 0
11	" Mr. P. C. Sethna	631 0 0
12	" Piwan Bahadur Annamalai Chettiar	1,681 8 0
13	" Sir Dunsaw Wacha, Kt.	949 8 0
14	" Mr. K. V. Krishnaswamy Ayyangar	1,493 2 0

Statement showing approximately amounts drawn by Members of the Council of State and of the Legislative Assembly on account of travelling and halting allowances paid to them since the inauguration of the "Reformed Councils" and for their attendance on the various Committees, etc.

Nature and period of the charge.	Amount.
<i>Bills paid during the year 1920-21.</i>	Rs. A. P.
Members of the Legislative Assembly	1,47,751 0 0
Members of the Council of State	14,655 0 0
<i>Bills paid during 1921-22.</i>	
Members of the Legislative Assembly	4,01,602 0 0
Members of the Council of State	1,40,945 0 0
Bills paid during 1921-22 for attendance on various committees:—	
Repressive Laws Committee	7,050 0 0
Press Laws Committee	4,937 0 0
Indian Students Committee	8,461 0 0
All-India Income tax Committee	1,916 0 0
Indian Fiscal Commission	10,458 0 0
Piece Workers Committee	754 0 0
	+1,421 0 0
<i>Bills paid during 1922-23.</i>	
Members of the Legislative Assembly	1,37,376 0 0
Members of the Council of State	55,691 0 0
Bills paid during 1922-23 for attendance on various Committees:—	
Arms Rules Committee	8,726 0 0
Railway Risk Notes Committee	4,750 0 0
Criminal Procedure Committee	618 0 0
North-West Frontier Committee	20,380 0 0
Racial Distinction Committee	6,684 0 0
Standing Committee on Indian Emigration	8,456 0 0
Workmen's Compensation Committee	8,430 0 0
	Figure as far as available up to date for 1922-23.

(Sd.) O. S. PEREIRA,

Assistant Accounts Officer,

Office of the Deputy Accountant General, Central Revenue, Delhi.

QUESTIONS AND ANSWERS.

" INDIAN RAILWAYS " BY RAI SAHIB C. P. TIWARY.

282. ***Mr. N. M. Joshi:** Has the attention of Government been drawn to the remarks relating to the meagre details presented with the railway budget, appearing at page 398 of the book called Indian Railways by Rai Sahib Chandika Prasad Tiwary? If so, do Government propose to furnish the members with copies of the establishment rolls and working estimates referred therein?

The Honourable Mr. C. A. Innes: Government have seen the remarks referred to. They regret that Members cannot be furnished with copies of the establishment rolls and working estimates, as these can be got ready only after the grant of sanction by the Legislature and after the Budget orders thereon are communicated to individual railway administrations.

Mr. N. M. Joshi: Will Government be pleased to furnish us with copies of the establishment rolls of the previous year?

The Honourable Mr. C. A. Innes: I am afraid, Sir, that that would be a very expensive business. Here is a copy (shown) of the establishment rolls and working estimates for a single railway.

Mr. N. M. Joshi: May I ask, Sir, how many copies are printed when the copies are printed for the use of the office?

The Honourable Mr. C. A. Innes: I am afraid I do not know, Sir.

Mr. N. M. Joshi: Will Government inquire?

The Honourable Mr. C. A. Innes: Yes, Sir.

LIGHTING ON B. & N. W. RAILWAY.

283. ***Khan Bahadur Sarfaraz Hosain Khan:** (a) Are the Government aware that some of the compartments of the passenger trains on the Bengal and North-Western Railway are not usually provided with light?

(b) Do the Government propose to advise the authorities to make proper arrangements for light in all the passenger trains of the Railway?

The Honourable Mr. C. A. Innes: (a) The Government of India understand that all compartments of passenger trains on the Bengal and North-Western Railway are provided with lights and their maintenance receives the continual attention of the Railway Administration. Specific cases of complaint in this respect brought to the notice of the Administration will receive attention.

(b) Government do not consider that any instructions to the railway authorities are necessary.

Mr. J. Chaudhuri: Is the Honourable Member aware that there are no adequate arrangements for refreshments along the same line?

The Honourable Mr. C. A. Innes: I do not see how that question arises out of the question I have just answered.

Mr. J. Chaudhuri: Because the railway exists for the convenience of passengers and food is a greater necessity than light.

Mr. President: That question does not arise.

PRESS FINE FUND.

284. ***Khan Bahadur Sarfaraz Hosain Khan:** (a) Do the Government maintain a fund called the Press Fine Fund in the interest of the employees of Government Presses?

(b) If the answer to the above question be in the affirmative, will the Government be pleased to state:

(i) The total amount of the fund up to December last?

(ii) The total number of press workmen who have got relief in their distress?

Mr. A. H. Ley: (a) Yes.

(b) (i) Rs. 2,592-6-0.

(b) (ii) Two grants have been made from the fund in the Delhi Press. No application for grants has been made in the Calcutta or Simla presses.

ADVANCE OF PASSAGE MONEY.

285. ***Khan Bahadur Sarfaraz Hosain Khan:** Is it a fact that the Imperial Services have recently been granted the privilege of obtaining advance of passage money for themselves and their families to enable them to go home on leave, whereas the European members of the Provincial Civil Services have not been allowed this privilege?

The Honourable Sir Basil Blackett: Orders are under issue extending the concession to Provincial Services.

Mr. K. B. L. Agnihotri: Does the Government intend to extend the privilege to the Indian Members of Council who may desire to avail themselves of it?

The Honourable Sir Basil Blackett: I think that question does not directly arise out of this answer.

ATTENDANCE AT MEETINGS OF THE LEGISLATURES.

286. ***Maulvi Miyan Asjad-ul-lah:** (1) Will the Government be pleased to state the names of the members who have not attended a single meeting of any session or more sessions than one of the Indian Legislatures held between February, 1921, and the September session of 1922, and the respective constituencies they are returned from?

(2) Are the Government aware that there are no provisions of rules enforcing attendance of members except for those who will be absent for a period of two consecutive months while going abroad (out of India)?

(3) Do Government propose for the benefit of the country to make necessary provision in the rules to compel members of the Legislatures to vacate their seats for not attending the meetings of the Council and the Assembly regularly?

Sir Henry Moncrieff Smith: (1) Government has no certain information as to the Members of the Indian Legislature who have not attended a single meeting of any Session or who did not attend more than one Session between February, 1921, and the September Session of 1922, but the number of such Members so far as is available, is given in the Statement which is laid on the table.

(2) and (3) The Honourable Member is obviously aware of the provisions of Section 93 (2) of the Government of India Act. That section empowers the Governor General to declare that the seat of a Member has become vacant if, for a period of two consecutive months, such Member is absent from India or is unable to attend to the duties of his office as a Member. There is no other statutory provision having the effect, directly or indirectly, of enforcing the attendance of Members. The Government do not propose to take any action in the matter as they are of opinion that under the reformed constitution an elected Member of a Legislature is primarily responsible to his constituency for the due performance of his duties as a Member. In any case where a Member fails to attend meetings regularly, it is open to his constituency, should it feel itself aggrieved by his absence, to move the Governor General to exercise the power vested in him by Section 93 (2).

Statement showing the number of Members absent from meetings of the Indian Legislature.

LEGISLATIVE ASSEMBLY.

Number of Members who did not attend any meetings of the Delhi Session, 1921 (the first session of the Indian Legislature).	2
Number of Members who did not attend the second session from September 1921 to March 1922.	5
Number of Members who were absent throughout the September Session, 1922.	19

COUNCIL OF STATE.

Number of Members who did not attend any meetings of the Delhi Session, 1921 (the first session of the Indian Legislature).	Nil
Number of Members who did not attend the second Session from September 1921 to March 1922.	Nil
Number of Members who were absent throughout the September Session, 1922.	7

Mr. J. Chaudhuri: Has the Government asked any non-official nominated members who have been regularly absent to resign their seats and nominated others in their place?

Sir Henry Moncreiff Smith: No non-official nominated member has been asked to resign his seat; but I think the Honourable Member will have seen recently that one seat previously occupied by a nominated non-official member has been declared vacant.

POLICE SUPERINTENDENT ON FOREIGN SERVICE.

287. ***Sir Montagu de P. Webb:** (a) What is the rate of contribution levied by Government from a foreign employer on account of the pension only, of a District Superintendent of Police transferred to foreign service?

(b) Does the rate of levy represent the value, expressed as a portion of his pay, of the transferred officer's pension?

(c) If not, what does it represent?

The Honourable Sir Basil Blackett: (a) The revision of the rate of contribution is under consideration, recoveries are at present being made provisionally at the rate of $\frac{1}{4}$ of pay, foreign employers being told that the amounts are liable to alteration.

(b) and (c) The rate is intended to represent the ratio that the cost likely to be incurred by Government in respect of an officer's pension bears to the cost of his pay.

PAY AND PENSIONS OF SERVICES.

288. ***Sir Montagu de P. Webb**: What is the actual annual increase in the charge upon public funds since the 1st August, 1914, under each of the heads (a) pay and allowances, (b) pensions, including refund of contributions, and (c) family pensions, in respect of each of the following cadres:—

(A) The Indian (Imperial) Police.

(B) The Indian Civil Service.

The Honourable Sir Malcolm Hailey: The information is being collected and will be supplied to the Honourable Member. I may explain that it will not be available for some time as we shall have to ask Audit Officers, the India Office and the High Commissioner for figures.

TRAVELLING FACILITIES FOR 3RD CLASS PASSENGERS.

289. ***Mr. N. M. Joshi**: Will Government be pleased to state what steps they have taken to give effect to the resolution passed by the Legislative Assembly on 7th September 1922, regarding the improvement of travelling facilities for 3rd class passengers?

The Honourable Mr. C. A. Innes: The Railway Board have been in correspondence with the principal Railway Administrations on the subject and have asked them to submit special reports on the principal points of complaint relating to third class passengers. The reports are being received and when they have been examined, the question of publication will be considered.

COAL MINE ACCIDENT AT PERBELI.

290. ***Mr. N. M. Joshi**: Will Government be pleased to state (a) the cause of the accident in a coal mine that recently took place at Perbeli, (b) the total number of persons killed and injured in the accident, (c) what steps Government propose to take to prevent such accidents hereafter and (d) whether compensation will be paid to the families of those who were killed and to those who will be permanently disabled?

Mr. A. H. Ley: (a) Government have not yet received information as to the cause of the accident beyond the bare statement that it was the result of an explosion of gas.

(b) So far as known, seventeen persons were killed outright and 58 injured, of the latter all save one have succumbed to their injuries.

(c) An official enquiry under section 18 of the Mines Act has been ordered by the Government of Bihar and Orissa, and, until a report of that enquiry is received, it is impossible to decide on the steps to be taken to prevent the occurrence of such accidents hereafter. Government will give the question their most careful consideration.

(d) There is at present no statutory obligation on employers to compensate the families of the killed or the injured. But Government are confident that a Company of the high standing of the Bengal Coal Company will do all in their power to relieve the hardship and suffering caused by this most lamentable accident.

Sir Deva Prasad Sarvadhikary: Is it a fact that these accidents due to gas explosions have been on the increase of late? If so, what are the reasons? And when Government receive this report will enquiries be made as to whether that is a fact and whether steps cannot be taken for preventing them?

The Honourable Mr. C. A. Innes: I cannot give the Honourable Member a categorical answer to that question, but I may point out that our mines are now beginning to get deeper and as coal mines get deeper the danger of gas becomes worse. The whole question of safety lamps and other preventatives against these accidents has, I believe, been for some time under the consideration of the Mining Board. I am afraid that is the only answer to the question that I can give.

CATERING DEPARTMENT, B. N. RAILWAY.

291. ***Mr. N. M. Joshi:** Will Government be pleased to state (a) the functions and activities of the Catering Department of the Bengal Nagpur Railway, (b) the amount spent during the year 1921-22 on the Indian Branch and the European Branch of the Department separately and (c) the amount of profit or loss made on each branch during the year 1921-22?

The Honourable Mr. C. A. Innes: (i) The functions of the Catering Department of the Bengal Nagpur Railway are:

- (a) to ensure the service of good meals and refreshments for the benefit of the travelling public;
- (ii) to provide the staff with meals when on the line and with facilities for readily obtaining their provisions and stores at reasonable prices.

(b) The amount spent during the year 1921-22 on the Indian Branch of the Department was Rs. 33,289 and on the European Branch Rs. 2,79,700.

(c) The net profit made on the Indian Branch including licence fees aggregating Rs. 27,460 was Rs. 28,319 and on the European Branch Rs. 20,558.

Mr. N. M. Joshi: Considering these figures, will the Government see the necessity of increasing the amount spent on the Indian Branch and decreasing that on the European Branch as the European Branch does not pay so much as the Indian Branch?

The Honourable Mr. C. A. Innes: They both pay, but I should like to point out that the European Branch is a misnomer, as the European Branch provides not only for Europeans but for all Indians who live in the European style.

Mr. N. M. Joshi: Does the Government consider this sufficient reason for their spending money on a Branch which does not pay so much, neglecting another Branch which pays more?

The Honourable Mr. C. A. Innes: Both Branches pay and Government consider that Railways must consider the comfort and convenience of all classes of passengers.

Sir Deva Prasad Sarvadhikary: Is there a similar department in connection with the East Indian Railway or the Eastern Bengal State Railway? If so, what is the result of working there?

Mr. President: I think the Honourable Member must give notice of that question;

X'MAS CONCESSIONS ON RETURN TICKETS.

292. ***Mr. N. M. Joshi:** Will Government be pleased to state the reasons why the X'mas concession on return tickets is not extended to the Intermediate and third class passengers?

The Honourable Mr. C. A. Innes: Government understand that the reason for limiting the X'mas concession to 1st and 2nd class passengers is that there is ordinarily more accommodation available in these than in the other classes.

As already stated in the reply to question No. 145 on the 17th January 1923 Government are bringing the matter of extending these concessions to the notice of Agents who will no doubt act in this direction as circumstances and conditions permit.

Mr. N. M. Joshi: Am I to understand from the answer that in the case of first and second class carriages there is a surplus available always?

The Honourable Mr. C. A. Innes: The intention of the answer is to bring out the fact that railways are commercial undertakings and that they give these concessions in order to increase traffic.

PUBLICATIONS OF PUBLICITY BUREAU.

293. ***Mr. N. M. Joshi:** Will Government be pleased to state (a) whether copies of the publications of the Publicity Bureau of the Government of India and of the annual report relating to the moral and material progress of India will be given free to all the members of the Indian Legislatures and (b) whether any copies of such publications are distributed free outside India and if so, what is the number of copies thus distributed of each publication?

The Honourable Sir Malcolm Hailey: (a) Copies of the Moral and Material Progress will in future be supplied free of cost to Members of the Indian Legislature. It is not considered necessary to provide copies of other publications free of cost.

(b) Yes. Twelve hundred copies of the Moral and Material Progress Report are sent to the Secretary of State for submission to Parliament. No copies of other publications are distributed free outside India.

Mr. N. M. Joshi: May I ask if the other publications of the Government of India are sent free to people who are not members of the Legislative Assembly?

The Honourable Sir Malcolm Hailey: The question referred to copies of publications of the Publicity Bureau of the Government of India. If the Honourable Member will subsequently ask me about the other publications I shall be able to supply the information asked for.

Mr. N. M. Joshi: Am I to understand from this answer that these publications are given free to members of the Assembly?

The Honourable Sir Malcolm Hailey: Which publications?

Mr. N. M. Joshi: Publications of the Publicity Bureau?

The Honourable Sir Malcolm Hailey: I have said, Sir, that copies of the Moral and Material Progress Reports will be given free. It is not considered necessary to give other publications.

Mr. N. M. Joshi: My question, therefore, is whether Government is aware that copies of the other publications are distributed free to Members of Parliament in England.

The Honourable Sir Malcolm Hailey: No, Sir; I do not understand that; my answer was that copies of the Moral and Material Progress Report are distributed free but not other publications.

Mr. N. M. Joshi: My question is about other publications also and I want a reply about the other publications.

The Honourable Sir Malcolm Hailey: And I cannot reply to a question which does not refer to the subject matter of the original question. The Honourable Member asked me about copies of the Moral and Material Progress Report issued by the Publicity Bureau of the Government of India. I am not at present prepared with information regarding other publications.

Mr. N. M. Joshi: Please look at my question; it is whether copies of publications of the Publicity Bureau of the Government of India and of the Annual Report are distributed free; I want to know whether publications besides the Annual Report are distributed free.

Mr. President: Order, order; the Honourable Member has had his answer; if he looks at it when printed he will find that it is full and sufficient.

INCONVENIENCES AT RAISINA.

204. ***Rai Sahib Lakshmi Narayan Lal:** Are Government aware of the great inconvenience to which the residents of Raisina, Delhi, are put to owing to the want of (1) a high school for boys, (2) schools for girls (both European and Indian), and (3) recreation grounds, (*i.e.*, football, tennis, etc.), for Government servants and their children? If so, do they propose to take necessary steps at once for the construction of the buildings required for the above institutions, etc.

The Honourable Mr. A. C. Chatterjee: For some years primary schools for Indian boys and girls have been located temporarily in clerks' quarters at Raisina, while during the winter season accommodation has been provided for a private school for European children of both sexes whenever asked for and whenever available. The construction of a high school will be begun in February next, while that of two primary schools, one for boys and the other for girls is nearing completion.

There are three clubs in Raisina which between them provide recreation for all classes of Government servants, except the artisans and menials. At all of these tennis can be played. There are also temporary public recreation grounds for football and hockey. The laying out of permanent grounds is now in progress.

ASSAULT ON A MEMBER OF LEGISLATIVE ASSEMBLY AT CAMPBELLPUR.

295. ***Mr. Mohammad Yamin Khan:** (a) Is it a fact that a Member of the Legislative Assembly while getting into a first class compartment of the Bombay Mail at Campbellpur Junction of North-Western Railway on the morning of the 7th January, 1923, was insulted and assaulted by the Guard in charge of the train and the said Member made a report to the Station Master?

(b) What action, if any, has been taken by the Government?

(c) Do the Government propose to make an inquiry if the matter has not reached the Government as yet?

Mr. C. D. M. Hindley: A report has been called for from the Agent, North Western Railway, and it will be decided what action has to be taken, if any, on receipt of that report.

SEARCH LIGHTS ON TRAINS.

296. ***Mr. Mohammad Yamin Khan:** (a) Has it been suggested to the Government that there should be a powerful search light at the head and at the back of every passenger train to avoid collision in night time?

(b) If suggestion of this nature has been made do the Government propose to consider this question?

Mr. C. D. M. Hindley: (a) and (b) The question of the provision of electric head-lights on engines to ensure greater safety has been under consideration for some time and some Railway Administrations have already introduced them on certain sections experimentally. The question was informally discussed by the Indian Railway Conference Association at their meeting which was held in October last and the matter is now under correspondence between the Railway Board and the different railway administrations.

UNSTARRED QUESTIONS AND ANSWERS.

GRATUITIES ON RAILWAYS.

112. **Mr. N. M. Joshi:** Will Government be pleased to say (a) whether the order regarding the gratuities of the Railwaymen passed by the Secretary of State for India and His Excellency the Viceroy in the Government Gazette of 12th July, 1922 (Order No. 571-F.-17), has been communicated for action to the different Railway administrations; and if so, (b) whether it is being acted upon by them?

Mr. C. D. M. Hindley: (a) and (b) The orders referred to have been communicated to the different Railway Administrations and as far as the Government are aware, are being acted upon.

REDUCTIONS ON RAILWAYS AND IN POSTAL DEPARTMENT.

113. **Mr. N. M. Joshi:** Are Government aware that reductions in low-paid sections of the establishments are made on the several Railways and in the Postal Department without any consideration whatsoever, of their long-standing and loyal service and throwing them out of employment practically with nothing to depend upon?

Mr. C. D. M. Hindley: The Government regret that they are unable to consider sweeping statements of this nature. If any railway establishment is reduced, endeavour is invariably made to provide in other departments of railway working for those members of the permanent staff of long and loyal service whose appointments are abolished.

I would, however, remind this House that when the Railway budget for 1922-23 was being considered, great stress was laid, especially by non-official members, in the interests of economy, on the necessity for reducing ordinary working expenses.

All Agents have been giving this matter very close attention.

The principal means, in fact almost the only one, of securing such reduction is by getting rid of staff who are considered to be not absolutely indispensable.

These reductions have only been made after very careful investigation often by an officer specially appointed for this purpose.

No existing appointments in the Postal Department have so far been abolished, but the Director General, Posts and Telegraphs, has recently issued orders that permanent vacancies at the lowest points of chains of arrangements due to retirements, deaths, etc., in certain postal establishments should be temporarily left unfilled as far as possible and when this can be done with due regard to efficiency. Officials, therefore, have not been thrown out of employment, nor have their prospects been affected. Should it be found necessary to abolish appointments in the interests of economy special care will be taken in selecting the officials for discharge in consequence.

CHINAMEN IN RAILWAY WORKSHOPS.

114. **Mr. N. M. Joshi:** Are Government aware that while Indian workers are discharged from Railway workshops, their places are given to Chinamen on much higher wages?

Mr. C. D. M. Hindley: Government do not admit the truth of the allegation contained in this question.

"G. I. P. WEEKLY NOTES."

115. **Mr. N. M. Joshi:** Is the paper called the *G. I. P. Weekly Notes* intended for the highly paid officials only; if not, why is it not supplied to all who ask for it though some of the notices appearing therein also affect the welfare of the workers?

Mr. C. D. M. Hindley: Government has no information on the subject.

NICKEL EIGHT AND FOUR ANNA PIECES.

116. **Lala Girdharilal Agarwala:** (a) Are nickel-made eight-anna and four-anna pieces current coins at present?

(b) Is it not a fact that Delhi merchants refuse to accept them on the allegation that a prohibitory order has been issued in this respect by the local authority?

(c) What action do the Government propose to take in the matter if any?

The Honourable Sir Basil Blackett: (a) and (c) I invite the Honourable Member's attention to the answer which I gave on the 23rd instant to a question on the same subject by Mr. K. N. Mitra. Nickel eight and four-anna pieces are current coins; the former are not now coined and issued by Government, but coins already issued are current like any other coin.

(b) There is no foundation for the allegation that a prohibitory order has been issued in this respect by any local authority.

CATTLE DETERIORATION.

117. Lala Girdharilal Agarwala: Has the attention of the Government been drawn to a letter issued by the Honorary Secretary, Marwari Association, Calcutta, on the 10th December, 1922, on the subject of cattle deterioration? If so, will the Government be pleased to lay the same on the table for the information of the House and state whether any action has been taken or is proposed to be taken in the matter?

Mr. J. Hullah: A copy of this letter has been received by Government and is appended. The attitude of Government in the matter was defined by the Honourable Mr. Sarma in his speech on the 19th September, 1922, in the Council of State in reply to the Honourable Lala Sukhbir Sinha's Resolution regarding the appointment of a Committee to enquire *inter alia* into the condition of grazing lands and the Government of India see no reason to depart from that attitude.

THE MARWARI ASSOCIATION.

100, HARRISON ROAD.

Calcutta, the 10th December 1922.

FROM

THE HONORARY SECRETARY,
MARWARI ASSOCIATION, CALCUTTA,

TO

THE HONOURABLE RAO BAHADUR B. N. SARMA.

DEAR SIR,

In view of the grave economic situation which has been created by the gradual but steady decline and deterioration of the cattle stock of the country, I am desired by the Marwari Association to address this appeal to you on the urgency of providing pasture land for the grazing of our draught and dairy cattle.

The villages in the interior where the nation lives furnish unmistakable proof of the awful decline and deterioration that have taken place in the number and quality of our cows, bulls and bullocks. In most of the rural homes, cows, bulls or bullocks are now conspicuous by their absence, the few that can be seen in others are mostly famished animals with visible ribs which can hardly be expected to be either good milkers or good plough cattle, and milk and milk products are scarcely available and extremely dear in consequence. But it is a matter of common knowledge that only a few decades back, cows, bulls and bullocks formed part of the possessions of almost every householder, many people used to keep large herds and milk and milk products were to be had in plenty and at a cheap price.

Ample evidence of their falling off in number and quality is available in the official records also. According to the live stock statistics recently published by the Government of India, the total number of cattle which was 147 millions in 1914-15 came down to 145 millions in 1919-20, in other words, there was a decline of more than 2 per cent. in 5 years. Is it necessary to point out that if the decline continues at this rate, the time is not far distant when the whole race of cow will be extinct in India?

As a result of this decline, the number of cattle per hundred of population now comes to 59, while it is 74 in Denmark, 79 in the United States of America, 80 in Canada, 120 in Cape Colony, 160 in New Zealand and 259 in Australia. The proportion is still higher in some other countries. If it is remembered in this connection that all the above countries are industrially far more advanced and economically far more prosperous than India and their people are not dependent mainly upon agriculture for their livelihood or upon milk and milk products for their nourishment like the people of India, it will be clear that the proportion of cattle per 100 of population is far too low in India.

In fact, the number of cattle now available in the country is inadequate for its needs. According to the official records, the area of arable land in British India is 228 million acres, but the number of plough cattle is only 49 millions. Leaving aside 25 per cent. of this number as sick, old and infirm and 25 per cent. for other works, 24½ millions only are available for purposes of cultivation. It means that a pair of cattle which, as every one knows, cannot properly till more than 5 acres of land in a season, has to till 19 acres, in other words, has to do the work of 4 pairs. It also means that India has only one-fourth the number of cattle required for the cultivation of its arable land. No wonder that cultivation in the country has become extremely inefficient and the rate of outturn of even the staple crops, such as wheat and rice, extremely poor compared to that of other countries. While the outturn of wheat is only 11·5 bushels per acre in India, it is 32 in Japan, 33 in Denmark, 30 in Great Britain and 32·5 in Switzerland. As regards rice, while India produces 35 bushels to the acre, Spain turns out 101 bushels. No wonder that although India requires about 9 crores tons of food grains for the consumption of her people every year, she is unable to produce much more than half that quantity and crores of people have to drag on a miserable existence, living on one meal a day or on semi-liquid food like rice water from years end to years end and many have to starve.

More deplorable is the condition in regard to our stock of milch cattle. The country does not possess more than one-eighth the number required to supply the people with a fair quantity of milk. There are said to be 50 millions of milch cattle in the country but ill fed and flimsied as they are, they have mostly lost their characteristics as good milkers. How greatly our milch cattle have deteriorated in quality will be evident from the fact that while only a quarter of a century back, the daily average yield of milk per head of cattle was 5 seers, it is 1 seer now. But where is the wonder? Can we expect milk from mere bags of bones? In England and Denmark the average yield of milk per day per head of cattle is 20 lbs. Could deterioration of Indian cattle go further? But this is not all. According to official publications, some of the finest breeds are in danger of total extinction. Where is the wonder that milk and milk products have become extremely scarce and dear, the rich man's luxury, beyond the reach of the middle and the poorer classes? While the price of food grains has risen 5 to 7 times during the last 60 years, that of milk has risen more than 40 times and even at such high price pure milk is not available.

The above figures reveal a terrible state of things from the point of view of the country's economic future and the health of the people and necessitate serious reflection.

Having regard to the fact that the cattle problem of the country is inseparably linked up with its health and bread problem, it is not a moment too soon now to find out the causes and to take necessary steps to remove them. One of the main causes which have contributed to bring about this serious decline and deterioration of India's cattle stock is the utter inadequacy of grazing grounds which, according to expert opinion, tells severely upon their health, and is the most important circumstance adverse to cattle breeding. What generally happens is that the owners, who are mostly poor and cannot afford the expenses of sufficiently feeding their cattle at home are compelled to sell them at a young age as they become too weak and emaciated to be of any service. None but the butchers care to buy such cattle and so, after serving their masters ill fed and ill nourished, throughout the few years of their life, these most useful domestic animals ultimately but prematurely go to the butchers' knife. Statistics show that about 10 millions of cattle are slaughtered every year in India. Who knows how many millions more find relief in death otherwise?

From official publications it appears that gradual encroachment on grazing lands both by the State and the people has led to the present awful want of pasture land and, as in other respects so in this, the condition in India is now the worst of all countries in the world. The area of land available per head of cattle for grazing is only ·17 acre in Bengal and a little more in other parts of India, while it is 1·6 acres in the United States of America, 1·35 acres in New Zealand and 1·44 acres in Germany

though the price of land in those countries is far higher than in India. Cultivation of fodder crops is also very scanty, being only a little over 1 per cent. of the cropped area while in America it is 3.5 per cent. The prevalence of infectious diseases like rinderpest which carries off a large number of cattle every year is said to be due to no small extent to this cause.

The foregoing paragraphs show unmistakably that the miserable condition of the cattle stock of the country, their awful decline in number and deterioration in quality, —is due chiefly to neglect on the part of the Government and the people. It is very much to be regretted that in a country where, in the olden days, the laying aside of a tenth part of every village for pasturage was the law, where the keeping and rearing of cow was regarded as an act of merit and entitled the owners to titles of distinction, the people should forget themselves so far as to neglect the cow, the bull and the bullock. But the result of this neglect has been terrible. The inefficiency of cultivation, poor outturn of crops, scarcity and unparalleled rise of milk and milk products which constitute the chief nourishment of the people, insufficient supply and dearth of food and the consequent deterioration of the physical stamina of the people which makes them subject to frequent attacks of all sorts of diseases, heavy mortality among women of the child bearing age and among infants for want of nutrition and the gradual but steady advent of wasting diseases like tuberculosis are all attributable, in a large measure, to the depletion and deterioration of the cattle stock. To continue to neglect these animals is to invite irretrievable economic disaster to the country.

It is therefore high time that Government were approached for legislation on the subject authorising the District Boards and Municipalities to spend some portion of their income to acquire land for the free grazing of cattle till sufficient land has become available for the purpose in their jurisdiction, permitting free grazing in specified areas of Government forests and on the sides of public roads and providing for pasture land in Government Khas Mahals. My Association feel that while pressing the need of such a law on the attention of Government, if the Maharajas, Rajas, Nawabs and other big landlords, members of legislatures and the self-governing institutions of the country, such as the District Boards and Municipalities, will strive heart and soul and with a harmonious singleness of purpose to do what can be done independently of Government aid, it is yet possible to minimise the difficulties of the situation and to avert that otherwise inevitable disaster, at least to a large extent. All that is needed is to prevent encroachment upon pasture lands and where there is no land set apart as such, to see that all the available land is not brought under the plough every year, but that some portion is left uncultivated for two or three years at a stretch to be utilised for cattle grazing. When in due course that area is taken up for cultivation, an equal portion may be similarly left out elsewhere. While removing the want of pasture land, it will also increase the fertility of the land to the great benefit of the cultivators themselves. The fact cannot be ignored that by bringing every inch of available land under the plough every year and by depriving the household cattle of their grazing, more harm than good is done to the country.

It is therefore the earnest hope of my Association that in the best interests of the motherland you will do all that lies in your power to see that the existing inadequacy of pasturage is removed.

Yours faithfully,

(Sd.) DEBI PRASAD KHAITAN.

Honorary Secretary.

AUTUMN SESSION OF THE LEGISLATURE.

118. Lala Girdharilal Agarwala: Will the Government be pleased to state whether they contemplate holding a session of the Legislative Assembly and the Council of State during August or September this year? If so, when approximately and where (Simla or Delhi)?

Sir Henry Moncreiff Smith: The Government are not in a position to give the information asked for by the Honourable Member. I would remind him that under sub-section (2) of section 63-D, it is the Governor General and not the Government who has power to appoint such times and places for holding sessions of either Chamber as he thinks fit.

INTERMEDIATE AND THIRD CLASS PASSENGERS.

119. Lala Girdharilal Agarwala: On what Railways are intermediate and third class passengers not allowed to travel by mail trains (except servants)?

Mr. C. D. M. Hindley: The Honourable Member is referred to the time-tables and guides published by railways from time to time in which he will find the information he requires.

INTERMEDIATE & THIRD CLASS PASSENGERS ON MAIL TRAINS.

120 Lala Girdharilal Agarwala: Are the Government reconsidering and revising the rules so as to allow intermediate and third class passengers holding long journey tickets to travel by mails uniformly on all Railways?

Mr. C. D. M. Hindley: The rules in this respect vary necessarily with the conditions of traffic on different railway systems, and Government do not interfere ordinarily in a matter of this kind. If there are any special cases where the present rules cause serious inconvenience Government have no doubt that the railway administrations concerned will be prepared to listen to representations on the subject.

SERVANTS TRAVELLING BY RAIL

121 Lala Girdharilal Agarwala: Do the Government propose to modify the rules with regard to travelling of servants accompanying their masters on mail trains on Indian Railways by doubling the maximum number of servants in the case of first and second class passengers and also allowing one servant to travel with intermediate class passengers?

Mr. C. D. M. Hindley: Government do not consider that the present is a suitable time to take up this question in view of the limited accommodation for servants on mail trains

3RD CLASS BOOKING OFFICE AT GHAZIABAD.

122. Mr. Mohammad Yamin Khan: Is it a fact that the 3rd class Booking Office at Ghaziabad station is outside the station and far removed from the 3rd class waiting hall and passengers suffer great inconvenience during rain and heat?

Mr. C. D. M. Hindley: The question was referred to the Agent, East Indian Railway, who reports that the third class Booking Office and waiting hall at Ghaziabad station are contiguous.

FANS ON R & K. RAILWAY.

123. Mr. Mohammad Yamin Khan: Does the Rohilkhand and Kumaon Railway line provide fans in the 1st and 2nd class compartments during hot season? If not, will the Government be pleased to ask the Company to provide them?

Mr. C. D. M. Hindley: Fans are provided, during the hot season, in 1st class compartments on the Rohilkund and Kumaon Railway. Hitherto 2nd class compartments on this railway have not been provided with fans but these are now being fitted.

SECOND GUARD ON O. & R. RAILWAY.

124. **Mr. Mohammad Yamin Khan:** Is it a fact that there used to be a second guard on the Oudh and Rohilkhand Railway who was generally an Indian? Does he still continue in addition to the Conductor?

Mr. C. D. M. Hindley: On grounds of economy Conductor Guards were taken off mail trains in November last.

Mail and passenger trains on the Oudh and Rohilkhand Railway carry either a Second Guard or Brakesman in addition to the Head Guard.

THIRD CLASS WAITING SHEDS.

125. **Mr. Mohammad Yamin Khan:** Is the Government aware that the 3rd class waiting sheds at Lucknow, Moradabad and Bareilly are occupied mostly by the stall-keepers to the discomfort of the passengers?

Mr. C. D. M. Hindley: The question was referred to the Agent, Oudh and Rohilkhand Railway, who reports that steps are being taken to reduce the number of vendors in third class waiting halls at Lucknow and Bareilly, and that similar action will be taken in the case of the waiting hall at Moradabad, if necessary, on completion of investigation.

WATCHMEN ON BRIDGES.

126. **Mr. Mohammad Yamin Khan:** Does the Government appoint watchmen on all bridges during the rainy weather after the incident near Amroha?

Mr. C. D. M. Hindley: Bridge watchmen are posted only where special circumstances render it desirable, and it has not been considered necessary to make any alteration in the arrangements for watching bridges owing to the Amroha accident. Railways are however usually patrolled during the rainy season.

BASAL STATION, N. W. RAILWAY.

127. **Mr. Mohammad Yamin Khan:** (i) Is there a raised platform on the Basal Junction station, North-Western Railway?

(ii) Is there a waiting room on the said station?

(iii) If the answer to (i) and (ii) is in the negative, will the Government be pleased to erect them?

Mr. C. D. M. Hindley: (i) No.

(ii) No.

(iii) These facilities are provided according as the number of passengers using the particular station justifies them and it is generally left to the Railway Administrations concerned to decide whether such facilities are or are not required at individual stations on their systems.

REGISTRAR, REVENUE AND AGRICULTURAL DEPARTMENT.

128. **Mr. K. O. Neogy:** (a) Is it a fact that the Registrar, Department of Revenue and Agriculture, Government of India, is on extended service?

(b) Is it a fact that his two predecessors were also granted extensions of service?

(c) Has it become a practice in the Department to grant extensions of service to every Registrar?

(d) When is the present Registrar of the Department due to retire?

(e) Is it contemplated to grant him further extension of service, and is the approval of the Honourable Member in charge of the Department required under Departmental rules to the grant of such extension of service?

(f) Do the Government intend to consider the desirability of discontinuing the practice of granting such extensions of service as these block promotions?

Mr. J. Hullah: (a) No.

(b) Yes.

(c) No.

(d) On the 1st July 1927, when he will attain the age of 60.

(e) The first part of the question does not arise. The orders of the Honourable Member are taken on all cases of extensions of service to gazetted officers of the Department.

(f) There is no such practice and such extensions are given only for special reasons.

REGISTRAR, R. & A. DEPARTMENT, AS ASSISTANT SECRETARY.

129. **Mr. K. O. Neogy:** Does the Government contemplate appointing the Registrar of the Department of Revenue and Agriculture as Assistant Secretary in the near future? If so, on what pay?

Mr. J. Hullah: The Registrar has been appointed temporarily as Assistant Secretary in addition to performing his own duties. The change was necessitated by the fact that the Under Secretary in the Department has gone on leave and it is not proposed to fill up the post pending consideration of the Incheape Committee's proposals. In addition to his pay as Registrar he draws a duty allowance of Rs. 250 per mensem for carrying on the dual duties. The net effect is a saving of Rs. 1,600 per mensem.

SUPERINTENDENTS IN R. & A. DEPARTMENT.

130. **Mr. K. O. Neogy:** (a) Is it a fact that no Indian has been appointed as a permanent Superintendent in the Department of Revenue and Agriculture since that department was created?

(b) If the reply to part (a) be in the affirmative will the Government please state the reasons for the same?

(c) Will the Government now promise to give effect to the policy of Indianisation by appointing permanent Indian Superintendents as several other Departments have done?

Mr. J. Hullah: (a) Yes.

(b) The reason is that only a few Indians were recruited in the early days of the Department, and the only two Indians who have so far become eligible by seniority for permanent appointment were both declared unfit to hold the post of Superintendent after being given a trial in that appointment.

(c) Promotion is by seniority subject to the test of efficiency and Assistants will be promoted on this basis regardless of the fact whether they are Europeans, Anglo-Indians or Indians. No promise can be given that Indians will be promoted out of their turn.

. OUTSIDERS IN REVENUE AND AGRICULTURE DEPARTMENT.

181. **Mr. K. O. Neogy:** Will the Government kindly state:

- (a) as to how many outsiders have been appointed in the Department of Revenue and Agriculture to the ministerial staff since 1916?
- (b) how many of them were placed in the seniority list above other Assistants?
- (c) what were the educational and special qualifications possessed by such outsiders?

Mr. J. Hullah: (a) The question is not understood. All appointments to the Department are necessarily made from outsiders.

(b) One.

(c) He passed the High School Examination for European Schools and studied up to the B.A. standard and was specially recommended as a good clerk and fit for a Superintendentship.

THE MARRIED WOMEN'S PROPERTY (AMENDMENT) BILL.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadian Itural): Sir, before we proceed to the legislative business I have to ask your permission to move that the name of Mr. Rangachariar be added to the Select Committee which has been appointed to consider the Married Women's Property (Amendment) Bill. The rules provide that when the Law Member is not a member of this Assembly, one of the Chairmen shall be a member of the Select Committee. I wish to make this motion for the consideration of the Assembly.

The motion was adopted.

* STATEMENT OF BUSINESS.

The Honourable Sir Malcolm Halley: I wish to place the House in possession of any plans we have for the disposal of business for the remaining days of the week. The House will see that they will be in the hands of Mr. Hullah and Mr. Innes and Mr. Burdon for to-day and probably to-morrow. If there is any business remaining over from the motions which will be put forward by those Honourable Members, we shall continue that business and finish it on Wednesday, and shall then proceed with the Criminal Procedure Code (Amendment) Bill. On Thursday there are two important Government Resolutions which will be put forward by Mr. Hullah. I hope to-morrow morning to make a statement regarding the business on Friday or Saturday. I cannot at present state whether our free day will be Friday or Saturday, but we shall be working on one of those two days.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): Will the Honourable the Home Member inform the House of the two important Resolutions coming on for discussion?

The Honourable Sir Malcolm Halley: Resolution regarding emigration.

Mr. J. Hullah (Revenue and Agriculture Secretary): Resolutions moving that the notifications already laid before the Assembly in respect of emigration to Malaya and to Ceylon be approved.

THE INDIAN COTTON CESS BILL.

Mr. J. Hullah (Revenue and Agriculture Secretary): I beg to move, Sir:

"That this Assembly do recommend to the Council of State that the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India, be referred to a Joint Committee of this Assembly and of the Council of State and that the Joint Committee do consist of twelve Members."

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, before the House commits itself to the principle of the Bill I wish to make a few observations. I do not in any way wish it to be understood that I rise to oppose the Bill; but I wish to point out one or two dangers against which I hope the Select Committee will make a provision. The first danger is this: the Fiscal Commission has unanimously recommended that there should be no export duty on cotton, for this reason—that if an export duty existed middlemen would take advantage of the existence of an export duty and try to get cotton from the growers at very cheap rates. Now, a cess is justified when the revenue derived from the cess is used for the purpose of benefitting the industry itself. I wish that the Select Committee would provide against the danger of middlemen exploiting this cess for the purpose of deceiving the grower of cotton into selling him cotton at cheap rates. That is the first danger. The second danger against which also a safeguard may be provided is this: as the Fiscal Commission has unanimously condemned the principle of export duties I wish the Select Committee to provide specifically that the instance of this cess may not at a future date be used as precedent for levying an export duty. These are the two dangers against which I hope the Select Committee will provide safeguards.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, as one primarily interested in agriculture and one personally interested in the growing of cotton, I am afraid this cess will eventually fall upon the producer. The primary objects in view which the Central Cotton Committee had are for the benefit of the industry; but to levy this cess on exported cotton is sure to fall upon the producer. The example of the import duty levied in Bombay for the Town Improvement Trust has already shown that the producer suffers by the addition of these cesses and duties, for the prices fall down and the buyers take advantage of these cesses and duties and reduce the price which the producer eventually gets. Almost all the objects which the Central Cotton Committee have in view are for the benefit of the spinner and the industry will have to pay for such improvements which are to be effected on the recommendations of the Central Cotton Committee and not the producer. Sir, the producer will profit, if for instance the marketing conditions are made better; but I find very little trace of any attempt being made in that direction. On the other hand, most of the objects in view are for improving cotton so as to

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be available in finer quality for the spinner and the industry. Therefore, Sir, I ask whether it is at all necessary, having regard to the objects in view, that you should tax exported cotton, whether you should put this cess on exported cotton, whether you will not get enough amount by merely imposing a cess on the cotton consumed in the mills in the country. I think, Sir, you will readily realise that, after all, the recurring expenditure which the Cotton Committee have in view is about 2 lakhs per annum. One lakh goes to the expenditure of the Committee itself, and one lakh for the Technological Institute which they propose to establish. In allowing a good margin a return of 2 to 3 lakhs will be ample for carrying out the purposes which the Cotton Committee have in view, and so far as I am able to see from the papers placed before us, I do not see what other objects there are on which this money is going to be spent. They expect to raise between 8 and 9 lakhs, and I am sure it will go up to more than 10 lakhs in good years, and what they are going to do with this money is rather problematic. I therefore think, Sir, having regard to the immediate needs, it is enough if the cess is imposed merely on the cotton consumed in the mills in the country.

Then, Sir, the persons who are going primarily to profit by the efforts of this department will be the persons who will not pay for it and the producer will suffer thereby. The example of the Empire Cotton Growing Association in England is to be kept in view in this connection, as they propose to levy an import duty on all cotton imported into England. There, Sir, it will fall on the industry and not upon the producer, but here by imposing the cess on the export of cotton the burden will fall on the producer who, in many cases, are poor ryots and who cannot afford to lose the 4 annas or 8 annas as the case may be per bale. It may be said, for instance, that there are such violent fluctuations in the price of cotton that this cess will not really affect the price which the producer will get. But, Sir, past experience has shown everywhere that the imposition of a duty or a cess like this really falls on the producer, and I do not think therefore that it is right to impose this cess on exported cotton. That is the first point that I wish to make.

Another matter which I wish to mention is this, at this rate I am afraid the agriculturist in this country may have to face further legislative measures in view of the scientific improvements which are to be effected in this country for the benefit of agriculture. Take for instance the sugarcane industry, tobacco industry or any other industry in this country. If the Government are going to find departments and institute research work for the purpose of improving those commodities, are we going to have cesses like these imposed upon every kind of crop grown in the country? Are not the general revenues to meet the requirements in this connection? Is the present cess going to be a precedent in other directions? Therefore, Sir, I want to sound a note of warning that, these cesses, although they may sound small individually, when piled up will fall heavily upon the producer. Therefore this is likely to be a bad precedent, and I am not sure whether the Government of India's decision in 1919-1920 which they have now reviewed at the instance of the Central Cotton Committee, whether their first decision was not the right decision in this matter, whether the Government of India did not come to a right conclusion when they refused to accept the recommendation of the Central Cotton Committee in the first instance. They have now reviewed that decision because the Central

Cotton Committee has asked for a reconsideration of the matter. I am aware, Sir, in this connection that the Local Governments have not raised any opposition to this measure, but at the same time I do not know, agriculture being a transferred provincial subject, whether we are not trenching upon the provincial fields, and I feel that when we impose a cess like this it is really a cess on agricultural products.

Again, there is a difficulty in the administration of the fund which is going to be raised. There will be provincial jealousies created in the application of the funds. I am aware that a Committee is being constituted, but, Sir, look at the composition of the Committee. It is far too large. I have counted about 29 in the enumerated list, and the Government are going to add to it by nomination. An unwieldy Committee of this size, a miniature Central Legislative Council as it were, for the purpose of improving cotton is being constituted by this Bill. Look at the travelling allowances and other expenses which you will have to pay for all these Members to come here; when you have expert Agricultural departments in almost every province which are now working with great credit, what is the object of instituting a Central Cotton Committee of such unwieldy dimensions? When are they to meet, how often are they to meet, how far are these committee meetings going to be of any real use that it should spend one lakh of rupees by raising this cess. I mean the advantages to be derived are rather problematical, the inconveniences rather large, and I am not sure whether really we are doing a wise thing in perpetuating this Central Advisory Body as it were. Is it not enough if the heads of the Agricultural department in each province meet, as they do meet? Why should a Committee be constituted for this purpose? Could not the Government of India be trusted to distribute the funds in this matter, and the local representatives here in the Legislative Assembly to give advice on the disposal of the funds thus raised? Why should this Committee be created for this purpose—a costly machinery—I fail to see.

Sir, there is one other matter which I wish to mention, and that is the question of the employment of experts when once this fund has been raised for the Technological Institute or for research work. Sir, the experience of the past has shown that, when we have other expert departments where experts are employed, Indians have not been given the full benefit which they ought to have been given. When I asked a question the other day whether the Indians who were trained in the Dehra Dun Institute had become sufficiently fit to be appointed as experts, I was told that they were not yet fit. So similarly, where you import costly foreign experts, I hope they will be imported only on contracts limited to a short period and you will make it a condition precedent that they should train Indians and that speedily and without any delay or hesitation in that matter. In this connection I may point out, Sir, that the progress of creating Indian experts in these matters has not been as rapid, as sound and as satisfactory, as it should have been. I do not oppose this Bill, but I do think these matters require to be carefully considered in the Select Committee, and I hope when the Central Cotton Committee comes into existence, it will be one of its primary functions, if it is really going to profit the country, to see that more facilities are created in the shape of marketing the commodity for the producers. I therefore, hope, Sir, in according my support to this Bill, the Government of India will take it that we are not likely to encourage such further measures as this if the attempt is made to tax other agricultural products, because already land revenue in this country is a crushing burden, and why with all this land revenue especially

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in provinces where ryotwari settlement prevails where we have got periodical revisions and all sorts of cesses are raised on the land, should the producer again be called upon to pay this cess? After all, although these cesses are indirectly levied on the produce exported, as I have said, they are bound to fall on the producer. I therefore, Sir, make these remarks in order that the Select Committee may consider them carefully.

Mr. B. H. R. Jatkar (Berar Representative): Sir, I wish to offer some remarks about this Bill before it is sent to the Joint Committee. I entirely agree with my Honourable friend, Mr. Rangachariar, in saying that, whatever cess is imposed upon cotton would ultimately fall upon the producer and the grower of the cotton. And, if this Bill is to do any good to any person, it should be to the grower and not to the trading classes. The entire fund would be coming from the pockets of the grower of the cotton and it should be the principal aim of this Bill to provide for agricultural research and agricultural research only, and also for the improvement of the marketing of cotton. But the title of the Bill refers also to the improvement of the manufacture of cotton. The improvement of the manufacture of cotton should not be the aim of this Bill. Even the Indian Cotton Committee, while recommending that a cess should be imposed, has distinctly stated that the funds should be utilised for agricultural research, so as to increase the production of long staple cotton and also to increase the yield and ginning percentage of cotton. That also is embodied in one of the recommendations of the Central Cotton Committee, where it is stated that an improved yield per acre and the production of suitable types of plant combining long staple with high yield and hardiness are essential to real progress and this can only be achieved by provision for agricultural research on a scale not yet attempted. So that, whatever funds should be raised out of the cess should be solely utilised for agricultural research and not for the improvement of the manufacture of cotton or for the benefit of the trading classes. Our friend, Mr. Jamnadas Dwarkadas, has given the view of the manufacturer of cotton. In the constitution of the Central Cotton Committee we find that only four persons are stated to be the representatives of the growers and these four persons are to be nominated, one from each of the provinces of Madras, U. P., C. P. and the Punjab. The part from which I come—I mean the four districts of Berar only—yield not less than 1/6th of the total produce of India. That, of course, can be said to be included in the Central Provinces, but the representation given to the growers is very poor. I think cotton growers have got some organisations in my part of the province at least, and these representatives should be elected by those cotton growers' organisations, like agricultural unions, seed unions and agricultural societies.

About marketing not a word is said in the Bill. There are cotton markets in Berar under a special law which are not found in any other part of the country. That has been praised by the Indian Cotton Committee, it is true, but a cotton market is also for the benefit of the trader and for the purchaser of the cotton. There is nothing to encourage the organisations of growers themselves who bring to the cotton markets thousands of carts and are completely at the mercy of the purchasers who are either mill-agents or the agents of the exporters. It would be much better if this Bill would provide for creating such organisations and encouraging them so that the growers of cotton who bring their cotton

to the markets for sale should be enabled to withstand the caprices of the purchasers. If anybody has experience of these cotton markets and the prices of the cotton, which are telegraphed every day from Bombay to all the outlying stations, he will find that the rates prevailing in the various cotton markets are far below what are prevalent in Bombay itself, and these cotton growers who bring their carts of cotton have got no other alternative but to sell them at whatever price they are offered by cotton purchasers. They are entirely at the mercy of the purchasers. But if there are better organisations and if they are encouraged, I believe the growers can withstand pressure of the purchasers and get better prices for their cotton. So that I would only suggest that in the Bill itself this aim of the improvement in the manufacture of cotton should be taken away and the provision for spending funds for technological research should also be omitted, and the Bill should be confined only to the improvement and development of the growing and marketing of cotton. With these remarks, Sir, I join wholeheartedly in the remarks made by my friend, Mr. Rangachariar.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban):

Sir, when this Bill was introduced we thought that it was going to be an absolutely uncontentious and innocuous measure. It looks as if it is going to be otherwise. We from Bengal have a small, but not negligible, interest in the matter, which, I think, ought to be pressed on those who, in the name of avoiding the bogie of provincial jealousies, are really fostering them. The question arose some time ago, Sir, in this House about the steady deterioration of Bengal cotton for which we wanted a remedy and we were told that that was a matter for the provincial Government as Agriculture was a transferred subject. Evidently that opinion has not found support in the movement represented by this Bill, for it seeks to promote research from the point of view of all Provinces. I therefore welcome it. Bengal cotton, which at one time was good, is not what it used to be, and we are therefore much interested to see that steps are about to be taken by which Bengal cotton may get back something of its old lost place. Steady research, no matter benefitting which province, is necessary in that direction. I do not agree, Sir, that the cess should fall only on consumption in the mills in this country. There is no reason in that. That would indeed make it a worse excise than prevails at the present moment. Nor do I agree with Mr. Jammadas Dwarkadas, that it is entirely in the nature of an export duty which has to be guarded against with regard to the possibility of future contingencies. It has partially that character, no doubt, but, as the cess is to be on the local industries as well as on exports, the objectionable character of both will be taken away and there will be a balancing which, I think, ought to be welcomed both by the industrial element as well as the exporting element. Whatever you may do, the producer has in the first instance to pay. Mr. Rangachariar's apprehension is well founded so far. But does he think that the mills, with some of which I am concerned directly, in making their purchases will try to exploit the producer in the same way as the man exporting cotton and will he not take it out of the grower in the first instance? But it must fall on the consumer in the long run. And the grower is ultimately benefitted as was pointed out by the last speaker. Therefore, we should not grudge that possibility of advance in the science of cultivation. I quite agree that marketing and manufacturing ought not to claim the place that has been given in the Bill to the producer's point of view. The producer ultimately gains and so does the industry and so does the country more or less. I do not want in this

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connection to go into other apprehended contingencies about other agricultural produce having to be taxed in future. It may or may not be taxed. We are crying out for retrenchment in many directions which cannot be resisted. At the same time we cannot neglect these researches which Central Finance cannot any longer pay for. Therefore somebody will have to pay for them. If the country at large out of its revenues is not prepared to pay for research, the interest concerned will have to pay. You have an admirable illustration in the case of the tea cess. Not exactly for the purpose of promoting the growth but for propaganda work this tea cess is of much benefit to the tea industry. The tea industry willingly and cheerfully submitted to it and welcomed it. They have other arrangements for carrying on research in the Indian Tea Association apart from the tea cess which is utilised for propaganda work. Therefore if the industry or the agriculture concerned understands its real interest it will welcome and promote research even at its own cost. Somebody will have to pay for it. I should very much like that the Central revenues or the Provincial revenues as occasion required should pay for it, but if in the lean times that we have this is not possible, the interest concerned directly will have to pay.

Regarding the Central Committee, mentioned in the Bill, Sir, I share Mr. Rangachariar's apprehensions and I am sure ways and means may be found by which the working expenses may be cut down as far as possible. But it is too late in the day after assenting to the principles of the Cotton Transport Bill to resist this measure, because. . . .

Rao Bahadur T. Rangachariar: What has that got to do with this? What has cotton transport got to do with the cess on cotton?

Sir Deva Prasad Sarvadhikary: It has. The Transport Bill is necessary because inferior cotton has to be dealt with and we want to get rid of that possibility altogether or at least in a large measure by better production. Therefore, if not immediately and directly, the question of controlling cotton transport has more than indirectly to do with this question. As soon as we are in a position to minimise the deterioration in product in every province the question of vitiated transport will ease of itself and the rigorous measures in the Transport Bill will not have to be extended in future to the same degree. It has therefore that bearing. For all these reasons it appears to me, Sir, that the Bill is in the main on proper and acceptable lines, and the questions that have been raised will undoubtedly be dealt with in the Select Committee. Out of the Select Committee a very acceptable measure ought to emerge. I therefore give the measure my support.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, my friend, Mr. Rangachariar, although he accorded his support to this Bill, gave it in a very grudging manner, and while doing so expressed certain fears regarding this Bill. I am sorry I have to differ from my friend Mr. Rangachariar in his views. Mr. Rangachariar was actuated, I think, by very orthodox views about taxation in this matter. I am not so rigid, I mean not so rigidly orthodox in my view of taxation. Taking a broad and a very large view of the matter, the only way to look at this measure is whether this cess will in the long run benefit the country and produce more wealth for the country. I believe if the staple of the cotton and the quality of the cotton is improved by research, it will bring in from foreign

markets far more wealth into the country in the shape of better prices both for the producer and for the industrialist; if that is so, I believe we ought to support this Bill wholeheartedly. I do think from what I know of the agricultural aspect of cotton growing that a cess like this, if it is utilised well, is likely to improve cotton and thereby bring much larger wealth for the producer and also for the industrialist. Mr. Rangachariar expressed the fear that this Bill would prove a bad precedent. That depends upon this House. Each Bill has to be considered on its own merits. This Bill need not necessarily be a precedent. When the next Bill levying a cess comes before us if it is vicious in its principle, we can throw it out and we need not be carried away by the idea that this is necessarily a precedent. Regarding the unwieldy character of the Central Committee I have to point out to Mr. Rangachariar that after all the expenses of that Committee will be met from the proceeds of this cess. If this cess defrays the cost of that Committee, if the Committee pays its own way and if it does not prove an additional burden on the general revenues of the country, well, we need not be very much particular about it. As long as this fund is self-contained and is able to pay for the expenses of the Committee, I think we need not grudge the unwieldy character of that Central Committee.

Mr. J. Hullah: Sir, the points raised by Honourable Members will of course receive the careful attention of the Joint Committee but I should like to make a few remarks upon them. Mr. Rangachariar has told us that a cess on exports will fall upon the producer. I confess that I do not know on whom the burden of the cess will fall. The opinions in the papers circulated to Honourable Members are extremely divergent. The Bombay Chamber of Commerce, for instance, is of opinion that the cess will not in any way fall upon the producer. It occurs to me that when Indian cotton is of such very great importance in the world market, the purchaser of that cotton will be bound to pay the whole of the cess or at least a part of it. The position is very much the same as in the case of rice. The surplus available from the Indian and Burma rice crops bears so great a proportion to the surplus available for the world generally that it is admitted on all hands that the small export tax of three annas a maund on rice has not been felt in any way by the producer.

More important is the attack that has been made on the Bill—a sympathetic attack, I think—on the ground that it does not do enough and will not do enough for the cultivator. When I introduced the Bill I attempted to lay special emphasis on the fact that the Indian Cotton Committee, the Central Cotton Committee and the Government of India placed in the forefront of their proposals measures for the benefit of the cultivator, and we do not in any way intend to let this Bill operate as a measure for the benefit of the milling industry and the milling industry alone. The Central Cotton Committee itself has rejected a proposal that part of the scientific work of the proposed technologist should be the testing of yarns and cloth for the mills. When I introduced the Bill I gave a very brief account of the definite measures of agricultural improvement that we propose to undertake and which have already been approved by the Central Cotton Committee. But the Honourable the Deputy President, who was in the Chair, was constrained to call me to order because I was exceeding the time usually allowed to a Member in introducing a Bill, and that is why I gave only a very brief description of the measures that we have in view. I have before me now here and I could, except that I again do not wish to take up too much time, tell the House of about a dozen

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definite proposals in different provinces for definite schemes already approved by the Central Cotton Committee. The cost of those schemes altogether runs up to more than 17 lakhs. The proceeds of the cess, as I said before, we anticipate will be from 8 to 9 lakhs. I refrain again from setting forth these schemes in detail, but no doubt the Joint Committee will require to be satisfied about them when they consider the very important point of the amount of the cess,—whether it is to be, as we propose, four annas per bale. Are we going

to have cesses on everything, asked Mr. Rangachariar. I see
 12 Noon. no objection to a cess if it is paid by the industry and the industry is ready to bear it. In all cases where we have cesses, the lac cess, the indigo cess and the tea cess, the cess has been imposed on the industry itself and is paid by the industry. Mr. Rangachariar once told me that he was in favour of restricting the export of oil-seeds. What about the burden occasioned in that case? I do not say that the burden of a tax on the export of oil-seeds would fall on the cultivator, but Mr. Rangachariar's present attitude at any rate is hardly consistent with that which he adopted then. (*Rao Bahadur T. Rangachariar*: "The cultivator will be benefitted by the manure.") We are told that the Committee is too large. We rather feel that ourselves. It is a very big Committee. But there are so many provinces and interests to be represented and there has been so marked a feeling that the agricultural interest has not been sufficiently represented that we have added four agricultural representatives. But I may say that the power of nomination given to the Governor General in Council is intended to be very sparingly used, if used at all. Lastly, Mr. Rangachariar mentioned the question of Indianisation. That is in the forefront of everything, and I, for one, do not deny that it should be so. As I remarked to an Honourable Member this morning we have even Indianised the temperature of this room. (*Rao Bahadur T. Rangachariar*: "You cannot Indianise India.") That is not for me. It may be of interest to the Assembly to know that in the Agricultural Department, at any rate, Indianisation is proceeding apace. So far as it is possible for the provinces to fill up vacancies in their sanctioned posts, these are being filled by Indians. Out of 12 appointments in the Imperial Service made in the last eighteen months, 11 have been given to Indians. Among the proposals which are before the Central Cotton Committee regarding the purpose to which the proceeds of the cess will be devoted is a scheme of research studentships, for six students in the first place, who would be selected from among distinguished graduates of Indian Universities and placed under experienced research workers to be trained in agricultural research. The object of the scheme is gradually to build up a corps of trained Indian research workers.

I now commend my motion to the House.

The motion was adopted.

THE INDIAN BOILERS BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member):
 I beg to move:

"That the Report of the Joint Committee on the Bill to consolidate and amend the law relating to steam-boilers be taken into consideration."

I have already explained fully in this House the reason why we wish to get this Bill passed. Briefly, that reason is this. There are at present 7 different Boiler Acts in 7 different Provinces, and the Acts and Regulations differ in material respects. The result is that measures designed to secure the safety of human life are not the same in all Provinces. Under the Devolution Rules the Government of India, the Central Government, is charged with the duty of all-India legislation with regard to boilers and we want by means of this Bill to enforce, all over India uniform regulations and uniform procedure in regard to boilers which, as I have already stated, are very dangerous vessels. The Bill which I submitted to the House last September has been examined very carefully by the Joint Committee, and the Joint Committee has submitted a very full report. That report has been in the hands of Honourable Members for the last seven days and I have no doubt that it has been studied with the care and attention that it deserves. In the circumstances, I do not propose to delay the House any further, especially as I have been given notice of certain amendments. I move that the Bill be taken into consideration.

The motion was adopted.

Clauses 1, 2 and 3, as amended by the Joint Committee, clause 4, clause 5, as amended by the Joint Committee, were added to the Bill.

Mr. President: The question is that clause 6, as amended by the Joint Committee, do stand part of the Bill.

Mr. B. H. R. Jatkar (Berar Representative): Sir, I have sent in an amendment to this clause 6. In clause 6 (c) I propose that the following amendment be made:

"Omit from the words 'where the Local Government etc.' to 'certificates of competency', and substitute 'of competency' for 'required by such rules'."

That is the amendment that I have sent in.

The Honourable Mr. C. A. Innes: I am afraid I have received no notice of this amendment. I must take a point of order Sir, because this is a very technical Bill and I think I am entitled, at any rate, to some notice of the amendment. I cannot be expected to deal with amendments suddenly raised on the floor of the House to the Bill.

Mr. President: No notice has reached me. Therefore, I am afraid I cannot allow the amendment. I uphold the point of order raised by the Honourable Mr. Innes.

Clauses 6 and 7, as amended by the Joint Committee, were added to the Bill.

Mr. President: The question is that clause 8, as amended by the Joint Committee, do stand part of the Bill.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhamadan): The amendment I move is:

"In clause 8 in proviso to the sub-clause (4) substitute the words 'for reasons provided in sub-clauses (b), (c), (d), (e) and (f) of sub-section (1)' for the words 'owing to making of any structural alteration, addition or renewal'."

Sir, under this clause 8 a person is also required to send along with the application for renewal, a certain amount of fee, and this fee has been exempted in certain cases. That exemption has been provided in the

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proviso to sub-clause (4). There it is laid down that in the case where the certificate has ceased to be in force owing to the making of any structural alteration, addition or renewal, the fee may be excused. The certificate ceases to hold good in certain cases that have been provided in sub-clause (1). It may be on the expiration of the period or it may be on account of any accident to the boiler or some structural alteration or addition or renewal or some other causes. These have been provided there. I would like to have put in this proviso that the exemption should also extend to all those cases except to such cases where the period for which the certificate was granted has expired. It is not proper that the person should be required to pay the fee over again where the period of certificate has not expired. If the period has expired, then the fee may by all means be charged, but when the period has not expired and only some alterations or renewals have been made, as provided in clauses (b), (c), (d), (e) and (f) I think the fee should not be charged, as there is no good reason for charging it. The fee once paid continues up to the end of the period for which the certificate was granted; why should it then be necessary that a further fee be charged? If it is said that the renewal, alteration or construction or addition might require the Chief Inspector to inspect the boiler, and this inspection will entail some waste of the time and energy of a public servant, so the person who makes the renewal, etc., should be made to pay for it. But this argument fails when you exempt the person who makes some alteration or renewal. In that case also the Chief Inspector will have to inspect before renewal of certificate; and so if there is an exemption in that case there should be an exemption in other case too if the period of the certificate has not expired. If the period has expired you should certainly charge an additional fee, but not otherwise. Therefore I commend my amendment for consideration.

The Honourable Mr. C. A. Innes: I should first like to point out that this proviso does not provide that exemption shall be given. It merely gives the Chief Inspector power to remit the fees if he thinks fit. The next point I desire to make is this. We have to remember now that we are dealing with a matter which closely affects Local Governments. The theory of course is that they charge sufficient fees in order to recover the cost of the services rendered. Now if there is an accident to a boiler, or if a steam pipe of a boiler is found to be in a dangerous condition, and the certificate has to be renewed, what does it mean? It means the Chief Inspector may have to go a long way and spend a long time in making a very careful examination of that boiler, and surely, as this is a business department rendering a very useful service to the boiler owners, the Local Government should be entitled to charge fees for those services. In England the Government undertakes no responsibility in regard to the inspection of boilers; it is left to the Insurance Companies with whom the boilers are insured. Out here, owing to the fact that the Insurance Companies do not do that business, we have to undertake the work ourselves, we have to undertake it because it is very important in the interest of human safety and human life, and if we do undertake that work, surely the Local Government which provides the inspection staff should be entitled to charge fees for the valuable services that inspection staff renders. . . .

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): What is the amount of the fees so charged?

The Honourable Mr. C. A. Innes: The amount of fees is regulated by the Local Government under the rule-making power.

The motion was negatived.

The motion that clause 8 do stand part of the Bill was adopted.

The motion that clauses 9 and 10 do stand part of the Bill was adopted.

Mr. K. B. L. Agnihotri: Sir, the amendment which I propose to move in this clause is to the effect:

"That in sub-clause (a) of clause 11, omit all the words after the word 'obtained'."

Sub-clause (a) of clause 11 runs as follows:

"(a) if there is reason to believe that the certificate or provisional order has been fraudulently obtained or has been granted erroneously or without sufficient examination; or."

My amendment will make the sub-clause read:

"if there is reason to believe that the certificate or provisional order has been fraudulently obtained."

Sir, the object of clause 11 is to provide for revocation of certificates or provisional orders, and it has been provided that if a certificate has been erroneously given, or given without any sufficient examination, that certificate may subsequently be revoked or cancelled. Now this will make all the certificates that are given before that uncertain and a man may not be certain at what moment the Chief Inspector may come round, and say, 'Well, it was a mistake I committed as I did not make a proper examination and your certificate is revoked.' Such a state of affairs is undesirable. They will always be in terror and fear of the certificate being revoked at any time at the sweet will and mercy of the Inspector or Chief Inspector. There are other remedies provided and certificates cease to hold good, under circumstances provided in clause 8, and there seems to be no necessity to provide such a drastic provision in addition. If the Chief Inspector finds that in any way the boiler is in a dangerous state or some other things have happened, he may proceed under clause 8, and the certificate will cease to hold good. Why then should you allow him to turn round at any moment to say that the certificate had been erroneously granted or given without sufficient examination? Therefore to safeguard the interests of the boiler owners and managers, I put before the House my amendment for acceptance.

The Honourable Mr. C. A. Innes: Sir, the object of the words which the Honourable Member suggests should be omitted is to enable the Chief Inspector, if he finds a mistake has been committed, to correct that mistake. The words are taken from the existing Acts. They occur in the Central Provinces Act, from which Province the Honourable Member comes. As far as I am aware, the existence of those words in the Act has never given rise to any of the results to which the Honourable Member has referred. As I have said, we are merely continuing the existing Act and the existing practice. It is a useful power for the Chief Inspector to have because it enables him to correct a mistake if one has been made. In these circumstances I hope the House will leave the words as they are.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, the amendment I move is:

"In sub-clause (d) of clause 11, after the word 'who' insert 'does not hold a certificate of competency, and'."

[Mr. K. B. L. Agnihotri.]

Clause (c) refers to such Provinces where a Local Government has prescribed a condition that only that person can hold charge of a boiler who holds a certificate of competency; and clause (d) lays down that in Provinces where there is no such provision and where the Chief Inspector finds that the man in charge of a certain boiler was not competent under certain circumstances to hold charge of the boiler, the certificate be revoked. My submission is that in those Provinces in which the Provincial Governments have not prescribed such rules, there may be engineers in charge of boilers who may be holding certificates of competency obtained from other Provinces. If there be such persons who hold such certificates they should not be declared to be incompetent under sub-clause (d) but if they hold a certificate and are declared to be incompetent then the certificate might cease to hold good, not otherwise. Therefore I put my amendment before the House for acceptance.

The Honourable Mr. J. A. Innes: This clause, Sir, was the result of very careful thought and examination on the part of the Joint Select Committee. The facts of the case are that both the Indian Industrial Commission and the Boilers Law Committee examined very closely this question of certificates of competency and they condemned the system root and branch; they said it was not useful for the purpose for which it had been devised. Consequently, in the first draft of the Bill which we sent out we made no provision for certificates at all on the ground that we did not regard this system of certifying boiler attendants in any way as essential to the safety of human life. After all, that is the main thing we have in view in this Act. When the Bill was circulated, we found that in one province, namely, Bombay, there was a strong opinion both among the mill owners and also in the Bombay Government itself that that system was useful there and should be continued. That being so, we said that any Local Government which might wish to continue this certificate system should be allowed to do so, and we have provided accordingly; but we have no intention of prescribing or enforcing a certificate system in every province in India. Bengal, Madras and Mysore also have never gone in for a system of certificates; they have never found the use of it, and we do not want that any province which does not believe, as we do not believe, in the certificate system should be compelled to recognise certificates given by another province. There is nothing to prevent a man who has got a certificate from another province from obtaining employment as a boiler attendant in a province where the system is not in force, but, if the Chief Inspector, having regard to the condition of the boiler, considers that that man is not competent, then he will be able to exercise the powers under sub-section (d) subject to the reservations in the proviso to that sub-section. In provinces where the certificate system is in force, the Local Government can withdraw a certificate, if it so thinks fit. In provinces where the certificate system is not in force, the Local Government will have no power to withdraw a certificate given by another Local Government. In these circumstances, I do not think it is necessary to make the change suggested by my Honourable friend. If a man, who has obtained a certificate, say in Bombay, goes to Madras and obtains employment as a boiler attendant there, then I consider, if the Chief Inspector finds his boiler in a bad condition, the Chief Inspector should be entitled to withdraw that certificate for the boiler, unless the attendant is removed.

I oppose the amendment.

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The motion was negatived.

Clause 11, as amended by the Joint Committee, was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I move the following amendment :

"Omit clause 12, and in clause 13, after the words 'renewal in or to any' add the words 'boiler registered under this Act and in or to any'."

Sir, under clauses 12 and 13 the owner or person in charge of the boiler is required to do certain things before he can make any alteration, addition or renewal to the steam boilers and to the steam pipes. In clause 12 it is laid down that he should obtain the sanction in writing of the Chief Inspector before he undertakes any structural alteration, addition or renewal in or to a boiler. In clause 13, which deals with steam pipes, it has been laid down that the requirements of this Act will be satisfied if he simply sends an information to the Inspector, of his intention to make such alteration or renewal. What I beg to move is that in either case, whether in the case of steam boiler or in the case of steam pipe it should not be necessary for the man to obtain the sanction of the Chief Inspector before he undertakes a structural alteration, addition or renewal of either the steam pipe or the steam boiler. My reasons for this are that, if the owner or the person in charge of the steam boiler makes any alteration, renewal or addition, then the certificate ceases *ipso facto* to hold good. And where the certificate ceases to hold good, the person has to apply for a renewal of the certificate and the Chief Inspector has to go, inspect and examine the boiler and, if he finds that it is in a satisfactory condition, then only will the certificate be renewed, otherwise not. Therefore, it is not necessary that the man should obtain the sanction in writing of the Chief Inspector before he undertakes any structural alteration, renewal or addition. This provision 12 seems to be superfluous in view of clause 8 which we have just passed. Therefore, the person in charge of the boiler and the steam pipe should be left at liberty to make any alterations, additions or renewals which he thinks proper or desirable in his interest. The certificate will cease to be in force and he shall have to apply for renewal. If the renewal, after the certificate has ceased to hold good, the Chief Inspector finds that it is not in a proper condition, or is in a dangerous condition, then he can stop the renewal of the certificate. When we have got one provision which is sufficient for all purposes, why should we add this superfluous provision which may lead to delay in factories.

The Honourable Mr. C. A. Innes: Sir, clauses 12 and 13 should be read with the definition of "structural alteration" in clause 2 (g) of the Bill. A structural alteration for the purpose of these two clauses is really a major alteration, addition or renewal. I am quite prepared to admit that clause 12, as at present drafted, seems somewhat drastic, as compared with clause 13, but it was drafted in this form deliberately and after taking expert opinion all over India, primarily in the interests of the boiler owners themselves. This House has got to remember that these boilers are extremely dangerous vessels, they are extremely intricate vessels also, and, if a person, only after merely giving notice to the Chief Inspector, proceeded with an important structural alteration, addition or renewal to his boiler, then, as Mr. Agnihotri correctly pointed out, his certificate would immediately lapse. That boiler would then require examination by the Chief Inspector, and the owner might then find, either that his boiler would not get a certificate of renewal at all, because the Chief Inspector could not approve of the additions, alterations or renewals

[Mr. C. A. Innes.]

that had been made, or he could get a certificate only for working at a much smaller maximum pressure than had hitherto been allowed. It was for that reason that we put this clause in a somewhat drastic form. The Bill has been circulated to all Local Governments and all over India, and I think it is possibly a sufficient answer to the Honourable Member when I say that we have had no objection to this clause from any province or from any commercial body in India.

I oppose the amendment.

The motion was negatived.

Clause 12 was added to the Bill.

Clause 13, as amended by the Joint Committee, was added to the Bill.

Clauses 14, 15, 16 and 17 were added to the Bill.

Clause 18, as amended by the Joint Committee, was added to the Bill.

Clause 19 was added to the Bill.

Clause 20, as amended by the Joint Committee, was added to the Bill.

Clauses 21, 22 and 23 were added to the Bill.

Clause 24, as amended by the Joint Committee, was added to the Bill.

Clause 25 was added to the Bill.

Clause 26, as amended by the Joint Committee, was added to the Bill.

Clauses 27 and 28 were added to the Bill.

Clause 29, as amended by the Joint Committee, was added to the Bill.

Clause 30 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move :

" That in clause 31 add a proviso to sub-clause (2), namely :

" Provided that no regulations or rules so made shall be published unless the same has been laid in draft, in case of regulations, before the Indian Legislature, and in case of rules, before the provincial legislature and have been approved by a Resolution of the Legislature or the local Council, as the case may be; either with or without modification or addition, but upon such approval being given the regulations or rules, as the case may be, be published in a form in which they have been so approved."

Sir, under clauses 28 and 29 of the Bill the Central Government and the Provincial Governments are empowered to make regulations and rules consistent with this Act. It has become a practice for some years to take away many points from the Acts and to embody them in the rules. The rules are very rarely put up before the Legislatures before publication and the Members do not have any chance of offering suggestions or modifications to those rules or to any rules which may not be proper. I suggest that a provision similar to that in the Cotton Transport Bill—which is to come before us shortly, should also be made under this Bill to the effect that whatever rules and regulations be made under this Bill they should all be put up before the Imperial and Provincial Legislatures and the Members thereof should have a voice in the shaping of those rules before they are published. I beg to move, Sir, that this provision which seems to be a wholesome one should be incorporated under clause 31 in this Bill, so that the Provincial and the Imperial Legislature may have a hand in the framing and publication of the rules.

The Honourable Mr. C. A. Innes: Sir, the Honourable Member referred to the Cotton Transport Bill which I hope the House will read to-day. It is perfectly true that we have given certain powers to the Legislature in regard to that Bill. The local Legislature has been given power in that Bill to decide whether the provisions of the Bill should be applied to the province or not. But that is an entirely different matter from rules and regulations under this Bill, and I object to the Honourable Member's proposal that these rules and regulations should be laid in draft before this Legislature and the local Legislature before they are made effective. The reason why I object is this. In the first place, as regards the regulations, I think I may say without disrespect that no useful purpose would be served by laying these regulations before this House. The regulations are most extraordinarily technical. No layman can understand them in the very least. I do not pretend to understand them myself. The Honourable Member will find a draft of the regulations in the Appendix to the Boiler Committee's report.

Now, Sir, is it any use laying rules of a highly technical nature before a popular Assembly of this sort? It is not our job to go into technicalities of that sort. What we propose to do is to publish these rules for general information in order that those who understand the rules and the formula, that is to say, engineers, may object to them if they think fit. I assure the House it will cause great delay and would otherwise be entirely useless if we adopt the Honourable Member's suggestion. And further I should like to point out that the Assembly and the local Councils have other and more important work to do than to deal with the details of rules and regulations of this kind. I think that in matters of this kind the Assembly and the local Councils will do well to trust the Government. We have provided the safeguard that these rules and regulations shall not become effective until they have been previously published.

The motion was negatived.

Clause 31 was added to the Bill.

Clauses 32, 33, 34 and 35 were added to the Bill.

The Schedule was added to the Bill.

The Title was added to the Bill.

The Preamble was added to the Bill.

The Honourable Mr. C. A. Innes: I move, Sir, that the Bill, as amended, be passed.

The motion was adopted.

THE INDIAN MINES BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): I beg to move, Sir:

"That the Report of the Joint Committee on the Bill to amend and consolidate the law relating to the regulation and inspection of mines be taken into consideration."

Here again, Sir, the report of the Joint Committee has been in the hands of Honourable Members for several days and as notice has been given of a number of amendments, I think the best plan will be to get at once to those amendments, and therefore I do not propose to delay the

[Mr. C. A. Innes.]

House by making a speech on the motion that the Report be taken into consideration. I move, Sir, that the Bill be taken into consideration.

Mr. N. M. Joshi (Nominated: Labour Interests): While supporting this motion, Sir, I would like to make a few remarks on the principle of the Bill as it has emerged from the Joint Committee. The House will remember that when this Bill was last discussed in the Legislative Assembly I laid special emphasis on the necessity of prohibiting the employment of women underground. I am glad, that the Joint Select Committee has made some improvement in the Bill although I am not fully satisfied with what they have done. The Joint Committee has recommended that the power of prohibiting the employment of women under certain conditions should be transferred from the Local Government to the Government of India. So far as it goes, I think it is an improvement. The Joint Committee has also accepted the principle of the prohibition of employment of women underground and they have recommended to the Government of India to take up this question with the Local Governments in order that the total prohibition of women on underground employment should be accomplished within five years' time. So far as this goes I think the Committee has also done a great service to the women workers in mines. But, Sir, I would like to make one or two remarks on this question. In the first place the Joint Select Committee came to the conclusion that if they had recommended the total prohibition of women or even prohibition of women after five years in the Bill it would have been necessary to recirculate the Bill. Sir, I differ from this view taken by the Committee. The Joint Committee knew very well that when the Bill was discussed last time I myself laid great emphasis on the point during the discussion that took place on the appointment of the Joint Committee. Therefore, the Local Governments as well as the mine owners had sufficient notice that this point might be raised in the future discussion on this Bill. If they, the Local Government and the mine owners, did not give sufficient consideration to this point, it was their fault; and therefore I feel that the view taken by the Joint Committee on this question was not the correct one. Then, Sir, in the report of the Joint Committee I think the figure of women workers involved is somewhat exaggerated, or is put there by mistake. The Joint Committee says that the number of women workers involved by the change is 90,000. I think the number of women workers who work underground in Indian mines is about 50,000 and not 90,000

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadian Urban): 90,000 does not relate to those who work underground; it relates to the total number that are at present working in the mines.

Mr. N. M. Joshi: The question with which I am dealing now is the prohibition of the employment of women underground. Therefore I say that the number of women involved is not 90,000 but 50,000. Now, if we consider how plentiful cheap labour in India is, is it a very difficult problem for the mine owners as well as the Government to replace the labour of 50,000 women in India? We are now sending thousands and thousands of people from our country to outside countries because they do not find sufficiently remunerative labour in India.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): How are the women to live?

Mr. N. M. Joshi: How are the women to live? I see; the women ought to live on the wages of the men. Sir, that is a different point altogether. My point was that in India it is not difficult to replace the labour of 50,000 women at all. But, Sir, I do not propose to deal with this question any further. I feel that although the solution arrived at by the Joint Committee is not wholly satisfactory, it is a good working compromise; it is at least a step further and I am quite satisfied with that further step. The next question about which I should have liked the Joint Committee to have taken some further steps was to protect the young boys that will be employed in the mines, boys between the ages of say 13 and 16. In the English law there are provisions to protect such young persons as well as women. Their employment is restricted; they are not, for instance, allowed to be employed in moving waggons. Again in the English law there is provision that young persons who are novices . . .

Mr. President: Order, order. I have allowed the Honourable Member to go into considerable detail because I was not quite sure what his intention was. The intention of a motion of this kind is, I think, obvious—not to provide an opportunity for the discussion of each clause in detail, because that opportunity comes at the next stage, but for the House to decide whether the Bill as returned by the Joint Committee has been returned in such a form as they can conveniently take into consideration, clause by clause. The Honourable Member may reserve his remarks upon each separate point which he has been raising for the clauses as they will come up *seriatim*, when we have passed this motion.

Mr. N. M. Joshi: I never intended to go into all the clauses at all. I simply wanted to refer to the employment of children because these clauses do not at present exist in the Bill. I should have liked the Joint Committee to have introduced these clauses and safeguards for the protection of young persons. Then, Sir, lastly I would only touch upon one point, namely, this Bill as it has emerged from the Joint Committee does not make sufficient provision for safety against accidents and the Bill leaves everything to the rules instead of taking some important points as regards safety in the Bill itself. This is a great drawback in my opinion in the Bill; and although I have not attempted to send in amendments on this point, because the task of sending amendments on such a point is indeed a very great one, still I feel it is my duty to point out that Government, when they make rules on this point, should provide sufficient protection against accidents. With these remarks, Sir, I support the motion.

Mr. President: The question is:

"That the Report of the Joint Committee on the Bill to amend and consolidate the law relating to the regulation and inspection of mines be taken into consideration."

The motion was adopted.

Clauses 1 and 2 were added to the Bill.

Mr. B. N. Mishra (Orissa Division: Non-Muhammadian): Sir, my amendment* relates to sub-clause (c) of clause 3. In this sub-clause 'child' is defined to be a person under the age of thirteen years. It appears to me, Sir, as if this Honourable House is going to prepare a dictionary or to give meanings to words which are ordinarily understood in another way.

* "That in clause 3, sub-clause (c) for the words 'under the age of thirteen years' the words 'between twelve to fifteen years of age' be substituted.

[Mr. B. N. Misra.]

Generally, a child in India means a person below the age of 16; that is, up to the age of 15 we generally take them to be children; in law we have minor and major; and a child or minor would mean any person up to the age of 18; above that age he will be a major. In England a child or infant would mean any person up to the age of 22 and after that age . . .

Mr. President: Order, order. The Honourable Member has apparently neglected to provide any description for a person up to the age of 12 years. I cannot allow an amendment to be moved which makes nonsense.

Mr. B. N. Misra: I am sorry, Sir, but this has reference to section 26, and so I have put in this amendment to this section. The law provides that no child shall be employed in a mine or be allowed to be present in any part of a mine which is below ground . . .

The Honourable Mr. C. A. Innes: What about the child under twelve?

Mr. President: The Honourable Member is attempting to make nonsense of the clause. I do not propose to allow him to do it.

Mr. N. M. Joshi: May I, Sir, point out that unfortunately I do not take the view which you have taken of the definition of a 'Child'. Take for instance the Factory Act, in which I think the child is defined as between the ages of 12 and 15 years. My impression is that in that Act when the prohibition is laid against the employment of children below 12, the section simply says that persons who are below 12 are prohibited and the word 'child' is applied to persons between certain ages. That is my view.

The Honourable Mr. C. A. Innes: I may point out that in the Factory Act the word 'child' is defined as one who is under the age of 15 years.

Mr. President: If the Honourable Member cannot draft his amendment so as to express what he means, he cannot expect to move it.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muham-
madan): Sir, I beg to move:

"That in sub-clause (e) of clause 3 omit all words after 'under this Act'."

Sub-clause (e) of clause 3 defines an "Inspector", and it says "Inspector" means an Inspector of Mines appointed under this Act and includes a District Magistrate when exercising any power or performing any duty of an Inspector which he is empowered by this Act to exercise or perform". Sir, I beg to submit that this provision of including a District Magistrate as an Inspector is not desirable, in this way, that the District Magistrate is the head of the executive and judicial functions in the district. Under this Bill the duty has also been laid on him as an Inspector, to institute prosecutions. Therefore, the District Magistrate shall have to institute prosecutions in the courts subordinate to himself and that may not be desirable in the interests of justice and the owners. I therefore submit, Sir, that "District Magistrate" may be excluded from the term "Inspector" and other Inspectors may be provided instead of "District Magistrate". The District Magistrate being the head of the district can have the powers of supervision and will be the head of the Department in the district but he should not be made to perform all the functions of the Inspector. The Inspector is also required to be an expert in mining matters and must also possess some practical experience in mining. The District Magistrate has already got much to do in the district,

and has his hands always full, and so he cannot be expected to be such an expert as to properly look after the mines as well as to the interests of the public and workers in the way in which an expert Inspector is expected to do. Therefore, Sir, I submit that the District Magistrate should be excluded from the definition of the term "Inspector". It might perhaps be argued, Sir, that there are many districts in which there are very small mines and the employment of Inspectors is not possible and may not be desirable on the ground of cost and so the District Magistrate is required to work as an Inspector under this Bill. My submission in that case would be that if there are such mines in a district and the appointment of separate inspectors for such districts is found too costly, then one Inspector may be put in charge of mines in those districts also instead of District Magistrates being made to perform the duties of Inspectors in their districts. Therefore, I move, Sir, that the word "District Magistrate" should be excluded from the term "Inspector" under this Act.

The Honourable Mr. C. A. Innes: Sir, in this sub-clause we have merely followed the existing Act. The existing Act gives the District Magistrate such powers as an Inspector may have and as may be vested in him by the Local Government. This sub-clause read with clause 4 (8) says that the District Magistrate is expressly debarred from exercising such powers conferred by section 19 or section 32, but otherwise he performs the duties of the Inspector subject to the general or special orders of the Local Government. As the Honourable Member indicated in the last part of his speech, it is necessary because of the very large size of India and the large number of mines that are in India with a very small inspecting staff. We have 1,700 mines under the Mines Act situated in different parts of India. We have only 4 Inspectors, and it is quite impossible for those 4 Inspectors to exercise their powers as an Inspector all the year round over all these mines. Now this Mines Act is intended very largely for the safety of workers down the mines, and if we cannot provide technical Inspectors for the supervision and control which is necessary in various parts of India, it is absolutely necessary that we should have the District Magistrate, who is the head of the District, to exercise those powers. It is specially necessary in provinces like Madras where there are not very many mines, and where the most convenient course is to let the District Magistrate exercise the powers of an Inspector. The only objection taken to the practice is that the District Magistrate may in the course of his inspecting duties have occasion to order prosecutions. The fear has been expressed that the subordinate magistracy of the district will always convict if the District Magistrate has ordered a prosecution. Well, Sir, we have safeguarded that, because you will find later on in the Bill that no case under this Act may be tried except by a first class Magistrate. I have been a first class sub-divisional Magistrate myself, and I cannot imagine any Magistrate of the first class allowing his judgment on any case which comes before him to be swayed in any way at all by the fact that formal sanction of the prosecution has been given by the District Magistrate. The present practice is convenient, it is the existing practice, and I submit, Sir, that no reason has been shown why it should be changed.

The motion was negatived.

Mr. B. N. Misra: Sir, I move:

"That in clause 3, sub-clause (k), for the words 'the enforced absence of the injured person from', the words 'inability to attend to' be substituted."

[Mr. B. N. Misra.]

Because "serious bodily injury" is defined as injury which involves or in all probability will involve the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of or injury to the sight or hearing, or the fracture of any limb or the enforced absence of the injured person from work for a period exceeding 20 days. I submit, Sir, in this the term "enforced absence" is not quite clear, because who will enforce? Will really the mine owners enforce the labour to absent from work? Certainly they are not going to do that. Their interest is to bring the injured person to work and to show that he has not received any serious bodily injury. I think it is rather meaningless, because in the Indian Penal Code we have got the term "grievous hurt" defined as "inability to attend to work for 20 days, etc." The words "the enforced absence of the injured person from" is rather meaningless, and if we substitute the words "inability to attend to" it would be quite all right. It would mean the inability of the person to attend to his work. So I move this amendment.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I also beg to move an amendment to 1 P.M. sub-clause (k) of clause 3. My amendment is to the effect:

"That between the words 'from' and 'work' the word 'his' be inserted."

Sir, as the definition in sub-clause (k) stands there seems to me some ambiguity in the interpretation of "serious bodily injury." It is just possible that my interpretation may not be the proper one. It may be due to the lack of a proper knowledge of English on my part that I may not be able to properly interpret the clause or to suggest a proper amendment. But I find that similar difficulties have arisen in the courts of law in interpreting sections 325 and 326 of the Indian Penal Code and from the little experience that I have, I have ventured to put in my amendment. As the sub-clause stands, it may mean that, if a person who has suffered the bodily injury were to be able to work in a different department of the mine or in a different place or if he were able to do the work of a different nature, then that injury may not fall within the purview of this definition. And my object by this amendment is to restrict its meaning in the way that only such injury be regarded as serious bodily injury if a man were to suffer an injury of a nature that he could not attend to the work for which he was employed, that injury shall be deemed to have been a serious bodily injury. For instance, he may be working in a mine for raising loads and a load may have fallen on his leg so that he could not do the loading work himself, but at the same time he could be employed by his master in watching the persons going into the mines, or as a watchman. May I know if such an injury is the injury referred to in such a definition or is it not? As the clause stands, probably it will not be included in this definition and the man shall not be said to have suffered a serious bodily injury. But, if we were to so amend this clause that, where a man suffers from any injury the nature of which is such as to disable him to do that work which he ordinarily did before he received such injury, that injury should be deemed to be a serious bodily injury. I do not know whether or not the amendment which I propose will solve my difficulty but I simply put before the House the object of my amendment. If the Legislative Department or the draftsman in the Government of India think that my object will be served by the insertion of the word "his" so much the better. If not, I would request them to suggest a wording which will make the meaning clear and be in conformity with the object.

The Honourable Mr. C. A. Innes: Sir, I do not pretend to be a lawyer nor yet a draftsman and I must confess that my Honourable friend's speech left me in some doubt as to what his difficulty was. All I have got to say is this; this definition of "serious bodily injury" was taken from the rules existing already in Bengal and Bihar and Orissa, and that is the reason why we adopted it. Secondly, I should like to point out that the exact wording of the definition is not a matter of any great importance. We are not discussing the Workmen's Compensation Bill; we are discussing the Mines Bill. The object of this clause is to explain the clauses later on in the Bill, clause 20 for instance, which required notice to be given of accidents, causing serious bodily injury, and clause 40, which prescribes a slightly higher penalty in cases which serious bodily injury results from the contravention of the inspection rules. I submit that the matter is of no importance at all and I hardly think it worth while making the amendment suggested by the Honourable Member.

The motion was negatived.

Clauses 3, 4 and 5 were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, here I am in the same difficulty as I was in while considering the definition of "serious bodily injury."

My amendment is:

"In clause 6, sub-clauses (a) and (b), substitute the words 'may be necessary' for the words 'he thinks fit'."

Clause 6 empowers the Inspectors to make such examination and inquiry as they think fit in order to ascertain whether the provisions of this Act and of the regulations, rules, etc., have properly been complied with. The words used show that the discretion lies with the Inspector. The Inspector may think fit even an absurd inquiry, an absurd examination even though it may or may not have any connection with the provisions of this Act. That is to say that the words "he thinks fit" depend on his personal opinion rather than depend on the object of the inquiry which he may have in view. So, if we were to substitute the words "as may be necessary" this clause would be governed by and will be dependent on the object of the inquiry. The Inspector will not have any personal discretion at all. The Inspector shall have to judge about the necessity of the inspection from the object which he has in view and that could also be found out by superior officers whether a particular inquiry of a particular nature was essential under the particular circumstances or not. If there is any objection made to the examination of the inquiry by an Inspector, the Inspector can say "well, it may or may not be necessary for that object but I think it fit to examine and make such inquiries and therefore I do so and am not liable for my acts under this Bill." Therefore, I think but I am not quite sure "as may be necessary" will be a better and more desirable wording than "as he thinks fit", and I beg to move that the substitution be made.

The motion was negatived.

Clause 6 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, under clause 7 powers are given to the Inspectors to enter the mine for the purpose of surveying, etc., at any

[Mr. K. B. L. Agnihotri.]

reasonable time by day or night. The amendment, which I beg to move is:

"To substitute the words 'during the working hours of the' for the word 'by' before the word 'day'."

That part of the clause will then read as follows:

"any part thereof at any reasonable time during the working hours of the day or night."

Sir, it may be said on behalf of Government that the words "reasonable time" will cover my amendment, but it is also likely that it may be interpreted in a different way. It may be said that "reasonable time" may mean during early portion of the night and in that case it may create some inconvenience and hardship to the owners and managers. So it will be better if you make it clear and lay down that the Inspector and the Chief Inspector will have authority to inspect and enter the mine or do all things mentioned in the clause only when the mine is working, that is, during the working hours and not when the work has been stopped. Therefore I submit that the words "during the working hours of the day or night" may be included in clause 7 so that the Inspector may have no right to go and enter the mine, take level or survey it at any time other than the working hours of the day and night.

Mr. President: Amendment moved:

"Substitute the words 'during the working hours of the' for the word 'by' before the word 'day'."

The Honourable Mr. O. A. Innes: Sir, I think that if there be anything in Mr. Agnihotri's amendment, he may be sure that mine owners throughout India would have taken the point. None of them have done so. No one has suggested it. The real reason is that in most mines, especially coal mines, work proceeds by day and night. There are no special working hours. The work always goes on.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): There are the words "after giving not less than three days' notice to the manager of the mine" in the clause. This clause therefore provides that three days' previous notice should be given, and if the mine owners have any objection, they can take the objection within those three days. So I do not think there is force in the Honourable Member's contention.

The motion was negatived.

Clause 7 was added to the Bill.

Clause 8 was added to the Bill.

Clause 9 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I move that:

"In clause 10, in sub-clause (b), omit 'the Chief Inspector or an Inspector' and add 'any qualified and experienced mining engineer not being in the service of the Government and not being a Chief Inspector or an Inspector'."

Clause 10 provides for the constitution of the Mining Boards and it has been provided in the clause as it stands, that the Chief Inspector or

the Inspector could also be a member of the Mining Board. My amendment is to delete this provision and to exclude the Chief Inspector or the Inspector from the Membership of the Mining Board. I have said before that the Chief Inspector or Inspector is practically the chief mining authority with whom the mine owners shall have to deal. He is the executive authority whose complaints and references may be put before the Board and who has to launch prosecutions against mine owners for the breach of the rules of contravention of the regulations. Therefore it is undesirable that such a person should be on the Mining Board formed or constituted by the Government. It is better that instead of a Government official in the form of a Chief Inspector or an Inspector, some other person, an expert in mining matters be nominated in his place. Therefore, I suggest that instead of the Chief Inspector or Inspector a non-official Mining Engineer who has an expert knowledge of the working of the mines be nominated as a Member of the Mining Board. With these words, Sir, I move my amendment.

Mr. President: Amendment moved :

" In clause 10, sub-clause (b), omit the words ' the Chief Inspector or an Inspector ' and insert the words ' any qualified and experienced mining engineer not being in the service of the Government and not being a Chief Inspector or an Inspector '."

The Honourable Mr. C. A. Innes: Sir, I think the Honourable Member has not fully apprehended what the functions of these Mining Boards are. The main functions of the Mining Boards are to scrutinise draft rules, regulations and bye-laws. These draft rules and regulations—regulations especially—will be drawn up in the first instance by the Chief Inspector of Mines. We also propose to lay down that they should be referred to the Mining Board before we published them for general criticism. The Board is practically an advisory body to the Chief Inspector of Mines or to the Inspector and to the Local Government, and I think the House will see that it is absolutely essential that the Chief Inspector of Mines should be a Member of that Board. He must be there to explain his draft rules, to answer criticisms and generally to discuss the rules. There is no need for the Honourable Member to think that the Chief Inspector of Mines is always up against the mineowners and the mine managers. From personal experience I can tell him that it is not so. Both the mine managers and the Chief Inspector and the Inspectors have one main object in view. They are anxious to get the regulations and the rules drafted in such a way that they provide in every possible way for the safety of the workers, and I think the House will agree with me that when you are discussing rules and regulations of this kind, it is very much better that they should be discussed by the Mining Board with the Chief Inspector there as a Member of the Board and able to answer criticisms and discuss the rules. It will be seen that he is only one out of a Board of six. I hope, Sir, that the House will not accept this amendment.

The motion was negatived.

Mr. N. M. Joshi: Sir, I beg to move the following amendment :

" In clause 10, sub-clause (1) (c), omit the words ' of whom one shall be a person qualified ' and substitute in their place the words ' in consultation with the organisations of employees if such exist '."

There are two questions involved in my amendment in the first place, the original Bill proposed that there should be two persons nominated by Government out of whom one shall be qualified to represent the interests

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of the employees. The amendment which I propose is that the two persons to be nominated should be both appointed to represent the interests of the employees. My reason is this. Under this clause, the employers are given two representatives on the Mining Board, and if the employers are to have two representatives on the Mining Board, it is but fair that the employees should also have an equal number. Sir, I believe that the stake which the employees have in the industry is as much as the employers have, if not more, than the stake of the employers. This is true particularly of the mining industry. The House knows very well that the mining industry is a very dangerous industry. Every year this industry takes a toll of about 200 lives of the working classes. This is a great stake which the working classes have in this industry. If the mines are not properly worked, the mine owners suffer only loss in money. But if there is an accident and the regulations are not properly observed, the workers have to pay with their life. I therefore feel that the stake which the employees have in the proper working of the mines is as much as if not more than, the stake which the employers have. Therefore, instead of having only one representative on the Board they should have two, representatives as the employers also have.

The second point involved in my amendment is that the persons to be nominated by Government on behalf of the employees should be nominated in consultation with the organisations of the employees where they exist, or if such exist. Sir, in the case of employers this clause provides that the representatives of the employers should be appointed by the employers themselves. If there had been well organised organisations of the employees, naturally this power of appointment would have gone to them also. Unfortunately, there is no central well organised association of the employees. Therefore I admit the desirability of Government nominating the representatives of the employees on the Mining Board. But I want to provide that when such well organised associations of the employees do come into existence, they will automatically be given the power of appointing representatives of the employees on the Mining Board. Sir, we all know that these Acts are not modified very often. As a matter of fact, this revision of the Mining Act has come after about 22 years. I am quite sure the next revision may come after 22 years or 25 years. (*The Honourable Mr. A. C. Chatterjee*: "No, no.") Within that period workers' organisations are bound to come into existence and grow very strong. I therefore think that we should provide in our Bill that as soon as workers' organisations come into existence they should have a voice in any nomination of their representatives on the Mining Board. I hope therefore that my amendment will find favour with the House.

The Honourable Mr. C. A. Innes: Mr. Joshi has told the House that mining is a very dangerous industry. I agree. It is also an industry which requires a very great deal of technical expert knowledge. Mr. Joshi has also told the House that it is unfair that the workers should have only one representative on the Mining Board while the employers should have two. The difference between Mr. Joshi and myself in this matter is that Mr. Joshi is concerned with the rights of workers and I am concerned with their safety. As I have said, this Mining Board exists for scrutinising the regulations for the safety of the miners. If Honourable Members will turn to the rule-making power, they will find the sort of things which the Mining Board has got to deal with rules for providing for the ventilation of mines and the action to be taken in respect of dust and

noxious gasses; for providing for the care, and the regulation of the use, of all machinery and plant and of all electrical apparatus used for signalling purposes; for requiring and regulating the use of safety lamps in mines; for providing against dangers arising out of the accumulation of water in mines; for prescribing the qualifications of managers of mines and of persons acting under them. We have got to look at where the labourers come from. The labourers are for the most part aborigines, Santhals, aborigines from the Santhal Parganas. On the Mining Board the people we want are mainly people who have sufficient expert knowledge to understand these rules and these regulations. That is why we have the Chief Inspector of Mines on it. That is why we provide two persons nominated by mine owners. Whom do the owners nominate? Their mine managers, all qualified certificated mining engineers, and I am quite sure that it would not help the workers if, on a consideration of what Mr. Joshi thinks their rights, we in any way weakened the technical power and technical knowledge on the Board. There are certain matters which come before the Board, matters connected with health, sanitation and so on in which the workers' representative may give some useful advice, and we endeavour to meet Mr. Joshi by providing that there should be one representative of the workers on the Board and I think that the House will recognise that it is a sufficient advance for the present.

Then, Sir, Mr. Joshi suggests that these representatives should be nominated by the Local Government in consultation with organisations of employees if such exist. Well, Sir, I am not a draftsman, and as I have said before, I am not a lawyer. It seems to me that in a law of this kind it is bad to put in a hypothetical clause of this kind. What we have to consider is there are no organisations of employees at present, there are no unions of any sort or kind. If they come into existence and if, as Mr. Joshi says, they become very powerful, I have no doubt they will compel us to give them a share in electing their representatives on this Board. It will not merely be a matter of nominating in consultation with the organisations, the organisations will claim and will get the right of electing their representatives themselves, and I suggest that, instead of putting in a clause of this kind which does not mean very much,—you do not impose any obligation on the Local Government at all except the obligation of consulting these organisations if they exist—the Local Government is not bound in any way to accept their advice,—I suggest that it would be wiser to wait until organisations come into existence and until we can provide for them in a proper way.

I have another objection. As I have said, Mr. Joshi is concerned here more with the rights of workers. He wants us to put in a clause in the Bill which will compel the Local Government to recognise organisations of workers of whatever kind. Now, I say, Sir, that by making this suggestion to the House Mr. Joshi has brought into it a matter which requires separate consideration, that is, the whole question of the registration of trade unions. That question, as the House probably remembers, is now under consideration and one of the most difficult questions connected with it is whether we should make registration compulsory or whether we should make it voluntary. If we make it voluntary, one of the incentives to registration will be this recognition, this consultation by the Local Government. Mr. Joshi prejudices the decision on that point. If we accept this, the Local Government will be compelled to consult a labour organisation or labour union whether that union has registered or not. On both grounds, on the ground of the interest and safety of the workers themselves and on the

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other ground which I have just given, namely, that Mr. Joshi is asking us to take a premature decision on what is really an important point of principle, I hope that the House will reject this amendment.

Mr. K. B. L. Agnihotri: I have also given notice of a similar amendment and I think my amendment may be taken as an amendment to Mr. Joshi's amendment. Therefore, Sir, with your permission, I move my amendment as an amendment to Mr. Joshi's amendment. My amendment is:

"In sub-clause 10 (1) (c) after the words 'in mines' add the following:

'Provided that such nomination shall be based on the recommendation of organisations of employees where they exist';"

and with your permission, Sir, I add the words:

"and are recognised by the Government."

The Honourable Mr. Innes has put forward two grounds for opposing Mr. Joshi's amendment, one that Mr. Joshi's amendment puts in hypothetical words, and secondly, that there is a separate matter involving consideration about trade unions and their recognition. If my amendment be accepted, both these points would go away, because I do not provide a hypothetical word "if" but instead the words "where they are already in existence," and at the same time, to meet the Honourable Mr. Innes half-way I have added "and where they are recognised by the Government," say, after a consideration of the point whether trade unions . . .

Mr. President: I do not understand how the Honourable Member proposes to make his amendment, an amendment to Mr. Joshi's amendment.

Mr. K. B. L. Agnihotri: For Mr. Joshi's amendment, Sir, my amendment be adopted.

Mr. President: The Honourable Member is aware that his amendment comes at the end of the clause and Mr. Joshi's amendment in the middle. We must dispose of Mr. Joshi's amendment before we come to his.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, as I have said, I made those two points to the Honourable Mr. Innes. I think it would be desirable in the interests of the labour organisations to provide that they be authorised to recommend their nominees, and on that recommendation the Government would nominate such persons on the Board. If there be no labour organisations at present, my amendment would not come in the way of Government nominating any person, but will apply only where the organisations exist and are recognised by the Government and this will be a wholesome provision. The present Bill may not be taken up for revision, say for 20 or 25 years. Therefore I submit, that such a provision should be added to this sub-clause. With these words I commend my amendment to the House, namely:

"In sub-clause (c) after the words 'in mines' add 'provided that such nomination shall be based on the recommendation of organisations of employees where they exist';"

The motion was negatived.

Clause 10 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"In clause 11, for sub-clause (a) substitute:

'(a) Two Judges of the High Court of the Province the senior of whom shall be the Chairman of the Committee.'

Sir, clause 11 provides for the constitution of the reference committees. In the English law on which this law is based, it is provided that two of the members of the reference committee should be Judges, similar to what I have provided in my amendment. I shall read to the House section 117 of the Coal Mines Act, 1911, which refers to the appointment of the reference committee. Clause (3) of section 117 lays down:

"The Reference Committee shall consist of the Lord Chief Justice of England, the Lord President of the Court of Session, and such person especially qualified by eminence in mining knowledge as the Lord Chief Justice and Lord President may select."

Sir, it is on the basis of this Coal Mines Act of 1911 that the clauses concerning the Reference Committee have been inserted in this Bill, and therefore it is desirable that, instead of any person being appointed by the Local Government as the Chairman of such Committee, we should have two Judges of the High Court on the Committee, and the senior Judge of the High Court should preside over the Reference Committee. These Reference Committees will have power under the Bill to settle disputes between the Government and the mine-owners. Therefore it is necessary that a Judge be appointed as the Chairman of such a Committee and another Judge be a member. As the Government happens to be one of the parties through the Chief Inspector, while the mine-owner becomes the other party, the person appointed by the Government will be no better than a person in Government service and so it will be better that an independent person be appointed as Chairman of the Committee. Therefore I suggest to the House that my amendment be accepted, and instead of a chairman being nominated by the Local Government or by such officer or authority as the Local Government may authorise in this behalf, a Judge be a chairman and the clause be made to read: "Two Judges of the High Court of the Province, the senior of whom shall be the chairman of the Committee."

The Honourable Mr. O. A. Innes: Sir, the Honourable Member has evidently again failed to understand what the functions of this Committee are. He talked of disputes between the workers and mine-owners and he talked of the Local Government being a party to those disputes. Therefore he suggested it was wrong that the Chairman should be nominated by the Local Government. This Committee exists merely for the purpose of appeals against orders under section 19 of the Act. Section 19 gives the Inspector very drastic emergency powers. If he finds any practice which is not otherwise provided for by rules under the Act to be extremely dangerous, he can require that that practice be remedied, and where the practice is very dangerous, he can even order the removal of the workers from the mine. If the power is abused by the Inspector, an appeal is allowed to the Chief Inspector, and then an appeal is allowed to a Committee. Ordinarily I do not believe these Committees have often sat. Very rarely they will come into existence, but when they do, what are the sort of things they will have to inquire into? Probably it will be the sort of case where the Chief Inspector thinks that the robbing of pillars has gone to such an extent that a certain part of the mine or the whole mine has become so

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dangerous that the mine ought to be closed. The Committee may have to go to the mine and inspect it and decide the matter on the spot. It is a very technical work and not the sort of work which is suitable for two Honourable Judges of the High Court. I do not think they should be taken away from their Benches and taken down to the mines to report on matters of this kind. The provisions providing for the constitution of this Committee are precisely what they have always been. I think we have made one small change to provide for a representative of the employees, but substantially we have not altered the constitution of the existing Act which has worked very well, and I see no reason why we should change it now.

The motion was negatived.

Mr. N. M. Joshi: I wish to move the following amendment :

"That in sub-clause (c) of clause 11 (1) after the word 'nominated' the words 'in consultation with the organisations of employees if such exist' be substituted."

Sir, undeterred by the fate of my last amendment, I propose to move this amendment again in the hope that it will meet with a better fate. Sir, the objections taken to this amendment are likely to be the same which were urged against my previous amendment. It was said in opposition to my first amendment that the workers will not be able to select their representative, or select a proper representative for the Mining Board. It is said that the workers are Santhals and some such people and they have not got sufficient sense to elect a man who knows anything about mining. It is also said that if the workers are given the choice of electing, they will elect somebody that has only some theoretical knowledge of mining operations. Sir, I believe if workers are given the right of nominating their representative there are greater chances of their appointing a man who has got practical experience of mining operations than if the Government undertakes to do that work. Secondly, the question was raised that my amendments involve the question of the recognition of trade unions. I do not know whether this question is at all open to Government. Government does recognise trade unions, if not of the working classes, at least trade unions of the employers. After having recognised trade unions of the employers, are they going to say that they are not going to recognise the trade unions of the employees? I doubt if any Government at all will take up that attitude.

Now, Sir, this amendment also is much simpler than my previous amendment. In my previous amendment I had mentioned organizations. In this amendment there is no mention of organizations at all, so there need not be any organization of employees and there need be no fear of the recognition of the organization of trade unions. Before I request the House to accept my amendment, I want them to consider why these Committees will be appointed. They will be appointed when there is some trouble, some disaster, some accident, in a mine.

The Honourable Mr. C. A. Innes: No, that is a court of inquiry.

Mr. N. M. Joshi: Yes, only about matters concerning one mine. The Committees are not going to consider the large questions of mining operations. These Committees will consider questions as regards only one particular mine. If my impression is wrong, I am open to correction. Now, when a matter concerning the safety of the employees of a mine is to be

discussed, the representative to be appointed on behalf of the employees should be appointed in consultation with these employees, and, as the number of the employees would not be a very large one, it will not be difficult to consult their wishes. Sir, our Factory Act, in one of its sections at least, provides that the workers in a factory should jointly make a certain request and, when they make a certain request, that request should be considered. If the employees of a factory can jointly make certain requests and ask for certain changes in the rules, then certainly the employees of a mine ought to be entitled to do the same without difficulty. I therefore feel that whatever may have been the fate of my previous amendment, this amendment is free from even the objections which were raised to my previous amendment.

I therefore hope that this amendment will be accepted.

The Honourable Mr. C. A. Innes: Sir, I am not going to follow the Honourable Member into any discussion re-opening the question of organizations. In this particular amendment all that Mr. Joshi asks is that, before a member is appointed to a Committee to represent the employees, those employees should be consulted. What does that mean? I presume it means that, before a Local Government can make a nomination, it has in some way to call together a mass meeting of the miners down a mine and try to ascertain whether they know of any person who will be competent to give an opinion upon the point at issue. That point is nearly always a technical mining point, a point as to whether it is safe to work down a particular part of a mine owing to the pillars being inadequately strong, or whether the fire area of a mine has got so much out of control that the whole of that mine should be closed down. I cannot see that it will be the least use to call together this mass meeting of employees and ask their opinion on a question like this. It will merely cause delay. And one has got to remember that it is a very urgent matter for the owner of that mine that he should get a decision on his appeal against the Chief Inspector's order. His mine during the whole of this time may have been closed down and the workers may have been removed. If this House will agree that no material advantage is to be gained by the procedure indicated by Mr. Joshi, I think we ought not to incur the further delay which will result from consulting the employees. Moreover, this particular amendment was brought up by Mr. Joshi in Select Committee. I mentioned it to a mine owner and he said "That would suit me very well, because I could get my men to nominate exactly the person I wanted."

I think, Sir, on every ground we should object to this amendment.

Rao Bahadur T. Rangachariar: Sir, I am sorry to interpose, but there is a great deal in favour of the amendment moved by Mr. Joshi. It is admitted that these are merely Committees constituted for a particular dispute relating to a particular mine, so that it would be the employees of that mine whose interests would be involved. It is admitted in the Bill as it stands that the interests of the persons employed in a mine have to be protected, and it is supposed that this Local Government is so omniscient that they can find a person to represent their interests better than the persons themselves. How is a Local Government, situated hundreds of miles away, to know these interests. We know what it means. An Assistant Secretary or an Under Secretary will put up recommendations and the whole thing is done. The Local Government is supposed to know the interests of these employees better than the employees themselves. No doubt, Sir, where there is no will, you can exaggerate difficulties in the

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way. In a vast country like this people's opinions are gathered and, when they want to rely on people's opinions, they will say "the masses think otherwise, it is the educated minority who agitate for a thing which the masses do not want." I do not know how the Government know the opinion of the masses. But, here, if you were to consult the people themselves, I do not think it would be very difficult. The Chief Inspector or the Chairman of the Committee, by rules which you may prescribe, may hold a meeting of the employees and make a nomination. I do not think the difficulties are so great that you cannot find out the wishes of the employees as to who their representative should be.

I heartily support the amendment.

The Honourable Mr. A. C. Chatterjee (Education Member): With every sympathy for the object aimed at by Mr. Joshi and Mr. Rangachariar, I feel bound to oppose this amendment. I think my Honourable friend Mr. Rangachariar has not estimated the difficulties that will arise if the amendment is accepted and if we now legislate that, before a representative of the employees is appointed to a Committee, a mass meeting of the employees should be held. I do not know if either Mr. Rangachariar or Mr. Joshi is acquainted with the mine fields. I have some acquaintance with them, Sir, and I do not think it is realised that the mining population is shifting from day to day. How are you to find out who are the actual employees in a mine on a particular day or who are particularly interested in any matter which is referred to a Committee? Similarly, if there are two factions in the mine, it would often be extremely difficult for the Government to choose between the nominees of these two factions. The Honourable Mr. Innes has already referred to the very serious danger that will arise if the mine-owner gets round a large body of his employees and persuades them to accept a man who would really side with him. I see very serious dangers in accepting this amendment until the trade unions system is properly organised in the mines. I do not think, Sir, that an amendment to this Bill of the nature that Mr. Joshi suggests will be very difficult when the trade unions system is properly organised in the mine fields. Let us wait till then. Let us not prejudice the question and get into serious difficulties. Sir, I am as much in sympathy with labour interests as perhaps Mr. Joshi is, and I strongly oppose this amendment.

Mr. B. C. Allen (Assam: Nominated Official): Sir, I must protest against the description given by Mr. Rangachariar of the methods followed in appointing representatives of labour. I have some personal experience of the matter myself. There is in the Assam Council a representative of the garden coolies. I need hardly say that it is quite impossible to find any garden cooly who is capable of representing in the Council the interests of his fellow-workers. But when the duty was laid upon Government of selecting a gentleman to appear on behalf of garden coolies, all those who had any experience or who were in a position to give reasonable advice were consulted. The matter was investigated most carefully. There was no question whatever of merely asking an Under Secretary to submit a name. Divisional Commissioners and District Officers were asked for advice and ultimately a gentleman was selected whom everybody, I believe who has any cognizance of the facts would admit to be the most qualified representative of the labourers on whose behalf he was appointed to appear.

Mr. J. Chaudhuri: Sir, I support my Honourable friend, Mr. Joshi's amendment. He says "in consultation." He does not say that the representative should be elected by the employees. We remember that in the Legislative Councils formerly public bodies used to nominate representatives and the Government accepted them. So pending the formation of the Union of employees, I do not see any harm in the Local Government consulting the employees and accepting their recommendation. That is why I ask the House to accept this amendment.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, it has been proposed that an amendment should be made in the Bill. I do not intend to deal with the substance of the amendment. But from the drafting point of view I should like the House to consider what the proposed words will mean when they are in the Bill. Mr. Joshi will have the Member of the Committee nominated by the Local Government in consultation—that is to say, there is to be a consultation between the Local Government and the workers in the mines. How that consultation is going to be brought about, I for one entirely fail to understand, and I have not yet heard from Mr. Joshi or Mr. Rangachariar how the consultation is going to take place. Mr. Rangachariar suggested that the Chairman might be asked to intervene. That would not be a consultation between the Local Government and the coolies in the mines, because the Chairman is in no sense a representative of the Local Government. I think, Sir, purely from the drafting point of view, if this amendment were carried, it would be a blot on the Statute Book.

Mr. N. M. Joshi: Sir, I have no right of reply but if you will permit me, I shall only make one remark with regard to the point raised by Sir Henry Moncrieff Smith.

If Sir Henry Moncrieff Smith finds any drafting difficulty in this clause, I would only draw his attention to the draft which he himself perhaps has made in the Factory Act, and it is this:

"At the request of the employees concerned periods of rest of not less than half an hour each, so arranged that for each period of six hours work done there should be periods of rest of not less than one hour . . . and that no person shall work for more than five hours continuously."

Here the words used are "at the request of the employees." There is nothing said there about who is to make the request or who is to decide.

Sir Henry Moncrieff Smith: That is quite different from consultation.

Mr. N. M. Joshi: The employees in a factory may be in thousands. Take the case of Tata's Steel Works. They have got 30,000 employees. But nothing is mentioned in this section of the Factory Act as to how the request is to be ascertained, who is going to decide whether the request should be made or not or anything of the kind.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, I wish to add a few words to the remarks which have fallen from Sir Henry Moncrieff Smith. If one mistake has been made in the Factory Act . . .

Sir Henry Moncrieff Smith: No.

Mr. W. M. Hussanally: I do not think another should be perpetrated in this Act. In my opinion, any system of consultation would be so unworkable that it would be impossible to come to any decision in the

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matter at all if the miners or the employees were to be consulted. Supposing, Sir, the miners were consulted by a District Officer and some voted in favour of one gentleman or gave their vote to one gentleman and the others gave it in favour of another gentleman. How is the vote to be taken, and how is it to be decided? If the body of employees are to be consulted, this means an elaborate procedure of voting, which must be gone into, and I think if the House is minded to have this 'consultation' brought in, a much more detailed system of voting ought to be put in to the Act so as to make the thing workable. Otherwise as the amendment stands, it will be entirely unworkable.

Mr. President: Clause 11. Amendment moved :

"In sub-clause (c) of sub-section (1), after the word 'nominated' the words 'in consultation with the employees' be inserted."

The question is that that amendment be made.

The Assembly then divided as follows :

AYES—23.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahsan Khan, Mr. M.
Asad Ali, Mr.
Ayyar, Mr. T. V. Sethagiri.
Bagde, Mr. K. G.
Chaudhuri, Mr. J.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Mahadeo Prasad, Munshi.

Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—36.

Abdul Majid, Sheikh.
Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Haigh, Mr. P. B.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.

Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Pyari Lal, Mr.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Sen, Mr. N. K.
Singh, Mr. S. N.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned for Lunch till Five Minutes Past Three of the Clock.

The Assembly re-assembled after Lunch at Five Minutes Past Three of the Clock. Rao Bahadur T. Rangachariar was in the Chair.

MESSAGE FROM THE COUNCIL OF STATE.

Mr. Chairman: I understand that a Message has been received from the Council of State.

Secretary of the Assembly: The Message runs as follows:

"From the Secretary of the Council of State, to the Secretary, Legislative Assembly:

I have the honour to inform you that the Council of State at its meeting of the 29th January has agreed without amendment to the Bill further to amend the Criminal Tribes Act, 1911."

THE INDIAN MINES BILL.

Mr. Chairman: The question is that clause 11, as amended by the Joint Select Committee, do stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clauses 12 and 13 do stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clauses 14 and 15 do stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, in clause 16 I move to substitute the word 'or' for 'and' between the words 'agent' and 'manager' in sub-clause (1). Sir, this clause has more or less been taken out from the English Coal Mines Act, 1911, section 102. There the word 'or' is used between the words 'agent' and 'manager'; and I do not know why that has been changed to 'and' in this clause of this Bill. I think that if the word 'and' be allowed to stand in sub-clause (1) between the words 'agent' and 'manager' it is just likely that it may be taken to mean that the owner and agent and manager, i.e., all these three persons, will be liable for penalty under clause 16. I think that will not be proper and desirable and therefore it is better to put the word 'or', and to make the owner, or agent, or manager, whoever is found to have committed any of the breaches of the rules or regulations under this Act, him only to be held liable. Therefore, Sir, I propose that instead of the word 'and' the word 'or' be substituted between the words 'agent' and 'manager' in sub-clause (1) of clause 16.

The Honourable Mr. O. A. Innes: Sir, I must challenge the accuracy of what the Honourable Member has just said. He said that the English Act used the word 'or' between the words 'agent' and 'manager' instead of the word 'and'. I will now read section 101(2) of the English Coal Mines Act, 1911: "If a mine is not managed in conformity with this Act, the owner and agent and manager thereof shall be deemed to have been guilty of an offence under this Act." So the House will see that the Honourable Member is entirely incorrect in his main argument for his amendment. I should just like to explain that the first two clauses of this section are part of the existing Act. The whole matter was very carefully discussed in the Joint Committee, and the Joint Committee by a majority decided to follow the English Act by adding the proviso which is shown in italics. I

[Mr. C. A. Innes.]

may say that I was one of the minority, but at the same time the matter was very carefully discussed and we are quite prepared to accept the decision of the Committee. By that proviso we have brought this section into accord with the English Act except in regard to certain additions which the Honourable Member proposes to make later and which are the subject of his later amendments. In any case in view of what I have said and in view of the inaccuracy of the Honourable Member's remarks I hope the House will not accept this amendment.

Mr. K. B. L. Agnihotri: On a point of explanation, Sir. The Honourable Mr. Innes has said that the word used in the English Act is 'and' and he has read section 101(2) of that Act. But I referred to section 102 which provides for penalty and there you will find the word used is 'or' and not 'and'.

The Honourable Mr. C. A. Innes: You have got to read the two together.

The amendment was negatived.

Mr. K. B. L. Agnihotri: I drop the amendment to sub-clause (2), and I do not wish to press it.

Mr. Chairman: The question is that clause 16 as amended by the Joint Committee

Mr. K. B. L. Agnihotri: I have got other amendments to clause 16, Sir.

Mr. Chairman: But you said you did not wish to move them.

Mr. K. B. L. Agnihotri: No, Sir, the portion I did not press was that which related to sub-clause (2). I have moved the amendment in respect of sub-clause (1) only and I said I did not wish now to move the amendment to sub-clause (2) as it was similar, but I shall move amendments, with your permission, Sir, adding other sub-clauses to clause 16.

' Sir, my further amendment to clause 16 is:

" Add the following sub-section to the proviso to clause 16:

' Nothing in this Act shall render the owner, agent or manager of a mine liable to a penalty in respect of any contravention of or non-compliance with the provisions of this Act if he proves that the contravention or non-compliance was due to causes over which he had no control and against the happening of which it was impracticable for him to make any provision '."

Sir, this amendment I have taken out from clause 102 of the English Coal Mines Act of 1911. The provisos (a), (b) and (c) and sub-clause (3) to clause 16 in our Bill have also been taken out from section 102 of that Act, while other provisos to that section have been left out by the Joint Committee. I wish to propose, Sir, that the sub-sections that have been left out by the Joint Committee should also be incorporated by the House in clause 16. This seems to me to be a very desirable provision because if the manager, owner or agent committed any contravention of the rules or regulations or of any provisions under this Act, and it is proved that such contravention was due to impracticable causes over which he had no control and it was for him to provide against its happening, then such owner, manager or agent be exempted from the penalty under clause 16. Therefore, Sir, I propose that this addition to clause 16 be made.

The Honourable Mr. C. A. Innes: Sir, I received notice of this amendment only at 10-30 A.M. on Saturday morning, and I have not been able fully to consult my legal advisers upon it. I don't remember whether we actually considered in the Joint Committee whether we should add these two clauses. But the reason why, as far as I can see, we did not include in our Bill a clause corresponding to clause 4 of Mr. Agnihotri's amendment, that is, clause 102 (3) of the English Act, was that it was thought that it was sufficiently provided for by clause 16 (2) of the Bill, which is the existing law. Clause 16 (2) says:

"In the event of any contravention of any such provisions by any person whomsoever, the owner, agent, and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention."

We thought, therefore, that we provided for the substance of the English sub-clause by the existing clause 16 (2) of the Bill.

As regards the second amendment "Nothing in this section shall be construed"

Mr. Chairman: It is not before the House.

The Honourable Mr. C. A. Innes: That, Sir, is the reason why we did not include a clause corresponding to clause 102 (3) of the English Act in our Bill. As far as I am concerned, I am quite prepared to leave the matter to the House. I do not think it is a matter of much importance, but it seems to me that clause 16 (2) of the existing Bill sufficiently provides for what the Honourable Member wants.

Mr. K. B. L. Agnihotri: In that case, Sir, I may be permitted to withdraw it.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, as I was a Member of the Joint Committee I may say that I thought that in law all that was needed was that reasonable means should be taken by the manager, owner or agent; and "reasonable means" means necessarily that if the instructions are unreasonable he has a good defence and he can say 'These I cannot carry out; these are not reasonable,' and he gets out of it by these words.

The amendment was, by leave of the Assembly withdrawn.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That the following sub-clause be added to clause 16 of the Bill, namely:

"If a boy or girl was employed on the representation of his or her parent or guardian that he or she was of an age at which his or her employment would not be in contravention of this Act and under the belief in good faith that he or she was of that age or if a person has been employed in any capacity or in any manner on his representation that he fulfilled the conditions as to age, experience and otherwise necessary for such employment and under the belief in good faith that such representation was true, the owner, agent, or manager of the mine and employer shall be exempted from any penalty and the parent or guardian or the person making such representation as the case may be, shall in respect of the misrepresentation, be guilty of an offence under this Act."

Sir, this is also a sub-section of section 102 of the Coal Mines Act of 1911. In the present Bill we have provided that children below a certain age shall not be employed in the mines. The amendment which I suggest to this section will have the effect, that if the owner, manager or the agent

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of a mine employs any person on the representation of the person himself or on the representation of the guardian or the parents of such children, then he (the manager, owner or agent) would not be held liable to penalty under this section. Secondly, the guardian or the parent or the person who makes such a representation will also be held liable for having made a false representation to the owner, manager or agent for such employment, and therefore I suggest that this provision of making the person who makes such false representations, liable under this clause, will be very salutary in preventing the employment of children in the mines. Therefore, I submit, that this amendment be accepted and added to clause 16.

Mr. N. M. Joshi: I rise to a point of order, Sir. This is a complicated amendment, and I think it should not be allowed.

Mr. Chairman: Do you object to it?

Mr. N. M. Joshi: Yes, I object to it.

Mr. Chairman: As the amendment is objected to, and as Honourable Members have not been furnished with a copy, for want of notice, I think I should disallow it.

The Honourable Mr. C. A. Innes: Sir, may I point out that it will delay the whole Bill. I think I can explain the point to Mr. Joshi's satisfaction.

Mr. Chairman: If Mr. Joshi is willing to hear you.

Mr. N. M. Joshi: I have taken my objection.

Mr. Chairman (to the Honourable Mr. Innes): You may address the House as to why the objection should not be allowed.

The Honourable Mr. C. A. Innes: I think, Sir, the rules provide that two clear days' notice must be given for these amendments. These amendments reached me on Saturday evening, and from our point of view the objection can be upheld. I do not know why copies of the amendments have not been supplied to Members. The real point I want to make is that I am anxious not to delay this Bill on the ground that Members have not been given notice of an important amendment which I think I can dispose of quite easily.

Mr. K. B. L. Agnihotri: I think Mr. Joshi will reconsider his objection.

Mr. Chairman: In the circumstances explained, I suspend the Standing Order and allow the amendment.

The Honourable Mr. C. A. Innes: I think it is a very dangerous thing for us to try and transfer from the English Act a provision of law which may be and is entirely unsuitable to our own Act. In the first place, the form of Mr. Agnihotri's amendment is unsuitable. It talks about a boy and a girl. We have no definition in our Act of a boy or a girl. We have only got a definition of a child. In the second place, the intention of the amendment is to penalise misrepresentation as to the age of a child by the parent of that child. Now, everybody in this House, I think, will realise

that the Indian miner will have the very greatest difficulty in saying definitely whether or not his child is or is not below 13 years of age and therefore in clause 27 of our Bill we have made a special provision to meet this very case. Clause 27 says:

"If any question arises between the Chief Inspector or the Inspector and the manager of any mine as to whether any person is a child, the question shall, in the absence of a certificate as to the age of such person granted in the prescribed manner, be referred by the Chief Inspector or the Inspector for decision to a qualified medical practitioner."

In all cases, therefore, where it is uncertain whether or not a child is or is not below 13 years of age, we make provision for the settlement of the dispute. It seems to be quite unnecessary to impose on these ignorant miners the obligation of telling the truth with regard to the age of their children when they themselves probably do not know what that age is.

Mr. N. M. Joshi: Sir, I also oppose this amendment. It provides for a penalty on the parents of the children on the ground of misrepresenting the age of their children. I think, Sir, in the case of these illiterate people, anything can be proved against them, and therefore I think that such a provision is most dangerous. I therefore oppose it.

The motion was negatived.

Clauses 16, 17 and 18 were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move that sub-clause (7) of clause 19 be deleted.

Sub-clause (7) is to this effect:

"Nothing in this section shall affect the powers of a Magistrate under section 144 of the Code of Criminal Procedure, 1848."

Sir, under this sub-clause we give authority to a Magistrate to stop the mines and take proceedings under section 144 of the Code of Criminal Procedure. The House will remember that only a few minutes ago we have provided that the District Magistrate may be made an Inspector in a district. Sir, if the District Magistrate is declared to be an Inspector in the District, this clause becomes superfluous because, in his capacity as a District Magistrate, he could take action and in his capacity as an Inspector also he could take action; moreover, under this Bill, we have also provided that the Chief Inspector or the Inspector, if he finds that the mine is in a dangerous condition or something to that effect, can under clause 19, sub-clauses (1) and (2), close the mine. So this power under 144 will be superfluous when the same thing could be done by the Inspector or the Chief Inspector and by the District Magistrate. They can also withdraw the workers from the mines and they can stop the working of the mines. It might be said that there may be a likelihood of a breach of the peace and therefore the Magistrate's intervention may be necessary but this very thing could be done by the Chief Inspector and the Inspector under the other sub-clauses of clause 19 and therefore this sub-clause (7) is superfluous and unnecessary and should be deleted.

The Honourable Mr. C. A. Innes: Sub-section (7). Sir, is in the existing Act. As I understand the matter, it is as follows: "under section 144 of the Criminal Procedure Code a Magistrate has power to take certain action in an emergency—that is a general power. Under clause 19 of this Bill we confer upon the Chief Inspector and the Inspector special powers to take action also in an emergency. The object of sub-clause (7),

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as I understand it, is to make it perfectly clear that nothing in the special powers which have been conferred upon the Chief Inspector and the Inspector override or interfere with the general powers exercised by a Magistrate under the Criminal Procedure Code. It is by no means clear to me whether, if you remove this section from the Bill, you would in fact deprive a Magistrate of his general powers under section 144 of the Criminal Procedure Code. To take the question, on the merits, whether a Magistrate should be allowed to exercise these powers, I would point out, as I have just pointed out on an earlier amendment, that we have only got four Inspectors in all India. Quite conceivably, there might arise a case where a part of a mine becomes extremely dangerous, where a Magistrate has to take action on the spot without waiting for an Inspector to come down. It seems to me, Sir, whether it makes any difference or not if we remove this sub-clause, it will be a mistake to do so.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I think Sir, the Government is not well advised in having a clause like this. If they once bring in a special act of reservation in respect of a particular section of the Criminal Procedure Code, it would mean that the Magistrate cannot exercise any of the other powers conferred by the same Code. For example, take section 133. Does the Honourable Member mean to suggest that, unless power is given by this Bill to exercise powers under that provision of the Criminal Procedure Code, the Magistrate could not exercise the power? I think, if he thinks the matter over, he will find that the introduction of this clause is likely to lead to a great many difficulties. If we specifically mention section 144, it would imply that the other powers are not open to the Magistrate; I do not think the Government would be well advised in having a clause like this. Once you mention a specific section you exclude the exercise of powers under other sections of the Criminal Procedure Code. Take section 133—taking precautions in respect of danger to property. If you leave out that and put in section 144, what would be the effect? It would be regarded as if you had made provision for exercising powers under section 144, but that the Magistrate cannot exercise powers under section 133. I think it is a dangerous innovation and is likely to lead to difficulties.

The Honourable Mr. C. A. Innes: It is not innovation: it is in the existing Act.

The Honourable Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, in reply to my Honourable and learned friend who has just spoken, I should like to point out that section 144 and this particular clause of the Bill that we are now considering deal with the same matter, deal with an emergency where speedy remedy is desirable. Section 133 is another matter altogether: that deals with the case of a nuisance. I would point out one mistake into which Mr. Agnihotri has fallen. I understood him to say that, as the District Magistrate has the powers of an Inspector under the Act, he can as an Inspector use his powers under section 19 to meet the emergency and therefore it is quite superfluous to allow him any power or any Magistrate any power under section 144. Mr. Agnihotri has, Sir, I am afraid, overlooked the clause of the Bill under which the District Magistrate gets his powers under the Bill. If he will look at sub-section (3) of section 4 he will find that the District Magistrate is not, and cannot be, invested with powers under this particular section 19. It is

one of the two sections which is excluded from the scope of the Magistrate's action under this Bill. Therefore, Mr. Agnihotri's sole argument to support this amendment has disappeared. A District Magistrate cannot take action under section 19 and we make it quite clear that he can take action under section 144 of the Criminal Procedure Code.

Mr. Chairman: Amendment moved:

"In clause 19 delete sub-clause (7)."

The motion was negatived.

Clauses 19, 20 and 21 were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 22, substitute 'in the local official Gazette' for the words 'at such time'."

Sir, clause 22 of this Bill is to this effect:

"The Local Government may cause any report submitted by a Committee under section 11 or by a court of inquiry under section 21 to be published at such time and in such manner as it may think fit."

My amendment will make it obligatory on the Local Government to publish it in the local official Gazette, in addition to the other modes that the Local Government may decide to give publication in as required. My reasons for this are, Sir, that the local official Gazette is practically the mouth-piece of the Government. Every event, order or piece of legislation, rules or regulations and every report that has to be published by the Government, unless it is of a very voluminous size, is generally published in the local official Gazette and every person including a mine owner is expected to know it and even the law presumes that whatever has been published in the Government Gazette is a proper communication to the persons who may be concerned. Therefore I suggest that it would be better that in addition to the other modes of publication the Local Government may think proper that the publication should also be made in the local official Gazette so that no person could complain afterwards that he had not the knowledge of it because the manner of publication under the Bill remains uncertain and may not probably be known to every mine owner or to persons concerned; while they are expected to know and actually know that there is a Government Gazette which contains these publications. Therefore, it will be better if the local official Gazette is inserted in this clause and the Local Government be required to publish the reports, etc., in the local official Gazette in addition to the other modes that they may think right.

The Honourable Mr. C. A. Innes: I would just point out, Sir, as a point of form, that if this amendment is adopted, it would seem necessary to add before "manner" the word "such". Otherwise the clause will stand "in the local official Gazette and in such manner as it may think fit." That will probably amount to an injunction for the Local Government to consider whether it should be printed in small pica or big pica or whatever it may be. But apart from that, Sir, I do not think I need take the time of the House over this amendment. Surely in a matter of this kind we can leave it to the Local Government to decide what is the most suitable method of publishing a report of this kind and I do not see why we should tie them down in this Bill to any particular method.

The motion was negatived.

Clause 22 was added to the Bill.

Mr. B. N. Misra: Sir, my amendment runs as follows:

"(i) That in clause 23, sub-clause (b) for the word 'sixty' the words 'forty-eight' be substituted.

(ii) That in clause 23 (c) for the words 'fifty-four' the words 'forty-two' be substituted."

Clause 23 runs as follows:

"No person shall be employed in a mine:

(a) on more than six days in any one week;

(b) if he works above ground, for more than sixty hours in any one week;

(c) if he works below ground, for more than fifty-four hours in any one week."

My amendment relates to clauses (b) and (c). The first sub-clause says that no person shall be employed for more than six days in one week. Practically a labourer has to work sixty hours in six days, and if he has to work sixty hours in a week, it comes to this, that he has to work ten hours a day. I consider that this ten hours' continuous work is really very unwholesome and it will greatly tell upon the health of the labourers. The object of the Bill is to protect the safety and health of the labourers. Generally labourers go to work at about 7 in the morning, come at about 12, prepare their meals, have their bath and so on. They go to work at 3 P.M., come back at 6 P.M. An ordinary labourer works 8 hours a day. That is outside, in the open fields. In this case, if the present conditions are allowed, they will have to work 10 hours. For instance, if they go early morning at 7, they will complete their ten hours' work by 5 o'clock without any recess. If some recess is allowed for their bath and their food,—you must allow at least two or three hours,—even if you allow only two hours, they will have to work till night 7 o'clock. I think two hours' recess is absolutely necessary for their bath and other things. Practically they will have to work from morning 7 till night 7, if any recess is allowed. If no recess is allowed, as is not contemplated, they will have to work continuously from 7 A.M. till 5 P.M. I wish to point out to Honourable Members that we began just at about 11 o'clock and we went for our lunch at 2 P.M. That is, after three hours' work we had one hour's rest. I think Honourable Members will have some sympathy and some consideration for these hard working poor labourers. If two or three hours' work is sufficient for an hour's rest for us, don't you think that these labourers who have to work in pits deserve your sympathy! I am told sometimes these pits are 5,000 feet deep and some are 2,000 feet deep and they have to work at such depths underneath the ground that they do not get any free air, and the pits are very warm and very unhealthy. Do they not, as human beings, require some sort of concession and do you think it proper that they should be so much tormented and work for ten hours a day at such depths? Sub-clause (c) provides that they will have to work only fifty-four hours underground. That means that underground labour is required to be 9 hours a day and above-ground work 10 hours a day. There is no definition of what is above-ground work and what is underground. We do not know which they will call underground work—200 feet or 300 feet or 1,000 feet under the ground. In these circumstances, to labour for 9 hours or 10 hours a day is very unwholesome for these labourers. Probably my Honourable friend, Mr. Innes, will tell us that we have to conform to the decision of the Geneva International Conference which has accepted 10 hours' labour to be the minimum. I submit that for this particular kind of work, which is really very difficult, and in a country

like India where the weather is really so uncharitable or so specially hot in summer, it is very difficult for labourers to work for 9 or 10 hours a day. I think 5 or 6 hours will be really very tiresome for any labourer who really wants to work. If you simply want them to be there even till 10 o'clock, they might be idling away their time. In the interests of hard work you have to give them some rest. If you give less hours, they can work more energetically and more vigorously, and they can turn out more work than if you allow them to be there for 20 hours or 15 hours or any longer hours. The result that the mine owners will get by allowing these people to work more hours, will not be profitable to them, because we must imagine that the workmen are after all human beings and no man can do hard work continuously for more than 7 or 8 hours. If you keep him there for 10 or 15 hours I do not think it will be profitable to the mine owners. Probably, it may be said that these labourers will get more money. As a matter of fact, they do not get more money. The work is carried on on a contract system. Say, the cooly sirdar takes 10 or 12 coolies. He takes a contract and whatever extra money is got is taken by the cooly sirdar from the mine owner or his agent. The actual coolies do not get any profit, because the coolies continue to get the same daily wages. The gain goes to the sirdar, or headman or contractor. I submit therefore that if they work hard it will not benefit them. I do not think that such provision will really bring any benefit to these labourers. Then, probably, it may be said that in the Factory Act we have also 10 hours labour. I submit to this House that labour in a factory and labour in a mine is quite different. Labour in a factory is more comfortable where they have to work under buildings or in open air, whereas this mine work is really very tiresome and unwholesome work. Ten hours labour is very difficult even above ground and 9 hours a day or 54 hours in the week is really very difficult to do. Of course, we are not making any provision that those who have worked 4 or 5 hours underground should be brought above-ground and another set should go underground. If there were some such provision, there might be reason in that, but there is no such provision. So, a man working underground will always be there continuously 9 hours which is very difficult. In these circumstances I move:

"That in clause (b) instead of '60 hours' '48 hours' be substituted and in clause (c) instead of '54 hours' '42 hours' be substituted."

Mr. Chairman: Amendment moved:

"That in clause 23, sub-clause (b), for the word 'sixty' the words 'forty-eight' be substituted."

Mr. N. C. Sircar (Bengal National Chamber of Commerce): The provision is that in respect of work overground it is 60 hours, that is, ten hours a day. Ordinarily, there are 12 hours in a day, I think my Honourable friend understands it. The practice in our coal mines is that the above-ground labourer gets two hours' rest from 12 to 2 P.M. In ordinary days, I mean in the summer season, the sun rises at about 5-30, and the labourer goes to work at about 6 o'clock. After working 6 hours he gets two hours' rest, and then he comes back at 2-30 or 2 and goes back home at 6 o'clock. We get 10 hours' work and at the same time they get two hours' rest. So, that meets the desire that a labourer should get a certain amount of rest. (A Voice: "What about winter?") In the winter season, they get their two hours' rest all the same, but they cannot get to work before 7 o'clock, and they are always let off at 5-30 P.M. In

[Mr. N. C. Sircar.]

the winter season we do not get 60 hours' work. (*A Voice*: "Why is it provided in the Bill"?) Then there must be two provisos that in the summer season it ought to be 60 hours and in the winter season it must be 54 hours. But in respect of underground work, the provision is for 54 hours and six days in the week which means nine hours a day. Of course, we have not at present the shift system in the mines, in fact, it is impracticable, because some miners come to work from a distance of 5 or 6 miles and therefore they cannot return home every day. Therefore they stop at the coal mine and they are expected in their own interests to work 9 hours. But the miners generally go down at 8 or 8-30 and sometimes at 9 o'clock. Whoever goes later is to come out later and from 8 o'clock they work up to 4 o'clock which means actually 8 hours and we do not get more than 8 hours' work. Of course, the provision is for 9 hours but we shall be quite pleased if we get 8 hours' work from the miners. As a matter of fact, we do not get more than 8 hours work. The same thing applies here as in the case of surface labour that in the winter season we get a certain amount of less work because they cannot go down until it is 9 o'clock and in the hot season, of course, they go down a bit earlier. At any rate, they do only 8 hours' work under the mines, and such being so, I do not see what effect the amendment is going to have on the practice already in force in the coal mines.

The Honourable Mr. C. A. Innes: My Honourable friend, Mr. Misra's speech contains so many startling mis-statements that it left me panting and breathless at the end of it. He referred to coal mines 5,000 miles deep. (*A Voice*: "Feet.") He referred to the Geneva Conference which was a conference which dealt with seamen. What he really meant to refer to was the Washington Conference, the conference which mainly dealt with factory labour. The whole of his speech indicated, I think, that he had never been to a coal mine, and that he had not even read the previous debates in this House in regard to this Bill. Mr. Misra evidently thinks that in the coal mines at 6 o'clock every morning you ring a bell and miners come out from neatly whitewashed houses and troop down the mine, and at five in the evening a bell is rung and the miners troop out of the mine. That is not so, for the mine labour in India, especially in the coal mine, is, I regret to say, very unorganised. It is difficult enough to get the labour at all. When the miner comes, he comes often from a long distance. The men come with their families. They go down the mines and come up whenever they like, they stay there as long as they like, and they are paid entirely by results. They do not do any fixed number of hours work. They merely cut so many tubs of coal. When they cut enough tubs of coal sufficient to maintain them for a week, up they come and away they go. That is why in making for the first time an effort to limit the hours of labour in a mine we have contented ourselves with fixing a weekly limit of hours, and in fixing that limit of 60 hours for labour above-ground, we have followed the desire expressed by this House, the mandate of this House. The Washington Conference recommended that in India the limit of 60 hours a week should be adopted for all workers in industries covered by the Factory Act and in mines. The House recommended to the Governor General in Council that that draft convention should be ratified and that is why we have adopted the 60-hour a week for labour above-ground. That is, we have adopted for labour above-ground in mines precisely the same limit as we have adopted for ordinary factory labour. Is there any reason why we should treat

above-ground labour in mines with more consideration than similar labour in factories? As regards underground labour we have gone rather beyond the prescriptions of this draft convention. We have adopted a 54-hour week, and we did that for a special reason. At the Washington Conference there was a special Committee sitting. It did not go as far as recommending the inclusion in the Convention of a 54-hour week for underground labour in mines, but it made a special recommendation to the Government of India that we should consider that proposition. We embodied these two propositions in the Bill. We have addressed all Local Governments and all Local Governments except one, Burma, which objects to the limits and thinks they are too low, have agreed to them. At this stage it would be very difficult for us to go further and lay more drastic limits down. And since in this Bill we have carried out the mandate of this Assembly, I think that this Assembly should reject this amendment.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): Sir, I am afraid I think a further lowering of the maximum working hours will affect the growth of some indigenous industries such as mica and coal, and will reduce their output.

Mr. Chairman: Will the Honourable Member kindly speak up.

Rai Bahadur S. N. Singh: Ten hours a day is not considered intolerable even for brain workers and there is no sufficient reason why a labourer should not put in 60 hours a week or 10 hours a day above ground, and 54 hours a week or 9 hours a day below ground, especially as it has been made clear that he must have absolute rest for one whole day in a week of seven days. In this connection I would venture to invite reference to the opinion of the Punjab Coal Company, which considered that the limitation of the hours of employment in mines and the enforcement of a weekly day of rest would be the death blow of the Punjab collieries. This provision has on the whole met with the approval of the Local Governments and the representative public bodies as the maximum limit reasonably enforceable, but even then, Sir, it is recognized that it will be necessary to make some rules to exempt the cases of firemen, pump-men and other labourers of an intermittent kind, at least for a considerable time to come, as it will not be an easy matter to provide specially qualified men of this class in the near future. Also, Sir, it is a matter of some significance that even the veteran hero of the labour classes in India (Mr. Joshi) favours the retention of this clause, as his proposed amendments to this clause would go to show.

In the circumstances, Sir, I think this amendment should be readily outvoted.

Mr. N. M. Joshi: Sir, I have great pleasure in supporting this amendment. The hours of work suggested by this Bill are no doubt too long and I hope the House will accept the amendment proposed by my Honourable friend, Mr. Misra. I am of opinion that no man should be allowed to work for more than six hours a day and for more than six days a week and that for adequate wages. I do not think my friend, Mr. Sircar, really made out a strong case. He himself admitted that people do not work for more than eight hours. If they do not work for more than eight hours why should you not accept the amendment?

Mr. N. C. Sircar: I meant to say as regards sub-surface work.

Mr. H. M. Joshi: If they do not work very long and for more than two days, why should he object to the amendment? I think if the amendment is accepted, we shall be following the modern and latest European standards. I therefore feel that this House should accept this amendment.

Mr. J. N. Mukharjee (Calcutta Suburbs: Non-Muhammadian Urban): Sir, I did not want to speak, but having heard my Honourable friend, Mr. Joshi, I should like to say a word or two on certain aspects of this question. There is one thing to which I would like to draw the attention of the House particularly. It is that the clause in question merely lays down the outside limit. Clause 23 of the Bill does not compel every labourer to work for 10 hours or any other specified number of hours. What it says is that no person shall be employed in a mine (a) on more than six days in a week, (b) if he works above ground, for more than sixty hours in any one week, and (c) if he works below ground, for more than 54 hours in one week. Now, Sir, we have just heard one of the coal proprietors from Bengal, and we know now that physical laws and economic laws cannot be very often resisted, in spite of regulated hours of work. So that if at certain seasons of the year workmen are obliged to work shorter hours and at other times longer hours, these periods have to adjust themselves to the needs of surrounding circumstances. That is a point, Sir, we should not lose sight of. Therefore if the amendment proposed be accepted, and then on any occasion if somebody is required to work for 10 hours, and he does so willingly and even for his own gains he will be punishable under the law according to the proposed amendment. That is what the present law wishes to provide against. It does not require any labourer to definitely work for 8 or 10 hours. Unlike my Honourable friend from Orissa (Mr. Misra), I have been in a mine myself and have seen things as they are. Sunrise or sunset has very little to do there. Down there, it is pitch dark relieved only by electric bulbs and one has to move about there with difficulty. I may repeat, one has very little to do with sunrise and sunset in marking his hours, when working in a mine. Putting aside these questions, I submit that clause 23 of the Bill provides for the maximum limit only for the period of work for a labourer in connection with a mine, and bearing this in mind we should not raise objections which might interfere with the output of coal, or with the cost of the output of coal, and may bring about economic conditions which may place India at a disadvantage in the economic world. Therefore, Sir, I oppose the amendment.

Mr. Chairman: The amendment before the House is:

"That in clause 23, sub-clause (b) for the word 'sixty' the words 'forty-eight' be substituted."

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 23, sub-clause (b) substitute the words 'fifty-four' for the word 'sixty', and in sub-clause (c) substitute the words 'forty eight' for the words 'fifty-four'."

I do not think that this amendment requires any argument. The Honourable Mr. Innes gave us two grounds in opposing Mr. Misra's amendment. The first was that generally these people were not required to work for more than eight hours, and certainly not for 10 hours, as Mr. Sircar has pointed out. The second was that we have adopted the draft Convention which lays down 60 hours, and it is thus necessary to adopt that as a principle for fixing the maximum hours of work in the mines.

But, Sir, we have already deviated from the draft convention in adopting 54 hours as the maximum period of work underground, and there is no cogent reason why should we put a maximum of 60 hours and stick to the convention. Mr. Sircar has pointed out that the labourers generally work for only 8 hours. (Mr. Sircar: "I was not speaking of surface labour, Sir.") Say, 10 hours in summer and less in winter. But, Sir, even clerks and other people employed in offices whose work is not of such a fatiguing nature as that of the labourer are never required to work for more than six or seven hours in the day. (Voices: "No, no.") From 10 to 4 o'clock or 5 o'clock: what does that come to. (A Voice: "Till 10 o'clock.") Office hours generally are from 11 to 5 or 10 to 4. If a man works later than that, it is his own lookout. When therefore we people who have light work to do, work only for seven or at the most eight hours, why should we take more work from the labourer whose work is much heavier and tiresome and make him work for 10 hours a day as is being provided in this Bill. And if, as pointed out by Honourable Mr. Innes and Honourable Mr. Sircar, they actually work for less than 10 hours, then there should be no objection to fix the maximum of working hours at 54. Even that will amount to nine hours work a day, which is in itself too much. Therefore I suggest that by way of a compromise the Government should accept this proposal for the substitution of 54 instead of 60, in place of 48 which has just been thrown out. The Honourable Mr. Mukherjee has said that that is only the maximum period which has been fixed. I do, of course, realize that in the mines where illiterate labourers work, they are never expected to be punctual in attending to their work, and often they come late. But there is no necessity to keep the maximum at a figure which is not desirable, because that may give an excuse to some mineowners to extract 60 hours full work from them and the Government could not interfere. Mr. Sircar has said that if a labourer comes late, he has to continue late. Therefore I submit it is better to reduce the work from 60 hours to 54 and if a man has to do underground work, from 54 to 48. Therefore I move that this substitution be made.

The Honourable Mr. A. O. Chatterjee: I do not think the Honourable Mr. Agnihotri has advanced any new arguments at all. He has referred to the fact that men working in commercial and Government offices do not usually attend office for more than 6 or 7 hours, but have we ever passed any law preventing any man from working for more than 10 hours in a commercial or a Government office? I wish we had, because then I personally should have some relief from occasionally working from 6 in the morning to 8 o'clock at night. The whole principle here is different. We are preventing people from working more than a certain number of hours. Therefore we have to be extremely cautious. My friend, Mr. Mukherjee, has already emphasised the fact that we are laying down maxima. We are not laying down minima at all. I hope all the Honourable Members of this House will bear that fact in mind. Then the Honourable Mr. Agnihotri has utilised the statement made by Mr. Sircar that as a matter of fact these men in the mines do not actually work more than 8 hours underground. That is quite true. I would go further. From the statistics that we gathered, we learnt that as a matter of fact the hours they work underground are even less than 8 per day on the average but then there is no reason why we should restrict them from working hard and working fairly decent hours if they want to. The fact is, and I think Mr. Sircar will bear me out when I make this statement, that most of these people who work in the mines are also at present agriculturists. The result is

[Mr. A. C. Chatterjee.]

that they devote a certain number of hours of work to the mines and devote the rest of the week to work on their fields. Therefore they do work rather shorter hours in the mines both above ground and below ground than they ordinarily do in the factories. But we all know that the standard of living in these mines among the mine workers is extremely low. Our aim should be to raise the standard of life amongst these workers and then and then only their condition will improve and the condition of the industry will improve. Therefore our aim should be to get as many men to work all the time in the mines as possible and not devote their time half to agricultural work and half to mines. When they do that, they will certainly be expected to work fairly long and steady hours in the mines and we should do nothing in our present legislation to prevent any such tendency. I think, Sir, everybody will admit that this House has been most progressive in the matter of labour legislation. Even in the very first Session on the motion of Government this House agreed to laying down a 60-hour limit for workers in mines and in factories. In the present case we have gone even further. Government have made the proposal that the labour of miners underground should be limited to 54 hours. This has been done (as the Honourable Mr. Innes has already explained) with special reference to a recommendation made by a Committee at Washington. Therefore we are not really deviating from the Resolutions that were passed by this House two years ago. We are only carrying out the further suggestion that had been made at Washington. Everybody agrees that that suggestion is a sound one. Therefore Government cannot be considered to have been inconsistent in having made this proposal. I do not think, Sir, that Mr. Agnihotri's proposal will tend to the well-being of the miners. I think, Sir, in their own interests they should not be prevented from working a decent number of hours above ground. I hope, therefore, Sir, that the amendment will not be accepted.

Mr. W. M. Hussanally: I wish to add a few words, Sir, to what has fallen from the mouth of the Honourable Mr. Chatterjee. If I understood the Honourable Mr. Innes aright and if these miners are not paid by the day, it will make a very considerable amount of difference in their daily earnings if the time of working is further curtailed. That is the first point which must be taken into consideration. Secondly, I think that if there is a further curtailment of the hours of work for these miners, the price of coal must necessarily go up. That would cost a good deal to our industries. There is another point which has also to be considered in coming to a decision on this matter. We all want more coal and more industries. If we go on limiting the hours of work in this manner from time to time, I think our industries will not prosper so fast as we all wish. I therefore oppose the amendment.

Mr. Chairman: The amendment before the House is:

"That in sub-clause (b) of clause 23 substitute '54' for '60'."

The motion was negatived.

Mr. B. N. Misra: Sir,

Mr. Chairman: Is the Honourable Member formally moving it? He has already made a speech.

Mr. B. N. Misra: I have already made a speech, Sir; that is what I was going to express. I think I have dealt with both the clauses, and I submit

that at least this amendment (42 hours a week) for underground work should be accepted. I therefore move:

"That in clause 23, sub-clause (c), for the words 'fifty-four' the words 'forty-two' be substituted."

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I beg to move this amendment, *vis.*:

"That in sub-clause (c) substitute the words 'forty-eight' for the words 'fifty-four'."

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move:

"Add the following sub-clause to clause 23:

"(d) for more than ten hours in a day."

Sir, we have provided 60 hours' work in a week, but we have not provided the limit of the hours for which a labourer is to work in a day. Therefore I propose, Sir, that a man may not be made to work for more than 10 hours a day.

The Honourable Mr. O. A. Innes: Sir, this point has been examined very carefully not only by the Government of India but also by a special Committee which sat on the Coal requirements in the coal-fields in 1919 and 1920. We have been advised on all sides that it is quite impracticable as things are at present in the coal-fields to impose any daily limit of hours. If the House will remember, we had a debate on this very subject in September last and I then explained in full detail this fact, namely, that it is not possible, as things are now in the coal-fields, to enforce a daily limit, and, since it is impossible to enforce a daily limit of hours, I think the House will agree with me that we ought not to impose one.

The motion was negatived.

Mr. Chairman: I think it will be for the convenience of the House if we adjourn now.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 30th January, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 30th January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

STATEMENT OF GOVERNMENT BUSINESS.

The Honourable Sir Malcolm Hailey (Home Member): We have proceeded further with the allotment of business. Honourable Members will find that Thursday's list has already been distributed to them. We propose to have no meeting on Friday. On Saturday we propose to ask that the Report of the Joint Committee on the Workmen's Compensation Bill be taken into consideration, and we anticipate discussion on this important measure will also occupy us again on Monday. On Tuesday we assume that there will still be some discussion left over on the Workmen's Compensation Bill, and after that we shall proceed with the further consideration of the Criminal Procedure Code Bill. On Wednesday we shall again proceed to the consideration of the Criminal Procedure Code. On Thursday there will be discussion on the private Resolution regarding Company *versus* State management of Railways. I shall subsequently announce the business that is fixed either for Friday or Saturday following. On the following Monday we propose to again consider the Criminal Procedure Code Bill and also on Tuesday the 13th. Wednesday is a public holiday. On Thursday the 15th we propose to consider the Resolution regarding the Fiscal Commission's recommendations.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): May I know, Sir, with regard to the business on Thursday the 8th, supposing the Indianisation of the Army question is concluded, will some other Resolution be allowed to be brought up on that day or is the whole day to be given to that question?

The Honourable Sir Malcolm Hailey: Thursday, the 8th, Sir, is a public day, which we have given up for the consideration of the question of Company *versus* State management of Railways. I think it is unlikely that we should be able to take any further business on that day.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): And will that be on a Government Resolution?—Company *versus* State management of Railways?

The Honourable Sir Malcolm Hailey: It is a Government day but we have allowed a private Resolution to come forward on that day as it is a matter of great importance to the Assembly, and the Assembly will remember that they asked that I should bring this on as early as possible. I may say, of course, that it was open to us to use this public day for a Resolution of our own, but, as a private Resolution had been tabled on the same subject we propose instead to take the opportunity of discussing it on that day.

MESSAGE FROM THE GOVERNOR GENERAL.

Mr. President: I have to acquaint the Assembly that I have received a Message from His Excellency the Governor General:

"In pursuance of the provisions of sub-section (3) of section 67A of the Government of India Act, I hereby direct that the heads of expenditure specified in that sub-section shall be open to discussion by the Legislative Assembly when the Financial Statement is under consideration.

(Sd.) READING,
Governor General."

The Assembly will now resume consideration of the Report of the Joint Committee on the Indian Mines Bill.

THE INDIAN MINES BILL.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I beg to move the following amendment:

"That to clause 23 the following sub-clause be added:

'(d) for not more than 11 hours in a day'."

I will take the latter part of my amendment separately. Sir, the evils which my amendment seeks to remedy are the evils of long hours of work in one day. By the Bill we have provided that there should be 54 hours of work in a week underground and 60 hours of work on the surface. Sir, by providing merely a limit for the week's work we do not stop the evils of the long hours of work. As a matter of fact, it was admitted during the discussion of the hours of work for the week that the workmen in the mines do not work generally more than 54 hours a week at all. Therefore, when that limit was placed, it was not placed to remove any evil because the evil of the long hours of work in a week did not exist at all. That limit was placed in order to satisfy the Washington Convention: that is all. But, even when you have a limit of 54 or 60 hours a week, you do not prevent long hours of work during the day. It is quite possible that the 54 hours may be worked in three days of 18 hours. Sir, it is not an exaggeration when I say that sometimes people do work for 18 hours a day in the mine and finish their week's work in that way. As a matter of fact this has been admitted both by Government and my Honourable friend, Mr. Sircar.

Mr. N. C. Sircar (Bengal: National Chamber of Commerce): I did not admit it.

Mr. N. M. Joshi: He says he did not admit it. Sir, he at least admits that there are not more than 54 hours in a week and he also admits that these people do not work for more than 3 or 4 days in a week. After working for 3 or 4 days these people go home. Sir, if these people work for 2 or 3 days or at most 4 days and finish the week's work which is about 54 hours' work, I think I am right in saying that the people in the mines must be working more than 18 hours and even sometimes 18 hours in a day. My Honourable friend, Mr. Sircar, may refuse to admit the fact which all the same exists. How does he propose to divide the work of 54 hours in three or four days' time unless the people work for 18 hours or at least more than 18 hours a day?

If my Honourable friend, Mr. Sircar, and the Government maintain that people do not work even for 54 hours a week, I can understand it.

But if they say that the people do not work for 54 hours, my contention is, why did they not accept the amendment of my Honourable friend that there should not be more than 48 hours in a week? If people do not work more than 48 hours in a week why should they object to the amendment? As a matter of fact people do work more than 48 hours. They work 54 hours and therefore the 54 hours' limit was accepted. Sir, this evil is not imaginary. Not only people work up to 18 hours in a day but sometimes a large number of people remain in the mine for the whole day including night and for days together. Sir, I do not wish to request the House to take my word unsupported by an authority. I therefore propose to read a sentence from the latest report of the Chief Inspector of Mines. The Chief Inspector of Mines in his latest report says:

"The practice of sleeping underground is only too common although it is usually forbidden."

(An Honourable Member: "What does 'sleeping' mean?")
 "Sleeping" means spending their night. Sir, as a matter of fact, people cannot but do that. Both Government and my Honourable friend Mr. Sircar will admit that they do not make provision for the housing of all the people who go to work in the mines, and if there is no provision of a residence on the surface, people do not mind sleeping underground and go on working as long as they can work. Both Government and my Honourable friend have admitted this fact that a large number of people come from their village to the mines.

Mr. N. C. Sircar: I rise to a point of order, Sir. I did not say that they are not provided with housing accommodation. What I said was that people coming from a distance of 5 or 6 miles do not go home every day. They go back home after their work is over.

Mr. N. M. Joshi: Sir, my contention is that all the people who work on the mines have not been given residential quarters in the mines. Are there residential quarters in the mines for all the people that work there? Again, there are a large number of people who come from the villages to work on the mines. Do you mean to say these quarters have been built for not being occupied at all? As a matter of fact, a large number of people have not got sufficient residence on the mine. Therefore a large number prefer to go on working from one morning to the next morning, having practically little rest, sleeping somewhere and again beginning work and finishing the 54 hours for the week. This has been going on for a long time and the remedy that we have proposed in this Bill is no remedy for that evil. We simply propose that there should be 54 hours in a week. That is no remedy for stopping over-work during one day. Sir, the evil effects of the long hours of work in a day are both economic as well as from the point of view of health. If people go on working without sound sleep and without sufficient rest in the day for three or four days continuously, their health is bound to suffer. Again, from the economic point of view, neither the workman gains nor do the employers gain. The workman has to work 54 hours in a week. If he works these 54 hours after taking sufficient rest at intervals, I am quite sure he will be able to produce more during the 54 hours than if he works those 54 hours without sufficient rest. From the same point of view the employers also do not gain very much. Neither do the employers gain by this practice nor do the workmen gain economically. From the point of view of the health of the workmen there is a great loss. Thus, this practice of working without any limit of rest during the day is harmful from all points of view.

[Mr. N. M. Joshi.]

If that is so, I should like to know what the objections are which Government or my Honourable friend Mr. Sircar may take to the proposal which I am making, namely, that there should be a limit of work for the day. I propose that the limit should be 11 hours of work. Sir, I have proposed the limit of 11 hours not because I feel that a smaller limit is not desirable, but because I want the support of the whole House if I can gain it. I have particularly kept the limit at such a high figure as 11 hours simply because I want to carry, if possible, the whole House with me. Now, Sir, what can be the objections to this proposal? My Honourable friend Mr. Chatterjee yesterday said that these people working on the mines must work decent hours of work. I ask him whether he will take objection to my proposal of 11 hours on the ground of decency. I hope he will not. Neither will my Honourable friend Mr. Innes nor my Honourable friend Mr. Sircar will take objection to my proposal on the ground that 11 hours' work is not a decent amount of work.

Then, Sir, there were some objections taken yesterday to the proposals for the week's limit of work on the ground that the earnings of the workmen will suffer. There cannot be any objection to my proposal even from that point of view. I do not propose that the total week's work should be reduced. Let the total week's work be of 54 hours. I only propose that this 54 hours' work should be more evenly and fairly distributed. Instead of people being allowed to work 54 hours in 3 or 4 days' time, I only propose that these 54 hours should be worked in 5 or 6 days' time. Therefore, from the point of view of the earnings of the workmen there cannot be any objection to my proposal. Then, Sir, what can be the other objection? The objection which either the Government or my Honourable friend Mr. Sircar will take is that of the habits of the people. It is said that those who work on the mines belong to some class of people who have not got regular habits of work. They are the Santhals or some such people, and their habits of work are irregular. They will not be trained, they will not be disciplined to regular work. That is the main ground on which objection can be taken to the proposal which I am making. Sir, I would like to know from my Honourable friend Mr. Innes or any supporter of his whether this objection of the habits of the people was not taken whenever there was a proposal for regulating the hours of daily work. I want to know whether, when the Factory Act was discussed and when the limitation of the hours of work in factories was discussed for the first time, objections were not taken on the ground that the habits of the people in India differ. Not only that, but even to-day, those who have an opportunity of speaking to people who employ a large number of people in factories in Bombay, not the Santhals of the Central Provinces or Bihar, but in Bombay, will always hear complaints that the habits of the people prevent their reduction of the hours of work. So this complaint about the habits of the people is not a new one. It is an old complaint, and it has been brought forward not only in India but in all the countries of the world whenever there was an attempt to limit the hours of work for the day. Therefore, there is nothing special in this objection which the Government propose to take. As a matter of fact, it is feared that people work longer hours and they are not also disciplined because we do not make an attempt to regulate their life. It is necessary that their life should be regulated, and because it is necessary to do so, the factory legislation has come into existence. If there are any people who say, "Why should we limit, why should we regulate the life of the working classes",

my answer to them is that they are too late in the day. The principle that the hours of work for the working classes should be regulated has been accepted by this country, by this Government, as well as by the whole world. Therefore if they say we should not interfere with the liberty of the working classes, I say they are too late in the day.

Then, Sir, when this question was discussed last time and even yesterday, it was said that I have no personal experience of the mines in India. Sir, I admit this disadvantage and I regret it, but I want to know how my Honourable friend, Mr. Innes, who insisted upon visiting one mine before he introduced the Bill, and my Honourable friend, Mr. Chatterjee, who insisted upon visiting a dozen mines,—how did they learn by merely visiting these mines once or even a dozen times the habits, sentiments and the feelings of the working classes? Is there any one here who will believe that it is possible for such high officials as my Honourable friend, Mr. Innes, and my Honourable friend, Mr. Chatterjee, by simply going to a mine, to learn the habits, the sentiments and the feelings of the working classes? Sir, I do not myself believe it and I do not think there will be any one here who will believe that by their going there they had learnt the habits, the feelings and the sentiments of the working classes. I therefore feel that I am not at a greater disadvantage than they are in this matter.

Then, there is another point of view from which Government is likely to take objection to my proposal and it is this. Yesterday, the Honourable Mr. Innes said that this proposal and any other proposal for limiting the daily hours of work will be impossible of supervision. Sir, I want to know from the Honourable Mr. Innes and those who support his view, if it is possible for the Inspectors of the Government to enforce the rule regulating the weekly hours of work, it is equally possible, nay, easier to enforce the daily hours of work and to see that the daily hours of work are properly observed. I want to know how any Inspector is going to see whether a man has worked 54 hours or more without finding out how much the man has worked during one day. If he has to find out the weekly hours of work, he has to find out the daily hours of work. Therefore, it is no more difficult for an Inspector to inspect mines for the sake of this rule, for the sake of the rule which I am proposing than if he could inspect the mine for the sake of the rule which the Government has already made. Therefore, there is no more difficulty from the point of view of supervision.

Sir, it was said that when I made these proposals I have not had the advantage of the advice of such experienced people as the Factory Inspectors, and especially the Chief Factory Inspector who has got great experience of this matter. It was said so last time. Sir, I again say that I am at a disadvantage. I have not got advisers who get salaries which the Chief Inspector of Mines gets, but it is quite possible for even a humble man like myself to get some adviser who knows the conditions in mines. But, Sir, I should like to know from the Government—I admit they have got the advantage of the advice of the Chief Factory Inspector, but whether they follow the advice of the Chief Factory Inspector, that is more important than having his advice at their hands. Sir, in order to tell the House how the Government of India follow the advice, the opinions of the Chief Factory Inspector, I propose to read one more passage from the latest report of the Chief Factory Inspector. I am sorry I have to read this passage from the "Times of India." (Mr. N. C. Sircar: "Inspector of Factories or Mines?") Mines. I am sorry that I committed that mistake and I am very glad that my Honourable friend has corrected

[Mr. N. M. Joshi.]

me. I say, Sir, I have to read the passage from the "Times of India" as the Honourable the Home Member has refused to give us free copies of the reports of the different Departments. This is the passage:

"The practice of sleeping underground is only too common, although it is usually forbidden. The institution of regular shifts would discourage this and many managers would welcome a statutory regulation of hours of labour. They are at present deterred from regulating hours by the fact that miners would probably resent the enforcement of the regulations and leave their mines for other mines where such regulations were not in force. Were the hours of labour regulated, many difficulties in respect of supervision would disappear and the efficiency of inspection by officials would increase."

That is the opinion of the Chief Inspector of Mines, namely, were the hours of labour regulated, many difficulties in respect of supervision would disappear; not only will there not be greater difficulties of supervision, but the difficulties of supervision will disappear. That is the opinion of the Chief Inspector of Mines on this point. Sir, I want the House to see that when the Chief Inspector of Mines talks of the regulation of hours, he is talking not of the regulation of the weekly hours, but the regulation of the daily hours of work. This is clear from the fact that he is, at the beginning of the paragraph, mentioning the habit of sleeping underground. Moreover, not only does the Chief Inspector of Mines consider this practice desirable, but he says that many managers also consider this practice desirable. Therefore, the only difficulty in their way is that they fear that the miners may not like this regulation. It is true that the miners will not like the regulation. Nobody likes any control, nobody likes any regulation when first introduced. But, Sir, the Government has got experience of regulating the hours of work in other directions. They have regulated the hours of work of people who were not in the habit of having their hours of work regulated in the factories. People naturally would resent in the beginning, but I am sure the working classes would take to it if Government once introduced this regulation. The real difficulty in introducing this limit voluntarily is that when one mine introduces such a limit the mine owner is afraid he would lose his labour, and the labour might go to some other mines. Therefore, this regulation cannot be introduced voluntarily. It can only be introduced by legislation. That is the opinion of several managers of the mines. That is the opinion of the Chief Inspector of Mines. I hope, Sir, the Government will follow the advice of their Chief Inspector in this respect.

Lastly, I would only like to say one or two words to the Members of this Assembly. I have specially made the amendment so moderate, putting the daily hours of work at such a high figure as 11, because I want to make the principle of the regulation of daily hours of work recognised. If there is any Member here who can show any other way of getting the same principle recognised, I shall be only too glad to accept his suggestion. If there be any Member here who makes a proposal that the 11 hours of work should be increased but we shall recognise the principle of the limitation of the hours of work, I shall seriously consider that proposal. But what I want the House to do is that this principle of the regulation of daily hours of work should be recognised.

Sir, there is one point on which I should like to speak before I finish and it is this. Members of the House are likely to be told by Government that the Local Governments have not been consulted. I repeat my yesterday's argument. Local Governments must know that this point would be discussed if they had followed the discussion that took place in the Simla Session on the appointment of the Joint Committee. If the Local

Governments and the mine owners have not considered that point, it is not my fault. The Members also may be told that as Government are opposed to this amendment Government may withdraw the Bill and there may be difficulties. The Bill may be at least postponed. Members need not entertain any fear on that score also. The Bill is going to come into operation at the end of July 1924, 18 months from to-day. So, if Government wants to introduce any modifications they like, they can do so. There will be no postponement of the Bill at all because the Bill will come into operation from July 1924, 18 months from to-day. There is no likelihood of any delay being caused by our accepting this amendment. I therefore hope that the Members of this Assembly by a majority will accept my amendment.

The Honourable Mr. C. A. Innes (Commerce and Industries Member):

Sir, I wish first to take up some points which Mr. Joshi has raised against me. He first admitted that he himself had never been to the coal fields and had never studied the conditions of life in the coal fields. He then asked what advantage Mr. Chatterjee and myself had gained from going to the coal fields and making inquiries there for ourselves. He pointed out that in the course of a visit or two one could not enter into the feelings of the labourers in the mines. Now Mr. Joshi has made one mistake. My friend, Mr. Chatterjee here has not only visited in his capacity as Secretary to the Government of India in the Industries Department many coal fields but he has spent many years of his life in those fields. He tells me that he lived there for many years as a child and therefore Mr. Chatterjee may claim real acquaintance not only with the conditions of life but also with the feelings of the labourers in the field and, as for myself, I possibly approach this coal problem from a point of view which is perhaps wider than that of Mr. Joshi. Mr. Joshi stands before this Assembly as the representative of a class. He asked this Assembly to consider class interest only. We on the Government Benches have to take other points of view into account. We have to consider the effect of any legislation which we may pass upon the country as a whole. I would ask the House to remember that this legislation which we are dealing with to-day affects in a very peculiar degree the most important industry in all India. Coal is the life blood of Indian industries. Any hasty legislation and any ill advised legislation which we may pass must have the most disastrous effect. It may send up the price of coal for every industry in India. It may even have the result that there will not be enough coal to go round and I hope, Sir, that the House will bear that fact in mind. I speak with some experience of this matter. For the last three years one of the most constant anxieties of the Government of India has been the coal position of India and I do hope that the siren voice of Mr. Joshi will not lead the House to adopt measures which will make an already difficult position much more difficult. Mr. Joshi then asked why it was that we did not adopt the advice of the Chief Inspector of Mines. He read an extract from the Chief Inspector's last Report. In that extract the Chief Inspector said that not only he but many mine managers in the fields were strongly in favour of a system of shifts. Sir, the Chief Inspector has been consulted in every line of this Bill. The Chief Inspector, as Mr. Joshi well knows, was present at the meetings of the Joint Committee and, Sir, I have assured myself that the Chief Inspector, however much he may be in favour of a system of shifts, is quite satisfied that it is impossible either to introduce a shift system at present or to impose a daily

[Mr. C. A. Innes.]

limit of hour. I have also satisfied myself by meeting many of the leading mine managers in the coal fields (and I say here and now that I have never met a more enlightened set of men), that these men are entirely in favour as we are all in favour, of a system of shifts if it can be introduced, but deprecate any immediate statutory imposition of that system of shifts. Then, Sir, as I said when this Bill was discussed last September, not very long ago we had a committee which inquired into the whole question of labour in the fields. That committee also referred to this question of introducing the system of shifts. They admitted that many mine managers in their evidence had said that what the coal fields really wanted was a system of shifts but they went on to say they were afraid that it was premature to introduce such a system by legislation and surely, Sir, when we appoint a representative committee of this kind we must attach weight to their words. As I said, I entirely agree that we could not confer a greater benefit upon the coal field than if we could assist mine managers to introduce a system of labour by shifts. But I deprecate attempting to do so before the time is ripe and I think the best way of dealing with that problem would be to deal with it in the same way as we have dealt with the equally difficult problem of women labour. That is when we address Local Governments in the terms of the Joint Committee's Report on the question whether a time limit could not be given for the employment of women in the fields we might at the same time consult them as to the possibility of setting a time limit by which a statutory system of shifts should be introduced throughout the fields. That I think will be the wisest and the best way of dealing with that problem. I am not in favour at this time of imposing a statutory limit of hours. I think, Sir, no one can accuse us of being reactionary in this Bill. We have made in the Bill some very real advances. We have for the first time prohibited the employment of children down mines. We propose, if the House will agree, to prohibit even the presence of children in the mines and that will inevitably reduce the number of women who go down those mines. That will reduce the labour population in the mines and this House has got to remember that the real difficulty which confronts every coal manager in India is the difficulty of getting sufficient labour. I say, that those measures are sufficient for the present and I am not in favour of going further and at this moment imposing a daily limit of hours. We have imposed a weekly limit of hours. Mr. Joshi asks what is the difference between a weekly limit and a daily limit. He says:

"If you are prepared to enforce a weekly limit, why can you not equally enforce a daily limit."

Then he went on to say that the reason that he wanted a daily limit was that he merely wished to enforce a principle. Now, Sir, that is the very reason why we have begun by imposing a weekly limit. We want to enforce a principle, but I do not say and I have never claimed that that weekly limit is going to make any material difference to the amount of hours' work in the fields. To the best of my belief, miners do not work 54 hours a week below ground, but we think it important that in this Bill we should recognize the principle of a weekly limit of hours. I may say here now that I would not have included that provision in the Bill had I thought that the enforcement of the provision would disorganize labour and the miners and would involve many prosecutions of mine managers for infringement of the rule. But it is different with the daily limit. Mr. Joshi, as he said, wishes to impose a daily limit merely to recognize the principle. My fear is that if you impose a daily limit, it will not be

possible at all to enforce it without a very large increase in the inspecting staff, and even if we did make that increase in the inspecting staff, and did try to enforce the limit, it would mean numerous prosecutions and disorganization of the whole of the coal field labour. We have got to consider what the conditions of labour on these fields are. The men do not go down at any stated time of the day, they do not come out at any stated time of the day. They are not paid by time, they are paid by results. Labour in the fields is a labour under small raising contractors. The labourers go down when they like. They cut coal, they put it into the tubs, and they are paid so much per tub. How, therefore, are we going to enforce a daily limit? As I have said, the whole of the labour does not go down at the same time and does not come up at the same time. The only way of enforcing a daily limit of hours would be to have an inspector in each mine for that inspector to check for each man down in the mine precisely at what time he went down in the mine and whether he had exceeded the daily limit. We have been advised by the Chief Inspector, we have been advised by every mine manager, that it is impossible to do that,—that the only way we can enforce this method would be to impose a shift system and I have already given reasons why we wish to take the reform slowly.

Then I wish to point out to this House that it is not a question of men working 11 hours a day for 6 days in the week. Many of these miners, especially in the Raneeunge coalfields, are agriculturists; they come in, it may be, 6, 8, or 10 miles to the mines. They live in their villages and work in their fields. But they come into the coalfields, they go into the mines, they cut as much coal as they think necessary, they rest, possibly sleep, down the mine, and then they go back to their villages. They are not working 24 hours at a time; they are not working all the time, for half the time they are sleeping; and when they go back to their fields, they have cut 6 or 7 tubs of coal in order to supplement their earnings in the fields. The House has got to remember that this is not a question of miners working day after day 11 hours a day. It is a question of agriculturists coming in and spending two or three days at the outside, sometimes only 24 hours, in a mine, working as it suits them,—possibly sleeping down the mine and then going back to their fields. Mr. Joshi says that they sleep down the mines because houses are not provided for them. He has accused the coal miners of not providing sufficient house accommodation. That charge, to the best of my belief, is entirely inaccurate. Houses,—bustees—are provided by every coal miner at every mine. But people who come in, who live 5, 6 and 7 miles away, they do not want houses; if they sleep in the mine, it is because it suits them and their convenience to do so. Now, Sir, I think I have met most of the points which have been brought against us by Mr. Joshi. I wish this House to remember that this is a very important question. I wish this House to remember that Government have put forward a Bill which goes as far as they are prepared to go. We may be accused, and when we come to clause 25 we shall be accused, of having gone too far, but I shall ask this House not to be in a hurry, not to run the risk of disorganizing a very important industry merely in order, as Mr. Joshi says, to enforce a principle, to enforce the principle of a daily limit of hours. I have said that I am quite prepared to consult Local Governments whether we could not fix a time limit within which a system of shifts should be introduced in the coal fields; and I think the House will agree that that is the right way to advance in the direction in which we all wish to go.

Mr. N. C. Sircar: Sir, Mr. Joshi has said that the miners sleep down below because of want of house accommodation. I invite Mr. Joshi to go to the coal mines and see if there are not houses for them. There are houses, and the houses are now being regulated by the Mines Board of Health,—and in a few days the miners will get as good houses as many of us would like to live in. There are houses in the collieries in which the permanent labour lives,—and there are also houses in the collieries, which are purposely meant for sojourners who come and work for certain hours and go back. I must tell my friend, Mr. Joshi, that when he says there is a want of houses, that we do not provide houses for labourers, that he must be labouring under a mistake. Mr. Joshi has said that I said yesterday that the miners work for two or three days in the week. I never said so, that is a wrong statement. Then my friend says about the habits of the people. I invite him to go to the coal mines and see what sort of labour we have to deal with. We have 101 castes of labour, and everyone in the House can imagine how difficult it is to change the habits of so many castes and creeds, especially illiterate as they are. Then my friend says about 11 hours' work. I welcome if the labourers will work 11 hours, but as a matter of fact they do not.

Mr. N. M. Joshi: Then why do you oppose?

Mr. N. C. Sircar: I am coming to the point. As a matter of fact I shall be too pleased if the underground labourer would work for only 8 hours, but as my friend, Mr. Mukherjee, pointed out yesterday, 54 hours, that is 9 hours a day, have been the utmost limit. But as a matter of fact we do not get more than 48 hours' work. Then about the 11 hours I was going to say that as my Honourable friend, Mr. Innes, has said, no daily working hours can be fixed until the shift system can be introduced, and it is impossible at the present moment unless and until we are a bit independent of the labour by electrifying our coal mines and introducing electric coal cutters. Some of the miners are resident of villages 5 or 6 miles away from the collieries. As has been pointed out by my Honourable friend, Mr. Innes, they are also agriculturists. They work in their fields in the morning and go down the mines in the afternoon and work up to such time as they please; some times they sleep underground and some times come to the surface to sleep and go down again about 2 o'clock in the morning, work till sunrise and then go home, after which they are 24 hours off. So, unless and until we are independent of this class of labour, and unless and until we can introduce the shift system, I cannot see how it is possible to introduce a daily system of 11 hours; and if the Legislature attempts to introduce such a system we shall, I am afraid, lose a good deal of our underground labour. The House knows what difficulty we were put to in 1921, having to buy ten lakhs of tons of coal from foreign countries at a cost of about two crores of rupees over and above what we would have paid in this country for same. With these remarks, Sir, I oppose the introduction of an 11 hours' working day.

Rai Bahadur Bakshi Sohan Lal (Jullundur Division: Non-Muhamadan): Sir, the object of limiting the number of working hours in a week to 60 and 54 provided by clauses (b) and (c) is to protect the health and eventually the life of the labourer. But will that provision alone have the desired effect if a greedy labourer works 18 hours daily for three days consecutively and takes three days holiday consecutively? It may be admitted without much argument that 18 hours work a day continuously may do much more injury to the labourer's health than 9 hours daily work for six days. Therefore it is more necessary to limit the hours of work a

day than the number of hours in a week. Without limiting the number of hours work in a day, the limiting of the hours in a week is of no avail. The labourer may become a total invalid after 18 hours work in a day or after 54 hours in three days. Unless such daily work is limited, the provisions of clauses (b) and (c) may also be evaded easily by the labourer working three days under one mine owner and three days under another mine owner without being detected. Neither mine owner will know the hours he has worked with the other. I consider that even 11 hours work in a day is excessive. The labourer requires at least two hours off for preparing his food; that makes 13 hours, which means the whole day continuous work during summer and more than the day continuous work during winter. Thus 11 hours daily work is too much, but as the amendment comes from Mr. Joshi who represents labour, I am bound to support it.

Mr. B. Venkafapatiraju (Ganjam *cum* Vizagapatam: Non-Muhamadan Rural). Sir, I am really surprised at the change in the attitude of the Government of India, during the last decade about the limitation of working hours. It is easy for the Honourable Mr. Innes with his persuasive eloquence to convince everybody that the key industry, coal mining, would be ruined unless we sacrifice human beings for that purpose. When the attempt was made for the limitation of working hours, in introducing changes in the Factory Act in the year 1905, the Government of India were unable to pass the Bill, or perhaps they were unwilling to pass it. At any rate the Bill was not passed. But subsequently, in spite of the advice of the Factory Commission to the effect that no such limitation should be made—their advice being:

"We are strongly opposed to any direct limitation of adult working hours, because we consider that there is no necessity for the adoption of this drastic course, because we are convinced that it would cause the greatest inconvenience to existing industries, most of which have never worked long hours, and because we think that such a measure would seriously hamper the growth of industrial enterprise."

That is what the Commission said, and most of the members who represented the Bombay cotton mills strongly opposed the limitation of working hours of the operatives in their factories. But in spite of that, Sir, the then Government were more influenced by the humanitarian point of view than the industrial point of view. On the advice of the late Mr. Harvey, the Government of India said, they "were unable to accept the recommendation of the Factory Commission that an indirect method should be adopted for obtaining a limit to the working hours of factories." After throwing out the recommendation of the Commission, in the Act XII of 1911, it was enacted that "no woman shall be employed in any factory for more than eleven hours in any one day. No child shall be employed in any textile factory for more than six hours in any one day. And no person shall be employed in any textile factory for more than twelve hours in any one day." Have we not then proceeded any further since the year 1911? Mr. Joshi has asked for the enunciation of a principle admitting the utility and the necessity of restricting hours of labour. We have it already in the Factory Act. It is bad enough that women are allowed to work in mines; it is bad enough that they are allowed to sleep underground; but now Government says that the industry would be ruined if we do not sacrifice these men and permit them to be employed for over 11 hours a day. Of course it is easy to see that it would not be their policy to overwork them; but these are people whose interests ought to be protected by others who know better. It is opposed to human nature for any person to work above or below ground for more than 11 hours a day.

[Mr. B. Venkatapatiraju.]

Is it not therefore the business of the Government in introducing such a Bill to limit the hours of work to even eleven hours a day? I therefore strongly support the Honourable Mr. Joshi's amendment and I hope the House will unanimously agree to that small modicum of mercy meted out to these unfortunate people in order to improve their condition.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I believe the quotation which my friend, Mr. Raju, gave the House is likely to mislead the House, as quotations very often do. The quotation had reference only to factory labour, which is much more organized, where the hours of work are under the control both of the Manager and probably of Government. With regard to mine labour, the whole question, as the Honourable Mr. Innes has told us, is working and cutting the coal by results. That is the most differentiating factor between the two.

12 Noon. The workman in the mines works voluntarily for certain hours just as it suits him to produce a particular quantity of coal in a particular quantity of time by piece work. I have no practical experience, I must admit, of mines, but if it is pardonable to give my practical experience of stone quarries, in which matter I think I have some experience (as I own lime stone quarries of a considerable extent which furnish the stone to a large province, and have had experience extending over some years), I think it would be pardonable if I give my own experience regarding the habits of the people and what they themselves like. Now, I have seen a large number of workmen preferring of their own will and accord to come for work, especially during the hot summer months, not according to the regulated hours but even so early in the morning as 4 o'clock, because it is cool, and go on working from 4 o'clock in the morning say till 12 or 1 or 2 o'clock, as long as they like; not that they work continuously during that time, but they work, for instance say for one hour, then take rest, then continue to work for two hours, again take rest, then continue to work for another hour and then take rest until they earn enough for the day. Now, when I tried to induce them to give up that habit and to regulate the hours both in their interests, in the interests of their health and in our interest for the sake of supervision, I believe they did not like it. Now, I recognise, as my friend, Mr. Joshi, says, that there should be a daily limit introduced sooner or later. In the abstract I do know that that will be to the interest of the workman and to the interest of the industry. But as the Honourable Mr. Innes has rightly pointed out, we are now passing legislation which is of a transitional character and while on the one hand we must not be carried away by purely academic considerations, on the other hand we must also see that in our enthusiasm for regulating labour we do not throttle industries which are for the benefit of the community at large. I therefore think that those of us who have the interests both of the industry and of the labour at heart should not support Mr. Joshi's amendment, howsoever good it may be in the abstract. Mr. Joshi brings to bear upon his discussions, no doubt, a close study of the question of the labour problem, but a study more or less from the academic point of view. I do wish really that he should add to his study a practical experiment, actual experience of handling workmen, even half a dozen workmen for half a dozen weeks, so that he may really see their mentality, what they themselves like and what is to their own real interest and convenience. Looking at it from this point of view, therefore, and the transitional character of this problem on the whole I think it would not be practicable at this particular stage to introduce a daily time limit.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muham-
 madan Urban): Sir, I do not own a mine, nor have I ever had the privilege
 of working in a mine, either underground or above-ground. As the House
 is aware, I do not represent, as my friend, Mr. Joshi, is supposed to
 represent, the working classes, but at the same time I wish to say that
 I do not feel greatly interested in the mine owners either. My object is
 to see what is really in the interest of the country as a whole. Before I
 proceed, Sir, I wish to express my wholehearted agreement with the
 Honourable Mr. Innes in his statement that there are some very pro-
 gressive changes introduced into the Bill which Government has placed
 before us. Mr. Innes has taken Mr. Joshi very politely and very kindly
 to task, because he has had no experience of mines. If I am not very
 much mistaken it was John Bright who once speaking in the House of
 Commons said that on one occasion he had ventured to express some
 opinion about America without having ever visited that country and he
 was at once met by people like Mr. Innes who said 'Oh, you have not
 been to America; how dare you express an opinion about it.' But it so
 happened that subsequently John Bright's opinion was found to be correct
 and the opinions of all those who had been to America not once but
 twice or thrice proved to be wrong. Mr. Innes has been to these mines
 and Mr. Chatterjee,—whose ability and whose eminence I gladly acknow-
 ledge—as a child has lived round about the mines and has therefore come
 into touch with the mine owners. (A Voice: "Mine workers.") Mine
 workers, yes, that is still worse. Mr. Chatterjee, as I have said, is one
 of those distinguished Indians of whom we are proud; but if Mr. Innes'
 description of Mr. Chatterjee is correct, Mr. Chatterjee must have been
 a very precocious and abnormal child. Mr. Bray says he was; most certainly.
 Sir, we are told, to use Mr. Innes' words, that coal is the life-blood of our
 industry. Is it therefore necessary that the life-blood of human beings should
 be sacrificed in order that the life-blood of our industry should be kept up?
 We are told that Mr. Joshi's proposal is premature, that it will lead to
 numerous prosecutions and it will lead to the disorganization of labour.
 All that may be true and I am not in a position to contradict these state-
 ments because I have no intimate knowledge of the working of these mines.
 But looking at the question perhaps from a point of view of more or less
 detachment, I wish to ask, Sir, the House to consider in all seriousness
 whether we shall allow these people to work for more than eleven hours a
 day. Is it in the interest of their health, is it in the interest of the well-
 being of that class, which, unfortunately, is to work underground? My
 friend, Mr. Sircar, says that he will be delighted if these people work for
 8 hours. Where, then, I ask, is the difficulty? Why not then introduce
 a rule that no labourer will be allowed to work for more than eleven hours
 a day? It is said that this question is academic and so on. Sir, this word
 academic is a very vague word. I think this question is intensely practical,
 it is intensely human. I am addressing you as an Indian not in any special
 manner interested either in the workers or the owners but as one interested
 in the well-being of the country as a whole. Call me a visionary or whatever
 else you will. Strong words do not break any bones. I say industry or no
 industry these people should not be allowed to work for more than eleven
 hours and if they are willing to work for more than 11 hours as indeed many of
 them may be, they have to be saved against themselves. This is the need for
 this legislation. It is said that you must think of your industry; most certain-
 ly. There is no enlightened Indian who is not anxious that industries should
 make progress in India. But, Sir, the industry exists for the people and the

[Munshi Iswar Saran.]

people do not exist for the industry. These are the considerations, Sir, why I think that the House should accept Mr. Joshi's amendment.

Mr. Joshi in his anxiety made one unfortunate remark, and it is this. He said 'I do not mind even if you make it 12 hours provided I am able to enforce this principle.' I entirely dissent from that view. I do not care, Sir, in the least whether this principle or that principle is enforced or accepted. What I am most anxious about is that human beings should not be treated as beasts or at any rate, they should not be allowed even if they so choose to work as beasts.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, after the perfervid oratory of my Honourable friend, Munshi Iswar Saran, I feel a certain amount of diffidence in addressing the House. I am in entire agreement with the oracular sentiments that he has placed before the House. I entirely agree that we should look at this question in the interests of the country as a whole. I also agree, Sir,—and I believe I have mentioned this before in this House—that industries exist for the people and the people do not exist for industries. But, Sir, unfortunately my Honourable friend has completely lost sight of, or perhaps he had never any knowledge of, the actual conditions of the people in those parts of the country where mostly mines are to be found. Therefore, Sir, in his love or admiration for abstract principles he has forgotten the actual application of those principles. It is on behalf of the miners themselves, Sir, that I would resist the amendment proposed by my Honourable friend, Mr. Joshi. I do not remember whether Mr. Sircar had explained that there were really two classes of workers in these mines. There are a number of wholtime workers, people who come from distant districts and provinces, but a very large proportion of the workers are recruited from the neighbouring villages. When I say neighbouring villages, I mean villages within a radius of about 10 miles of the mine. My friend, Mr. Joshi, tried to make capital of the fact that the owners of the mines did not provide dwellings for these workers and therefore they had to come all this long distance. Mr. Sircar has stated that there are enough dwellings. Personally, Sir, I should be extremely sorry to see all those villagers congregated round the mines, for in that case their conditions will become almost as miserable as of those workers who live in *chawls* in Bombay and Ahmedabad. I would much rather, Sir, that the present system did continue and these people lived comfortably and happily in their homes and came to the mines to add to their livelihood and went back to their homes getting a little bit of the sun and a little bit of the rain of Bengal as well. It is really in order to protect this class of workers from hardship and suffering that Government decided not to introduce at once the principle of a daily limit of work. If that principle is introduced, this class of workers will be entirely deprived of work in the mines. As Mr. Sircar has already explained, they work in the villages on their own fields or on the fields of their neighbours. They come to the mines, walk these 10 miles, arrive at the mines, work for two, three or four days and go back to their villages. They do not want all this regulation of 11 hours inside the mine and then a number of hours outside on the surface to be spent in those wretched *douras* that exist all round the mines. These *douras* are much better, I admit, than the *chawls* of Bombay; they may be better even than the quarters provided for labourers in jute mills, but certainly they are not as comfortable or as private as their own homes. They want to go back to their homes; why should you deprive them of those facilities? It is all very well to say that no man should work for more than

11 hours a day. I would certainly endorse that principle if a man is going to work 11 hours a day every day for six days in the week and for 365 days in the year. But when a man works only for two or three days and then takes complete rest, if he works even more than 11 hours a day, I do not think it really hurts his health. I am as anxious to see our workers healthy and comfortable as Mr. Joshi, but I think that he drives what he calls his principles too hard indeed. As a matter of fact, the miners do not work 11 hours a day at a stretch. As Mr. Sircar has explained, they go down the mine, they do a certain amount of work, and then rest and come up for food and drink. In these circumstances, it would be absolutely impossible at the present moment to bind them to a definite shift system; it would be extremely hard on these miners themselves, and I beg the House not to accept this amendment in the interests of the miners themselves.

Mr. President: Amendment moved:

"That to clause 23 the following sub-clause be added:

"(d) for more than 11 hours in a day."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—29.

Abdul Rahman, Munshi.
Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Asad Ali, Mr.
Asad-ullah, Maulvi Miran
Ayyar, Mr. T. V. Seshagiri.
Bagle, Mr. K. G.
Basa, Mr. J. N.
Bhargava, Pandit J. L.
Chandhuri, Mr. J.
Cotelingam, Mr. J. P.
Gagan Singh, Sardar Bahadur.
Ginwala, Mr. P. P.

Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Misra, Mr. B. N.
Nag, Mr. G. C.
Reddi, Mr. M. K.
Sarfaraz Hussain Khan, Mr.
Sohan Lal, Mr. Bakshi.
Venkatapatiraju, Mr. B.
Zahuruddin Ahmed, Mr.

NOES—44.

Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bray, Mr. Denys.
Burdon, Mr. E.
Cahell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.
Kamat, Mr. B. S.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.

Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nayar, Mr. K. M.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Samarth, Mr. N. M.
Srivadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Sen, Mr. N. K.
Singh, Mr. S. N.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was negatived.

Mr. N. M. Joshi: Sir, I beg to move the following amendment:

"That to clause 23 the following sub-clause be added:

'(e) for more than six hours continuously without a period of an hour for meals.'"

Sir, this is again a proposal for limiting the hours of work to some extent, and allowing a period for rest and for meals. Sir, it may be said that this is again a proposal for disturbing the coal industry or throttling the coal industry. Sir, this argument of danger to industry has always been brought forward not only on this occasion—but on all occasions when there have been proposals for limiting the hours of work. Was not the same argument of the industry being in danger brought forward when the hours of work in factories were limited? I do not see that there is any danger to the coal industry simply because we try by Statute to give an hour for meals for the workmen. As a matter of fact, I have mentioned before that in India there is no dearth of cheap labour. We have enough labour and more than we want and we send out our labour. It is these very provinces of Bihar and the United Provinces that send men to distant parts, it is these very provinces that send men to Fiji and British Guiana thousands of miles away from their homes. Therefore, if any people say that the coal industry will be ruined by not getting sufficient labour, they are simply deceiving the whole world.

Sir, my friend, Mr. Chatterjee, said these people belong to the villages and he does not want villages to be broken up. He has my sympathies. I do not want the villages to be broken up. It is for that reason that I wanted limited hours of work. As a matter of fact, it is the growth of these industries that has broken up these villages and not any proposals which I have been making. Then, Sir, it was said that, when I make these proposals, I only look to the interests of labour. Sir, I deny that charge. I do not interpret my duty in that narrow spirit. Whenever I have advocated any proposals for the amelioration of labour, I have advocated it because I thought it was in the interest of the country as a whole.

Mr. President: I cannot allow the Honourable Member to revive a discussion which we have just had for an hour and a half on the other amendment. He must adhere strictly to the proposal that no one shall work for more than six hours continuously without a period for meals: from the point of view of the Chair the important word in that amendment is "meals."

Mr. N. M. Joshi: I bow to your decision, Sir. Sir, the proposal is that people working in mines should not be allowed to work continuously for more than six hours without our giving them an hour for meals in the interval. As the House has accepted that these people may go on working up to 18 hours a day, I hope the House will have some mercy upon these people and give them an hour for meals. Sir, Members of this House are very kind-hearted. It has been said that the employers who are represented here in large numbers are very kind-hearted. Sir, shall I be straining their quality of mercy too much if I ask them to give an hour to these people for their meals? I hope, therefore, that these people in the kindness of their hearts will accept my amendment.

The Honourable Mr. C. A. Innes: Sir, I cannot think that my Honourable friend, Mr. Joshi, means this amendment to be treated very seriously. I think, Sir, that his object in moving the amendment was to do what you did not allow him to do, namely, to get in his reply to the speeches on the last amendment. I would point out

to the House that it has just rejected the principle of the daily limit of hours and that being so, what is the necessity or the use of trying to impose a rest period for meals? Let me point out to the House, as I have pointed out before, that there are no fixed hours for these miners. They come when they like, they are paid by the results, and they break off when they like. If they want a rest period for meals or for any other purpose, they can have it at any time they please. That being so, there is no reason at all for this House to impose a statutory obligation that a rest period should be given.

The motion was negatived.

Clauses 23, 24 and 25 were added to the Bill.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, clause 26 runs as follows:

"No child shall be employed in a mine, or be allowed to be present in any part of a mine which is below ground."

My amendment is:

"To omit the words 'be employed in a mine, or,'"

This will mean that a child can be employed above ground in the mining work. "No child shall be employed in a mine." Here "mine," must mean above ground as well as under ground. The other part of the clause is "or be allowed to be present in any part of a mine which is below ground." The phrase "which is below ground" qualifies only "or be allowed to be present in any part of a mine." If the construction of the clause is that no child shall be employed or shall be allowed to be present in any part of a mine which is below ground, I have no objection. But my point is that a child should be allowed to work above ground. The construction of this clause as it is, is that no child shall be employed in a mine. I submit it is rather injurious to the labouring class. My proposal is that the words "be employed in a mine" should be omitted from this clause. This will give an advantage. We have defined a "child" to be one under the age of 13. We are aware that these labourers always have children and the children always assist their parents in their work. The Honourable Mr. Innes has already said, and we all very well know, that it is the poor agriculturist class that comes for this labour, and we know that in poor agriculturist families, the children always help their parents in their work. If they have children of 6, 7, 8 or 12 or 13 years of age, they help their parents in the fields. They accompany them to the fields and help them there. They may not go under ground, but they can work above ground and help their parents similarly. They can carry the baskets of coal. They can do some minor work which is not very hard, they can earn some money in that way. Children of poor labourers very often never see schools. We, rich people, who send our children to schools cannot expect these labourers to send their children to any boarding schools or even to any primary schools. They always work jointly with their parents. If we keep them from labouring even above ground or doing some work near about the mine, it will mean not only loss of their earning to the family, but it will also mean that the parents will have to provide for their children and maintain them. Not only that. The children will ruin their own career, because they are not accustomed to go to school, they naturally waste their time in playing, they will not be of any use in future to themselves or to the family. They

[Mr. B. N. Misra.]

won't get used to work. In England even a cobbler's son or a shoe-maker's son can become a Prime Minister, and any poor man or a man of the labouring class can occupy very high positions. That is not so with Indian labourers. You cannot expect from this poor labouring class to get men who will get so much educated or who will rise so much above their class that they can occupy any high position in life. Generally these people continue to be labourers. We know very well how our caste system is working and we know that in India a peasant is always a peasant, a Brahman is always a Brahman, a blacksmith is always a blacksmith.

Mr. President: Order, order. Caste has nothing to do with employment of children in mines.

Mr. B. N. Misra: I am simply showing the analogy. The labourers who work in a mine cannot suddenly turn so rich and earn so much money that they can afford to send their children to schools. If the words, I propose, are omitted, the children will be given an opportunity of working near about the mine and they will earn a livelihood, and will help their parents and also learn how to work so that when they grow up, they can work in the mines or even elsewhere. In these circumstances, I submit that this Honourable House will accept the amendment. If my amendment is accepted, the objection on the part of the mine owners that they will lose labour and the industry will be ruined for want of labour will not hold good and the people will be allowed to work as much as they can above ground. With these words, Sir, I move my amendment, which runs as follows:

"In clause 26, the words 'be employed in a mine, or' be omitted."

The motion was negatived.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move that:

"In clause 26, omit all words commencing from 'or be allowed' to 'ground'."

The effect of my amendment will be, Sir, that the prohibition about the presence of children in the mines will go away. The clause as it stands in the Bill provides not only that the children be not employed in the mine but it also provides that they should not be present or allowed to be present in any part of the mine which is under ground. Sir, I subscribe to the principle that children should not be made to work in the mine. I also subscribe to the principle that they should not be allowed to be present under ground in the mine. But, Sir, if we look to the consequences, we find that this will lead to much obstruction in the working of the mines. This will result in driving away the women from the work. I do realise that the Government have expressed their intention and desire and they have adopted it as their principle that women should not be employed in the mines. But looking to the practical side of the thing I cannot say how far that will be desirable,—I mean industrially, and not from the humanitarian point of view or from the point of view of health. Work in a mine, Sir, is generally on a family system.

Where a man is required to cut coal, the woman is required to carry and take it away. In some places and on some occasions, if a man has not got his wife, he has to employ other women to do the work,—to carry

away the coal cut by him. Sir, those who are acquainted with the system of work that prevails in the part of the country from which these labourers are imported, one will find that most of the work is left to the women and less to the men. (*A Voice*: "Shame.") It may be a matter of shame, but it has been done for ages and continues to be done in that way. The Honourable Mr. Chatterjee will be surprised to hear that in certain backward parts of certain provinces women give birth to a child and immediately after that, take away the child and walk for miles together. That will show how hardy those women are. My object is this, that we should not encourage the employment of women in mines so far as possible, but if you were to stop it for some years before the public opinion amongst those people has developed, the result would be there will be a shortage of labour in the mines and other industrial centres. A man would not like to go away leaving his family at home, because probably the wages may not be attractive for him, and if we make the wages attractive, that will injure the industries a great deal. Therefore, it will be necessary to employ women in the mines and I suggest that it will be much better and more desirable that this provision making it penal for children to be in the mines be deleted. With these words I commend my amendment to the House.

The Honourable Mr. C. A. Innes: The effect of Mr. Agnibotri's amendment, if it is accepted, will be no prohibition against a child being taken down a mine as long as he is not employed underground. Now, Sir, quite deliberately the Government have included in the Bill this clause. Quite deliberately, we have decided that the Bill should take a step towards the prohibition of the employment of women below ground in mines. Quite deliberately, we have arrived at the conclusion that it is not right that small children, very small children should be taken down by their mothers into the mines and left in the mines when their mothers are working there.

This question of the employment of women in mines has a very old history. As far back as the nineties, we were warned by the Secretary of State that it would be wise in the infancy of coal mining to prohibit at once the employment of women in mines. Unfortunately, we did not take the step then. The Secretary of State warned us that the longer we delayed that step the more difficult it would become, and that is exactly the position that we are now in. There are 250,000 miners in India and not less than 80,000 are women. There are 170,000 miners on an average on the coal mines and 50,000 are women. I do not agree with what Mr. Joshi said yesterday that it will be an easy matter to replace those women. On the contrary, it will be a difficult matter, but I do hold that sooner or later, we have to face this problem of the employment of women in coal mines. As the Joint Committee has recommended, we shall take up with the Local Governments the idea of enforcing prohibition within a specified time. In the meantime, we propose to take this small step. We propose not to allow small babies or children to be taken down mines. We quite recognise that the result may be that some women will not go down the mines at all, and there may be a diminution in women labour; but at the same time, after full consideration with the Chief Inspector of mines, with mine managers in the coal fields, and finally in the Joint Committee we have decided that it is right to face that risk and to take this step, and this being so, I hope that the House will not accept the amendment.

The motion was negatived.

Mr. President: The question is that clause 26 do stand part of the Bill.

Mr. N. O. Sircar: I have got an amendment as regards clause 26, that is, to delete the clause.

Mr. President: Does the Honourable Member want to speak on it?

Mr. N. O. Sircar: Yes. I rise to speak but I am not a speaker, and I do not know if my speech will influence the Honourable Members to come to my side and vote for me—the Honourable Mr. Innes, the Member for Commerce, being on the one side, and Mr. Joshi, who represents the Labour Party on the other side to oppose me. Yet I must speak, because I owe an obligation to the Indian Mining Federation of which I am the unworthy President, and which Federation represents 40 per cent. of the Indian coal mining interests and 300 members, quite a big army to fight the Honourable Member for Commerce in order to exact their dues. Sir, I was associated with the Joint Select Committee appointed to consider this Bill and I did my duty with what you know is the give and take system, but in one particular point, I could not agree with the Committee Members and I was obliged to sound a note of dissent, and the point where I could not agree with them is clause 26 coupled with sub-clause (1) of clause 46, which indirectly contemplate dealing a death-blow to the coal industry and I am going to explain how. The object in view of prohibiting children from going down the mines is, indeed, a laudable one and I am at one with my Labour friends that this should be done, but not at once. The idea underlying this proposal, as has just been explained by the Honourable Mr. Innes, is what we are afraid of. It indirectly contemplates prohibiting female labour from going down the mines, as has already been apprehended, and justly apprehended by the Honourable Member for Commerce. Sir, it is the practice in the coal mines that women when they go down the mines, take their little babies underground, they keep them covered with their clothes in a basket and they go to work with their husbands, and the women thus have an opportunity of watching them there and taking care of them instead of leaving them on the surface with nobody to take care of them. I do not object to the prohibition of the employment and presence of children in the mines who are between the ages of 8 and 13, but what I object to is the prohibition of the presence of infant children in the mines, my reason being that the mothers can take care of the children. It is reported by the Joint Committee and it has been just said by the Honourable Mr. Innes that there are ninety thousand women working in the coal mines of which a fair estimate can be made that about 60,000 work below the mines and then again of these 60,000, a large number must be mothers and if they are prevented from taking their infant children down the mines it will mean that these women may not go down the mines and we will lose a very large quantity of output. A further danger is that these women work in the mines as partners to their husbands. The husband cuts the coal and the wife carries the coal and fills the basket. She is practically the partner of the husband in working in the mines. If the woman is thus deprived of taking her infant child down the mine, the woman would not go down and most likely the husband would not go down also. He will say "Why should I go and work alone below. I would rather take some work on the surface where I can work with my wife and earn a better wage." Now, Sir, what would be the consequence? We will be losing a large quantity of labour of women and most possibly of

men also. The output will go down very very considerably. It must be vivid in the mind of everybody what was the consequence in 1921 of a short output. The Government had to buy about 10 lakhs of tons of coal from foreign countries and at a price Rs. 20 above that which was obtaining here then. It meant a loss of about 2 crores of rupees to the country. As I have said, I do not object to the principle of prohibiting children from going down. There is in the Committee's report that Government is contemplating the prohibition of women from going down the mines and it is in the contemplation of the Committee to recommend a period of five years after which that prohibition is to come into force. As I say I do not object to the principle. I am at one with the Honourable Mr. Innes and I am at one with the Honourable Mr. Joshi. What I want in the interests of the coal trade is that time must be given to adapt the collieries to the change, so that the output may not considerably go down. With these remarks I propose that clause 26 be deleted.

The Honourable Mr. C. A. Innes: My Honourable friend Mr. Sircar began by making an appeal *ad misericordiam* that he was not a speaker. We have all heard his speech and I think that we can assure him that he was unduly diffident about his powers. The trouble about Mr. Sircar's amendment here is that it goes a great deal further than he intended. He wishes to take clause 26 entirely out of the Bill and merely to reserve power to the Government of India to restrict or prohibit the employment of children in mines by the rule making power. That is to say, the Honourable Member wishes to place us in exactly the same position as we are in the existing Bill. That is to say, he wishes to remove all our proposed restrictions on the employment of children. We are bound by the Washington Conference not to allow children to be employed in mines, even as we are bound not to allow them to be employed in factories. That is one reason why I say that the Honourable Member's amendment goes too far. But, Sir, he has explained that he entirely agrees in principle that we should take this step sooner or later towards the prohibition of the employment of women. All he asks for is a little longer time. We discussed this point very carefully in the Joint Committee and eventually we came to the conclusion that if we provided that this Bill should come into force in July 1924 we should give the mining industry sufficient notice. It must be remembered that one-half of the mining industry has accepted this clause without any complaint at all. It must also be remembered that in many mines in the coal fields even now small children are not now allowed to be taken down. I have just been reading a report on labour in the coal fields and in that report it is said that where the entrance to a mine is by shaft even now children are prohibited from being taken down that mine. All we propose to do is to extend that prohibition to all mines, whether they are approached by inclines or whether they are entered by means of shafts. I think, Sir, that the House will agree with me that we must take this step and that 18 months is long enough notice to the mine owners interested, especially as half the mine owners have agreed to the clause.

Mr. President: The question is that clause 26 do stand part of the Bill.
The motion was adopted.

Mr. President: The question is that clause 27, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 28, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: I understand from the Honourable Member that the amendment he proposes to move to clause 29 is really consequential, including the proviso at the end.

Mr. N. C. Sircar: That has been already disposed of by my amendment to clause 26.

Mr. President: The question is that clause 29, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 30, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 31, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 32, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 33, 34, 35, 36, 37, 38, 39 and 40, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 41, 42 and 43, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 44 and 45, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: Clause 46. Mr. Sircar.

Mr. N. C. Sircar: Sir, it is consequential on clause 26 and since my amendment to clause 26 was lost, I do not want to move this.

Clauses 46 to 50 were added to the Bill.

The Schedule was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Mr. C. A. Innes: I move, Sir, that the Bill, as amended, be passed.

Mr. President: The question is that the Indian Mines Bill, as amended, be passed.

The motion was adopted.

THE CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

Mr. E. Burdon (Army Secretary): Sir, I beg to move:

"That the Report of the Joint Committee on the Bill further to amend the Cantonments (House-Accommodation) Act, 1902, be taken into consideration."

This Bill was introduced in the Assembly last March, and last September it was referred to a Joint Select Committee of the two Houses. I think I may safely say that the principles which the Bill embodies have from the first met with the general approval of this House, and I need not therefore at this stage detain Honourable Members with a further exposition of what those principles are. The Select Committee have effected a number of amendments in the Bill, chiefly in respect of the procedure and practice which are to be followed in applying its provisions and these are fully set forth in the Report which was presented to the House on the 15th January. I should like, however, to take this opportunity of thanking the Members of the Select Committee for the trouble they have taken in dealing with the Bill and preparing their Report. Some of the points raised were not wholly free from contention and many of them were intricate. In spite therefore of the presence of the few amendments on the paper, I think I may venture to say that the results of the Committee's labours may be regarded as extremely satisfactory. Sir, I move that the Report be now taken into consideration.

Mr. President: The question is: .

"That the Report of the Joint Committee on the Bill further to amend the Cantonments (House-Accommodation) Act, 1902, be taken into consideration."

The motion was adopted.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, the amendment that I move is that in clause 1, sub-clause (3), the whole of the proviso be omitted.

Sir, it will be seen that section 3 of the Act limits the application of this law to only such houses in cantonments as are required by a military officer or may be required by a military officer, and with that object in view the framers of this law have decided to issue a notification, and before issuing the notification they have provided the procedure to be followed in this respect. But this proviso seems to nullify the provisions of clause 3. This proviso says that any notification issued under section 3 of the Cantonments (House-Accommodation) Act, 1902, that is, the present Act that we are considering, which is in force at the commencement of this Act shall be deemed to be a notification made under section 3 of this Act. Sir, the underlying idea is that there may be any number of houses in a cantonment, for instance there may be 800 houses in a cantonment but only 50 are required for the residence of military officers. The provisions of this Act should apply only to these 50 and not to the other 250, because, Sir, those who have house property in cantonments know it to their cost, that as long as a fear attaches to a house being at any time required or appropriated by military officers, it prevents the general public from going anywhere near it, they won't have it, and if they won't have it, who is to suffer?—The house owners; and therefore the Government have very wisely made this provision in section 3, that is to say, in future this Act shall only apply to such houses as are actually required; but what they give with one hand they want to take away with the other. Therefore if this proviso is allowed

[Mr. Pyari Lal.]

to stand what happens is that the notifications issued before this Act shall remain in force. If they remain in force, what is the good of clause 3? If they want to perpetuate the same mischief which they are going to remedy by clause 3, where is the use? Then, again, Sir, if you read sub-clause (3) of clause 1, you will find it says: 'It shall come into force on the 1st day of April, 1923, but it shall not become operative in any cantonment or part of a cantonment until the issue, or otherwise than in pursuance, of a notification as hereinafter provided by section 3,' which means that previous notifications which indiscriminately cover all the houses in a cantonment, those notifications shall be in force until the time when notifications under section 3 are issued. I say that this will meet the necessity of the case; but perhaps the cantonment authority might say, 'Oh, while those notifications are there, these houses are liable to be appropriated, but when you pass this Act and cancel all those notifications, what will happen to military people; they will be without any law to appropriate houses for them.' But this sub-clause (3) that I have read meets that case; that is to say, they will be allowed sufficient time to issue their notifications under section 3, clause 3, and until such time those notifications shall remain good. I can understand that, but to provide in the next clause, to put in this proviso, that those notifications shall remain good for all time to come, I say where is the use of clause 3? Sir, with that object I submit that this proviso should be deleted.

Mr. President: In clause 1 amendment moved:

"To omit the whole of the proviso at the end of sub-section (3)."

Mr. E. Burdon: Sir, if the amendment which my Honourable friend has proposed were to succeed, and the Bill with this amendment were to be passed into law, then I should like to explain that the result on the 1st of April next could only be one of two alternatives. The first is that there would be no House-Accommodation Act for cantonments at all, and the second would be that Local Governments would have re-enacted the notifications which were issued under the previous Act. There would be no other course open to us. I quite see the point which my Honourable friend has in mind. The suggestion is, I think, that as under this new Bill the Government will be the tenant of the houses in cantonments instead of individual military officers, and as the Government will take the houses which they lease for a considerable period—the period will be 5 years—therefore it will be possible to arrive at greater stability and greater certainty in regard to the number of houses which should be appropriated; that is to say, it should then become possible for Government to determine more or less, once and for all, how many houses they require to appropriate for the use of military officers, to apply the Act to those portions of the Cantonment in which these houses are situated, and thereafter to exempt from the operation of the Act the rest of the cantonment. I think it is quite possible that something of the kind may be done, but the House will realize that before the limitation which my Honourable friend desires can be put into practice it will be necessary for the local military authorities to assess in the light of the provisions of this Bill the number of houses they will require on an average, to find out those which are most suitably located, and thereafter to submit proposals to the Local Government probably after consultation with the military authorities at headquarters, defining as precisely as possible those portions of the Cantonment which should be set free from the operation of the Act. This is a process which

will take time. I can give my Honourable friend an assurance that we shall endeavour to limit the application of the Act in the manner which he desires; but I do not think that it would be an appropriate way of seeking this end to omit the proviso. The proviso, I think the House will realize, is of a very ordinary character. It merely continues an arrangement which was necessary under the old Act until revised arrangements under the new Bill can be brought into force. There is one further point which I should like to mention. The existing Act may be declared to be operative in any Cantonment or part of a Cantonment; in the present Bill we repeat this provision. "The Local Government, with the previous sanction of the Governor General in Council, may by notification in the local official Gazette declare this Act to be operative in any Cantonment or part of a Cantonment situated in the province." The Bill therefore, in so far as this matter is concerned, does not introduce anything new. As a practical matter, stricter limitation may be possible and we shall endeavour to carry this out, but more as an executive matter. For the reasons which I have given I oppose the amendment.

Mr. President: The amendment moved is to omit the proviso at the end of clause 1 (3).

The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clause 1, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. E. Burdon: Sir, I beg to move the following amendment :

- " (1) That clause 2 (1) (i) be omitted and the subsequent sub-clauses re-lettered.
 (ii) That in clause 2 (2) for the words 'President of the Cantonment Committee' the words 'Commanding Officer of the Cantonment' be substituted."

The amendment is of a purely formal nature. The words "President of the Cantonment Committee" only occur in the passages of the Bill which I have quoted and in no other, and there is no purpose of substance which requires their being retained at all. Actually, the Commanding Officer of the Cantonment is in all cases President of the Cantonment Committee and he is referred to by the former designation in every other clause of the Bill under which functions are vested in him. In principle too, the amendment which I propose represents correctly the facts of the matter. In appropriating houses in Cantonments for military officers the Commanding Officer of the Cantonment acts in his capacity as such, as the representative of Government. He should not and cannot correctly be viewed as acting in his capacity as President of the Cantonment Committee. The matter is of no great practical importance at present but it will become important if, and when, Cantonment Committees acquire more of the character of a local self-government body. For these reasons the amendment which I now move is, I venture to submit, clearly desirable.

Mr. President: The amendment moved is :

- " That clause 2 (1) (i) be omitted and the subsequent sub-clauses re-lettered."

The question is that that amendment be made.

The motion was adopted.

Mr. President: The further amendment moved is:

"That in clause 2 (2) for the words 'President of the Cantonment Committee' the words 'Commanding Officer of the Cantonment' be substituted."

The question is that that amendment be made.

The motion was adopted.

Mr. President: The question is that clause 2, as amended, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 3, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 4 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 5, 6, 7, 8, 9 and 10, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. Pyari Lal: Sir, the amendment that I move is:

"That in clause 11, sub-clause (1), the figures and word '21 days' be substituted for the words 'four days'."

This particular sub-section of clause 11 states that when a house owner receives a notice that a certain house is required, the house owner shall vacate it within four days from the service of the notice. But under section 30 the owner who receives this notice is given the right of appeal against such a notice, and for that appeal he is allowed a period of 21 days. Section 30, sub-clause (2), says:

"No such appeal shall be admitted unless made within a period of twenty-one days from the service of the notice aforesaid."

Now, I submit, Sir, that if the house owner has to vacate his house within four days of the receipt of that notice, what use will an appeal be to him, because it is not likely after he has vacated the house and the military are in occupation that they will give it back to him. This provision therefore will cause a great deal of inconvenience and in fact it is directly opposed to the other provision allowing 21 days for an appeal.

Mr. E. Burdon: In the interests of the convenience of the House, may I say that I am quite prepared to accept this amendment.

Mr. President: The amendment is:

"That in clause 11, sub-clause (1), the figures and word '21 days' be substituted for the words 'four days'."

The question is that that amendment be made.

The motion was adopted

Mr. President: The question is that clause 11, as amended, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 12, 13 and 14, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 15 do stand part of the Bill.

The motion was adopted

Mr. President: The question is that clauses 16, 17 and 18, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 19 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 20 and 21, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Mr. President: I think I will take the adjournment at this point, and we will discuss clause 22 afterwards.

POSTPONEMENT OF GENERAL ELECTION IN KENYA.

Mr. J. Hullah (Revenue and Agriculture Secretary): With your permission, Sir, I should like to make an announcement, which I think will be of interest to the House in view of the numerous questions that were recently put to me, on more than one occasion, regarding the political situation in Kenya and the possibility of postponing the general election until the question of the franchise has been settled. Have I your permission, Sir?

Mr. President: Yes.

Mr. J. Hullah: We have received this morning from the Secretary of State for India a telegram informing us that the Secretary of State for the Colonies has authorised the Governor of Kenya to make an announcement in the following terms:

"The unavoidable delay in settling outstanding questions including that of Indian representation has made it necessary for the Secretary of State to choose between a postponement of the general election and dissolution of the new council after its election. In adopting the former course the Secretary of State has been influenced by the fact that from the date of his predecessor's original attempt to secure a settlement by agreement it has been intended that the new constitution should be framed in time for it to be brought into force on the occasion of the general election now due."

The Assembly then adjourned for Lunch till Twenty Minutes Past Two of the Clock.

The Assembly re-assembled after Lunch at Twenty Minutes Past Two of the Clock. Rao Bahadur T. Rangachariar was in the Chair.

THE CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

Mr. W. M. Hussanally (Sind : Muhammadan Rural): Sir, the first amendment that stands in my name is:

"That in clause 22 (1) (b) the following words be deleted:

'who shall be persons ordinarily resident and liable to pay taxes, in the cantonment'."

The effect of this amendment, if carried, would be that the two members nominated by the owner concerned will be appointed by him to serve on the Arbitration Committee without any restriction. There will be no limitation to the effect that these two arbitrators named by him should be persons resident within the cantonment or pay taxes to the cantonment fund. I do not think, Sir, many words are needed for me to support this amendment as it is almost self-evident. Under clause 22, the Government have by sub-clause (a) the right of nominating two members on their behalf, whomsoever they like, and there seems to be no reason why the house-owner should be limited to select two arbitrators who are necessarily resident within the cantonment and are also paying taxes. I submit, Sir, he should be a perfectly free agent to select any two arbitrators from wherever he likes and he should not be compelled to select two arbitrators necessarily resident within the cantonment. The effect of the clause as it stands would be that, while a common shop-keeper having a stock-in-trade of say Rs. 50 in his shop and paying 4 annas in the shape of *halkore* cess to the cantonment fund, becomes a fit person to be an arbitrator, while a very big landlord owning house property within the cantonment area say to the extent of some lakhs and paying thousands of rupees in the shape of taxation to the cantonment fund but having the misfortune of residing within the adjacent civil area, cannot become a fit person to be nominated by the house-owner as an arbitrator. I think, Sir, that this will be a very anomalous position, and so far as the Karachi Cantonment is concerned, I know of certain gentlemen of very high position who own a very considerable amount of house property within the cantonment but reside within the adjacent civil area which is only about a stone's throw. All these gentlemen will be disqualified under these words which I want to be deleted, and I suppose Sir Montagu Webb will bear me out in this statement that several owners of house property within the cantonment area reside in the adjacent civil area of the town. Sir Montagu says—on the other side of the road.

There is another difficulty, Sir, that will also arise, I believe, very shortly if these words are retained. It is, I believe, proposed in several important cantonments, for instance in the Cantonment of Ambala, to remove the Sudder Bazar, which is at present a part of the cantonment, and make it into a separate municipality. Thus the cantonment proper in places where these Sudder Bazars will be removed from the cantonment, will be very much more limited than at present: and it will be a practical difficulty in the way of a poor house owner to find men in whom he has got confidence and who will be fit persons according to this clause to serve as arbitrators. That is a difficulty which we ought to keep in view, but which I believe the Government have not taken notice of. That also serves, therefore, as an additional reason why these words should be deleted.

Primâ facie there appears to be no reason whatever why the discretion of the house owner to name his two arbitrators should be fettered in any way. He may bring two arbitrators from wherever he pleases provided he has got sufficient confidence in them. The only argument that would

probably be advanced from the Government Benches against my amendment would be that if these two arbitrators are resident within the cantonment area, they will be acquainted with the conditions of the cantonment far better than persons residing outside it. That, to my mind, will be the only argument that will be advanced, but I do not think, Sir, there is much force in it. Conditions in the cantonment are not so difficult that a man of common intelligence whether he be resident within the cantonment or not, cannot acquaint himself with, by a little inquiry. After all, what is the purpose of this Arbitration Committee? The purpose of this Committee is to fix rental values, and I suppose that any man of ordinary intelligence can do that without much difficulty after acquainting himself with the conditions prevalent in the adjoining civil area as well as within the cantonment itself. Therefore, I think, Sir, there is no reason why these limitations should be placed on the choice of two arbitrators to be named by the house-owner, and I hope the House will agree with me that these words should be deleted.

Mr. Chairman: Amendment moved:

"That in clause 22 (1) (b) the following words be deleted:

'who shall be persons ordinarily resident and liable to pay taxes in the cantonment.'

Mr. E. Burdon: Sir, I submit that the clause, as approved by the majority of the Select Committee, is for at least two definite reasons better than it would be if amended in the way my Honourable friend, Mr. Hussanally, has proposed. The point of the amendment is, I may say, not a new one. It has been considered and discussed previously. The clause as it stands provides that the Committee of Arbitration shall consist of persons who are responsible persons and who have some local association with the cantonment area in which the subject matter of arbitration arises and may therefore be presumed to have some knowledge of the circumstances which would ordinarily determine the findings of the Committee of Arbitration. Now, this provision is to my mind rightly based and indeed it follows good and established practice. I cannot personally believe that, if the words to which my Honourable friend takes exception are retained, the field of choice will be limited as he seems to anticipate. I think his amendment would only provide for a remote contingency.

The other point which I would submit for the consideration of the House is of a very practical nature. In devising the arrangements which form one of the main purposes of the Bill, namely the arrangements which secure that, when a house is appropriated by Government, rent, shall be assessed in a manner which shall be scrupulously fair to the landlord, it has been necessary to provide for certain formalities and elaborations of procedure. Now, it is obviously desirable to limit these complications to the minimum absolutely necessary. We want an Act that will work smoothly and with reasonable expedition. Well, if the recommendation of the Committee of Arbitration is likely to be delayed, inconvenience will certainly be caused to the military officer who may in the meantime want to occupy a house and there will be greater delay if the owner of the house is at liberty to nominate as representatives on that Committee of Arbitration persons who may reside at a considerable distance. My Honourable friend has referred to the possibility of *Sadar Bazaars* being excluded from

[Mr. E. Burdon.]

cantonment areas and to the further limitation of choice which would result if this were to take place. Now, my Honourable friend is perfectly well aware that it has not yet been decided to exclude any particular Sadar Bazaar from the cantonment area. The matter is still under consideration, and in the present Bill we only take into account the existing state of affairs. I wish to lay considerable emphasis on the practical objection which I have put forward. There is a very grave danger that the elaborate procedure of the new Act may place serious practical difficulties in the way of its operation and I hope the House will agree with me that it is desirable to limit the complications of the Act as much as possible. These are the objections which I have to offer to the amendment and I would ask the House to look at the matter in this light. The clause as it stands seems to provide sufficiently and appropriately for the requirements of any ordinary case. More than that I do not think can be expected of any Bill. Sir, I oppose the amendment.

Mr. Pyari Lal: Sir, as a member of the Select Committee, I think it my duty to explain that the considerations suggested by my friend, Mr. Hussanally, were not present to my mind when I agreed to this provision in the Bill as it now stands. It is a fact, Sir, and the Honourable Mr. Burdon has not denied it, that it is in contemplation, or, as he puts it, under consideration, to separate the Sadar Bazaars from the military areas proper or to cut away the civil portion of the population of cantonments from the military portion. Supposing, Sir,—and I have very strong hopes that it will come to pass,—supposing this measure is carried out, then what will happen? There are cantonments now, for instance of Ambala and of Meerut, where the Sadar Bazaars only contain people of intelligence or any social status. These are not to be found in the cantonment areas proper. Then, where will you find fit and proper nominees for the house-owners—surely you do not expect the house-owners to appoint for their arbitrators men who would be petty grocers or petty traders or mere hawkers who would then inhabit the regimental portion after the Sadar Bazaars have been separated and the chief portion of the civil population would have gone. So, if my Honourable friend will consent to it, I would propose that some two or three words might be added to the clause as it stands, that is to say “persons who are ordinarily resident or pay taxes or live in the immediate vicinity of the cantonment.” That would provide for these contingencies which he has suggested, that is to say, the persons who are living very near the cantonment area, across the road, as has been said. For persons who are well-to-do do not live in the cantonment proper, yet they are very near it. Or, in case the cantonments and Sadar Bazaars are separated, then the present inhabitants of the Sadar Bazaars would also come in as arbitrators. That would meet requirements of my friend and at the same time retain all those advantages in this provision which we had all along contemplated.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): Sir, I do not think this amendment of Mr. Hussanally should be accepted. It is always desirable in such cases to bring in responsible men familiar with the subject-matter of the dispute, and men coming from outside the cantonment area do not necessarily possess any knowledge of the state of things existing in the cantonment and would have in fact no stake therein. Sir, when committees are appointed in municipal areas to revise or review

municipal taxation, the members elected are as a rule municipal rate-payers and I see no reason why any other criterion should be adopted in a cantonment.

Mr. Chairman: Do you move this as an amendment to that clause?

Mr. Pyari Lal: Yes, Sir, I beg to move:

"That the words 'who live in a cantonment or pay taxes or lives in the immediate vicinity' be substituted for all the words after 'persons'."

Mr. E. Burdon: I should be perfectly prepared to accept the sense of the Honourable Member's amendment. The form in which I would put it would be:

"For all the words after 'persons' substitute 'liable to pay taxes in the cantonment and ordinarily resident therein or in the immediate vicinity thereof'."

Mr. W. M. Hussanally: So far as I am concerned, Sir, I have no objection.

The motion was adopted.

Mr. W. M. Hussanally: Sir, the second amendment which stands in my name is:

"(ii) That in clause 22 (1) (c) for the words from 'and not having' to the words 'of the cantonment' the following be substituted:

'to be elected by the four members nominated under clauses (a) and (b) or a majority of them. Should there be no majority in favour of any person, the District Magistrate shall, on the request of the Commanding Officer of the cantonment, nominate the chairman of his own selection'."

The effect of the clause as it stands is that a chairman must be selected who shall be a person not in the service of the Government or the Cantonment Authority and not having any interest in house-property in the cantonment, which has been appropriated or is liable to appropriation, under the Act and who shall be nominated by the Commanding Officer of the Cantonment. My object is to take away this power from the Commanding Officer and to give it to the District Magistrate of the adjoining civil area. The reason why I make this suggestion is that under clauses (a) and (b) 4 persons are nominated as arbitrators, two by the Government and two by the house owner, and the house owner, as settled only a little while ago by the amendment of my friend Mr. Pyari Lal, is confined to select the arbitrators from amongst the residents of the cantonment or persons paying taxes therein but residing in the immediate vicinity thereof. So that, practically it comes to this. Of the four arbitrators thus selected, two are to a certain extent under the influence of the Cantonment Authority and the Commanding Officer is given the right of nominating the Chairman, he practically gets 3 of the 5 under his influence. Therefore, any decision arrived at by the Committee or the majority of them will not in the eyes of many of the house owners look as very just. At least it will give a handle to the people to think that the arbitration has been more or less one-sided, whereas if the power of nominating the Chairman is vested in the District Magistrate of the adjoining civil area, there is nothing lost so far as the Government is concerned, but the house owner will have reason to think that he has met with fair justice at the hands of the Committee as a whole. I therefore commend my amendment to the House.

Mr. J. P. Gotelingam (Nominated: Indian Christians): Sir, in order to understand the amendment that has been moved by my Honourable

[Mr. J. P. Cotelingam.]

friend Mr. Hussanally, I would like the House to take the clause as a whole. Clause No. 22 lays down the constitution of Arbitration Committees that will be called into existence when there is a disagreement about the amount of the purchase money of a house between the military authorities and the house owner. A cause of disagreement may also arise where the rent becomes a question of dispute. For these purposes Committees of Arbitration have been constituted, and this clause, as I have said, lays down the constitution of such Arbitration Committees. Two of the members of the Court are to be appointed by the Officer Commanding the Cantonment and in the choice of these two members of the Court he is restricted. He is to appoint one who is an officer of the Military Works Services or of the Public Works Department. The house owner the rent of whose house is a matter of dispute or the amount of the purchase money of whose house is a cause of dispute, has the option of nominating two persons to this Arbitration Committee. Then comes the question of the appointment of the Chairman. Usually a Chairman is elected by the members of the Committee. In other words, the Committee elect their own Chairman. But there are occasions where a controlling authority also appoints the Chairman. There are circumstances which make it very necessary that the Officer Commanding the Cantonment appoint the Chairman of the Arbitration Committee. Honourable Members will see from Chapter IV, which deals with Committees of Arbitration, that the whole matter has to be gone through as expeditiously as possible. Mr. Hussanally proposes that the four members, two elected by the Officer Commanding and two by the house owner, meet and choose their own Chairman. I am not aware of a Committee choosing a Chairman outside its own body. Mr. Hussanally proposes that the four members meet and choose an outsider as their Chairman.

Mr. W. M. Hussanally: Under the Bombay District Municipal Act such an Arbitration Committee can choose a Chairman from outside.

Mr. J. P. Cotelingam: Further, Sir, the Honourable Member says that they may be *elected* by the four members. I do not know how in the absence of an electoral roll for the purpose such a Chairman can be *elected*.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): By votes.

Mr. J. P. Cotelingam: The object of the Arbitration Committee is to expedite business and it may not always be possible for the two members nominated by the Officer Commanding the Cantonment to agree to a Chairman elected or selected by the two men who represent the interests of the house owner. If these are to meet and if they differ one from the other in their choice a good deal of time will be lost, and the object for which the Arbitration Committee is constituted will not be achieved. In the next place, the Officer Commanding cannot exercise any undue influence. He is restricted in his choice of the Chairman. He is to nominate a person not in the service of the Government or the Cantonment authority and not having any interest in house-property in the cantonment. This restriction secures a non-official as the Chairman of the Committee of Arbitration.

This matter was fully discussed in the Select Committee and the majority agreed to the nomination of the Chairman by the Officer Commanding. In the event of any irregularity in the procedure, the clause

provides for the District Magistrate to step in and appoint the Chairman or other member of the Arbitration Court. There is also a further safeguard provided for. If the aggrieved party is not satisfied with the award of the Arbitration Court, he has the right of appeal to a Civil Court. For these reasons, Sir, I think that the clause as it stands in the Bill and supported by a large majority in the Select Committee will commend itself to the House.

Mr. Pyari Lal: I do not think, Sir, that I can support the amendment of my Honourable friend. I think it is a matter of very small importance whether the person who appoints the Chairman is the Officer Commanding of the cantonment or the District Magistrate. We know as a matter of fact that the District Magistrate is a very heavily worked official, and as a rule, he is not in touch with the cantonment affairs. Therefore he would rather consider it very irksome when he is called upon to make the choice of a Chairman in matters which he probably does not care for. The Commanding Officer of the cantonment is a gentleman probably unconnected with any of the parties, a gentleman fresh from England, and a person who does not involve himself in the ordinary civil affairs of the people. And then when you restrict his choice that he shall only appoint a man who is not interested in the property, the subject of appropriation, that he shall appoint a man who is not in Government employ or in any way subordinate to him, I suggest nothing could be fairer than to ask him to make the appointment. Besides, our object in making this provision is to avoid unnecessary delays, because, after all, the house is very urgently required and as soon as possible. If you interpose at every step delays of months and weeks, what will happen? The provisions of this Act will then be absolutely nugatory, mean nothing, and therefore I think the clause as it stands should be allowed.

Mr. E. Burdon: Sir, my Honourable friends Messrs Cotelingam and Pyari Lal have anticipated most of the objections which I have to offer to this amendment. It is quite clear that in substance nothing could be gained by the proposal that the Chairman of the Committee of Arbitration should be elected. In the first place, election could always be made to fail by the two Government Members of the Committee declining to vote for any particular candidates, and they would always do so if there were any element of contention present. Consequently, in every case in which the principle of election would *ex hypothesi* be of value, it would be necessary to resort to nomination. This, of course, was recognised by the framers of the Bill. I need not touch on the point of the undesirability of adding unnecessarily to the delays of the proceedings of these committees of arbitration. Mr. Pyari Lal has explained this matter very clearly.

There are only two further points which I should like to mention very briefly. One is that the clause as it stands gives a guarantee that the Chairman of the Committee of Arbitration shall be a non-official, and that is a point on which very great stress has always been laid by those interested in cantonment reform. My Honourable friend's amendment would not necessarily have the same result. The other point is this. Let us suppose for a moment that the Commanding Officer of the cantonment, in exercise of his powers of nomination, makes an unsuitable choice, and this were to affect the ultimate decision of the Committee of Arbitration, what would happen then? The owner of the house, under the provisions of this Bill, will have the right of appeal to the Civil Court. I have heard it said

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that when you provide this remedy of appeal, you provide everything that any reasonable person can ask for. It is quite clear that the Commanding Officer of the cantonment with the knowledge of this fact before him, namely, that there is the right of appeal, would never deliberately make an unsuitable choice, and he would not do so for other reasons as well. It would be his object to bring the proceedings of the Committee of Arbitration to a close as quickly as possible and to do everything that he could to ensure that the proceedings of the Committee should be non-contentious. For these reasons I oppose the amendment.

The motion was negatived.

Clause 22, as amended, 23, as amended by the Joint Committee, 24, as amended by the Joint Committee, 25, and 26 were added to the Bill.

Mr. W. M. Hussanally: As regards this clause 27, I have two amendments standing in my name.

Mr. Chairman: Move them one by one.

Mr. W. M. Hussanally: They are connected with each other and I should like to move them together, because if one is carried the second follows. They are:

"(a) That in clause 27 after the words and figure 'Section 7 and' the following be inserted:

'in places where there are no populated civil areas adjoining cantonment areas'.

"(b) That to clause 27 the following be added:

'Where, however, there are populated civil areas adjoining cantonment areas, the annual rent on cantonment buildings may be fixed at such percentage on their market value as is for the time being recoverable by way of annual rent on the market value of similar houses in the adjoining civil area in the locality concerned.'

It will be observed that in the amendment as printed there occurs the word "shall" and with your permission, Sir, and the permission of the House, I should like to substitute the word "may" instead of "shall". I shall explain, Sir, why I propose these two amendments.

It was represented to me by some landlords in Karachi, I mean the Karachi Cantonment, that if rental values in the cantonment for such bungalows as the Government commandeers are fixed by reference to the adjoining bungalows in the cantonment, the result will not be satisfactory so far as the landlords are concerned, because the rental values of such bungalows, at any rate, in the Karachi Cantonment were fixed several years back, perhaps 30 or 40 years back. Times have changed since then

3 P.M. and the cost of repairs and the prices of materials have gone up considerably. Therefore fixing the rental values for bungalows to be commandeered by Government in reference to the other adjoining bungalows will not necessarily meet the case. Therefore they suggested it to me that a clause should be inserted that comparison should be made between the bungalows in the cantonment and the bungalows in the adjoining civil lines, in cantonments like Karachi, so that a fairer rental value should be fixed for these bungalows which are to be taken over by Government on long leases, and it is with that object that I differentiated between these two classes of bungalows; because if the bungalows are situated in a cantonment which has no civil area adjoining, there could necessarily be no comparison between any bungalows in Civil lines and the bungalows in the cantonment. Necessarily therefore any

comparison that can be held will only be amongst the bungalows in the cantonment. But when there are bungalows with similar accommodation and construction in the adjoining civil area of a cantonment, reference ought to be made to the rents that exist in these civil areas. But I am told that in certain cantonments this is not possible and that the rents of houses and bungalows in the civil area are much smaller than the rents within the cantonments. It is with the object of meeting that difficulty that I want to remove the word 'shall' and put in the word 'may', so that the amendment as I propose now will suit both the cases. When there is a cantonment by itself having no civil area adjacent and no bungalows within the civil area to which the rents of these bungalows within the cantonment can be compared, the comparison should be to the other bungalows in the same cantonment but when, in certain cases like Karachi as I have described, there are civil areas adjoining with bungalows of a similar kind the comparison should be made between the cantonment bungalows and the other bungalows, so far as the rental value is concerned and I hope that this amendment will be acceptable.

Mr. Pyari Lal: I strongly object to this amendment. My Honourable friend is probably unaware of the state of things in this part of the country. There is a great deal of difference in the value of the houses situated in the civil area and those within the limits of a cantonment. There are different considerations altogether in judging both these cases. The considerations that apply in one case will not apply to the other. In cantonments, the site of the houses belongs to the Government. We are liable to be turned out at any moment. We do not consider it to be our property at all and therefore when we build houses we practically take a very serious risk and for that risk we are paid by way of compensation a higher rental value. In cantonments I know, for instance Ambala or Meerut, the annual rental value of the house is about 12 per cent. of the estimated market value, whereas in the city it is only 3 or 4. Persons who have spent Rs. 10,000 for their houses in the civil area get about Rs. 25 or 30 rent, whereas persons who have spent a similar amount on their houses in these cantonments get Rs. 100. Therefore to have any recourse for purposes of comparison to the houses in the city will not be advantageous to the house owners and therefore will never do.

Mr. W. M. Hussanally: Quite the reverse is the case in Karachi.*

Mr. Pyari Lal: My friend wants to change 'shall' into 'may'. He wants "to run with the hare and hunt with the hounds." In one case he wants a particular rental and in another case another rental. That will not do. There must be a uniform rate and I think the method of calculating the rent suggested in the Act as proposed is a very sound one.

Mr. E. Burdon: My Honourable friend, Mr. Pyari Lal, has, I am afraid, taken the words out of my mouth. If I have understood my Honourable friend Mr. Hussanally correctly and if I may speak colloquially, he wants "to have it both ways." If rents in the adjoining civil area are high, then rents in cantonments should be raised by an artificial process irrespective of natural causes. On the contrary if rents in the adjoining civil area are low, then those in cantonments should be maintained at their existing high level. I now wish to put the case, if I may, as I see it myself. Houses in cantonments only are to continue as in the past liable to appropriation for the use of military officers and it is

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only in houses in cantonments that military officers are permitted to live. They are not allowed the option of residing in any adjoining civil settlement. Now these facts have a necessary effect in determining the value of houses situated in cantonments and the value of houses in adjoining civil areas has nothing whatever to do with the matter. The criterion which my Honourable friend seeks to introduce for the purpose of fixing rents in cantonments would be clearly alien and inapposite. I do not think, however, that I need elaborate the argument. I have no doubt the House will appreciate the point I have put forward. With these remarks I oppose the amendment.

Mr. Chairman: The question is :

"That in clause 27 after the words and figure 'Section 7 and' the following be inserted :

'in places where are no populated civil areas adjoining cantonment areas', and that to clause 27 the following be added :

"Where, however, there are populated civil areas adjoining cantonment areas, the annual rent on cantonment buildings shall be fixed at such percentage on their market value as is for the time being recoverable by way of annual rent on the market value of similar houses in the adjoining civil area in the locality concerned."

The motion was negatived.

Mr. Pyari Lal: The amendment which I beg to move is, that to clause 27 the following proviso be added, namely.

"Provided that due allowance shall be made in respect of the cost to the lessee of maintaining the house in a state of reasonable repair during the period of the lease."

I am sure that this is an amendment that my Honourable friend Mr. Burdon will jump at and I propose it simply to show that when he has been just generous to us in the matter of the provisions of this House Accommodation Act we are equally prepared to meet him in the same fair minded attitude. Sir, this amendment can be inferred from the various portions of the Act. But I only introduce it to put the matter in plain words and beyond all doubt. In the Act itself it is provided that the house will be taken for five years certain, that in the beginning the repairs will be done at the expense of the owner, and for the period during the tenancy, the repairs will be done by the tenant, and in the matter of assessing rent we shall be allowed the same amount as to the other house-owners possessing similar houses in the cantonments. But we know as a matter of fact that other house-owners have to meet the cost of these repairs annually, so that the rent which they receive is minus the cost of these repairs. We want to put the Government tenant on the same footing as these other tenants. These tenants have not to bear the cost of repairs; and therefore I propose that this amendment might be accepted. Again, Sir, it might be said that in the matter of ordinary tenants there is generally no dispute about repairs. In the case of military officers there is always a great deal of heart-burning and trouble over the extent and the cost of these repairs. They generally are persons of dainty taste who want much more repairs than the house owners can afford, and more often than not, the whole of the rent hitherto, used to be absorbed in these repairs alone, and so the owners practically got nothing. So it might be objected that by the provision that I am now introducing the same state of things may recur. But I say, no. Mr. Burdon has been kind enough to define the phrase 'reasonable repairs'. Now

it can never be disputed. Clause 2, sub-clause (j) defines what the phrase 'reasonable repairs' means :

"A house is said to be in a state of reasonable repair when (i) all floors, walls, pillars and arches are sound and all roofs sound and watertight"—*there can be no dispute that this is just*—(ii) all doors and windows are intact, properly painted or oiled, and provided with proper locks or bolts or other secure fastenings—*again there can be no dispute*—(iii) all rooms, out-houses and other appurtenant buildings are properly colour-washed or whitewashed."

Beyond this, under this Act the Government cannot go, and therefore those former disputes are not likely to arise. I must, Sir, congratulate the Honourable Mover on his introducing into this Assembly a Bill of this just and generous character.

Mr. Chairman: You will have time to do that when the motion is made that the Bill be passed into Law.

Mr. Pyari Lal: I shall say one word, with your permission.

Mr. Chairman: Later on. Amendment moved :

"That to clause 27 the following proviso be added, namely :

'Provided that due allowance shall be made in respect of the cost to the lessee of maintaining the house in a state of reasonable repair during the period of the lease'."

Mr. E. Burdon: Sir, I gladly accept the amendment proposed by Mr. Pyari Lal. It is obvious that the Committee of Arbitration should not be entitled to include in the rent which they fix as payable to the owner the cost of repairs which are being directly and separately borne by Government. The omission was, I must acknowledge, due to an oversight, and I am much obliged to my Honourable friend for providing me with the means of remedying it. Sir, I accept the amendment.

Mr. Chairman: The amendment before the House is that to clause 27 the proviso which I have already read be added.

The motion was adopted.

Mr. Chairman: The question is that clause 27, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clauses 29, 30, 31 and 32, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Clauses 29, 30, 31 and 32 were added to the Bill.

Mr. Chairman: The question is that clause 33 stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clauses 34, 35 and 36, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clause 37 stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clause 38 stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clause 39, as amended by the Joint Committee, stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that this be the Schedule to the Bill.

The motion was adopted.

The Title and the Preamble were added to the Bill.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadian Rural): Sir, I should draw the Honourable Member's attention, before he moves that the Bill be passed, to an obvious omission in sub-clauses (i) (j) of clause 2—'a house is said to be in a state of reasonable repair when (i) all floors, walls, pillars and arches are sound and all roofs sound and water-tight'. But there is no mention of the word 'wind tight',—a house ought to be wind-tight,—it is a usual clause inserted in every lease. Supposing the roofs do not leak, but a storm blows into the house; I hope it will be remedied.

Mr. Chairman: Order, order. Mr. Burdon.

Mr. E. Burdon: I move that the Bill, as amended, be passed.

Mr. Pyari Lal: Sir, I consider that the provisions of this Bill have been conceived in a very just and generous manner. It has always been a sore point with cantonment house-owners that their houses were commandeered by military officers and they got no return for their money, and this has caused a great deal of trouble hitherto. But now everything has been put on a very satisfactory footing. Not only is the notice to appropriate a house, good enough, but against that very notice an appeal has been allowed, and that must give a great deal of satisfaction. Then again in the matter of repairs, the house-owner can have a Committee of Arbitration, and the constitution of the Committee of Arbitration leaves nothing to be desired. From a decision of the Committee of Arbitration—and this again is very good—a right of appeal to the Civil Court has been given, and we can go up to the District Judge. What more could a house-owner in a cantonment want? Then again on the question of rent also we are to get the same value for our money, to get the same rent, as house-owners of the neighbouring houses. Then in cases of dispute again there is the same Committee of Arbitration, and the same right of appeal. Sir, everywhere, all along the line, we have been treated most fairly, and for this our unbounded thanks are due to the Honourable Mover, Mr. Burdon, and I only hope that this Bill is but an earnest of what we expect from his generous nature in future in the way of cantonment reforms.

Mr. W. M. Hussanally: Sir, I associate myself with every word which has fallen from the lips of Mr. Pyari Lal regarding the Honourable Mr. Burdon.

Mr. E. Burdon: Sir, I should like very briefly to thank my Honourable friends for the kind things they have said about the Bill and about myself. But I think that it is only right to say that greater acknowledgments are due to my predecessor, who really laid the foundations of this piece of reforms, which I know has been very anxiously desired by the owners of houses in Cantonments.

Mr. Chairman: The question is :

"That the Bill further to amend the Cantonments (House-Accommodation) Act, 1902, as amended, be passed."

The motion was adopted.

THE COTTON TRANSPORT BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member):
I beg to move, Sir,

"That the Report of the Joint Committee on the Bill to provide for the restriction and control of the transport of cotton in certain circumstances, be taken into consideration."

Sir, this Bill has already been before the House on two occasions and on both of those occasions I have made a speech explaining the objects of the Bill. In the circumstances I do not propose to detain the House very long to-day. The Bill is a very modest measure. Some people indeed think it is too modest a measure. It is a very modest measure intended to give Local Governments, if they so desire, a remedy against a very real evil, namely, the evil of mixing cotton. As I have explained previously, this evil of mixing bids fair to ruin the reputation and, incidentally also, the price of some of India's best staples. I wish to emphasise the point that though this Bill is a modest Bill, yet it should assist Agricultural Departments in the very beneficent work they are now doing in improving and maintaining the quality of staple cottons in certain tracts. For instance, some Members of this House may have seen in the course of the last day or two an article in one of the Bombay papers. That paper draws attention to the fact that the work done by the Agricultural Department in Bombay in the Surat and Naysari tracts, which is one of the tracts I may mention about which the Bombay Government is most nervous, has resulted in giving the cotton of that tract a premium of Rs. 20 to 21 an acre over the cotton of the adjoining Broach tract. And the article goes on to say that there is a danger that, owing to this evil practice of mixing, the work which the Agricultural Department is doing in this respect may be entirely neutralized. Our Bill is an attempt to enable a Local Government, it is faced with a problem of that kind, to apply at any rate a partial remedy. I move, Sir, that the Bill be taken into consideration.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): I move, Sir:

"That the Bill be recommitted to the Joint Committee."

My object in moving this amendment is not in any way to deprecate the measure or to put any obstruction in its passage. But, Sir, I find that there are certain apparent defects in the Bill that has emerged from the Joint Committee which I think cannot be amended on the floor of this House. With this object, Sir, I move that the points which I will suggest later, be taken into consideration by the Joint Committee, to provide the necessary checks to safeguard the interests that may be concerned.

This Bill when circulated for public opinion had a mixed reception. Some approved of it while others deprecated it. On the one hand

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the Bombay millowners and the Bombay Chamber of Commerce welcomed it with open arms, and not content with that, they even took the Government to task for having delayed such a wholesome measure. On the other hand, the United Provinces and some people in the Central Provinces were not satisfied with the Bill, and they thought that it was not a good measure and disapproved of it. Other provinces were quite indifferent to the Bill; and generally the opinion was divided. Sir, the objects with which this Bill has been introduced are very wholesome and desirable no doubt. In the cotton trade there has been fraud and deception practised in the country, inferior cotton used to be mixed up with good cotton of reputation. But the measure which has been brought before us will create many other hardships and troubles against which it is necessary for us to provide safeguards. Many people think that this measure will not be able to check the deceit and fraud complained against while others think that it may hamper the internal trade of the country. Some people think that even the agriculturists, for whose benefit this measure has been introduced, will not welcome it as they will be hit hard by it. For instance, only yesterday one of my friends said to me—suppose a man were to cultivate long staple cotton in a particular area, a portion of which may not be fertile enough for that particular variety and hence yield an inferior variety, while another portion might yield a superior variety. How can that agriculturist distinguish between the two and separate them? There is also the objection, Sir, that the cotton growing area in certain provinces is very limited and scattered. From these scattered parts the cotton has to be transported to central localities where ginning factories are located. Some people suggest that the cotton could only be improved by improving the agricultural processes and by the Agricultural Department and the fraud could be checked by the agents of mill owners specially deputed for the purchase of superior cotton.

The first of the difficulties in this Bill, as will appear to Honourable Members, is that the Bill provides the railway staff with authority to prohibit the transportation of any cotton from a place to any place in a notified area. No doubt, as the Honourable Mr. Innes has pointed out, very extensive powers have been given to Local Governments to notify areas and to notify the variety of cotton that they may desire to prohibit or protect. But the power given under the Bill to the station staff is highly extensive and undesirable. We not only give power to the railway staff to stop transport of cotton, but we also give them power to discriminate as to whether the cotton handed to them for transport was or was not of a prohibited variety. For instance, suppose the Central Provinces Government notifies that the Berar or Akola area is a protected area. And that short staple cotton should be prohibited from entering or being sent to that area but long staple cotton to be a protected variety, and not be prohibited. They may do this to prevent the admixture of short staple cotton with the long staple cotton. I go with a bale of cotton having long staple and I give it over to the railway station master or to the goods clerk or any other railway officer authorised in this behalf to forward it to Berar area. I tell him 'Here is a bale of cotton, kindly forward it to Akola.' Under the provisions in clause 4 the station master, if he thinks that the variety of cotton contained in this bale is not of a variety that has been notified by the Government, as the protected variety of cotton, the result will be that that station master might stop the transport of that cotton

from the station. Here we give the authority to the station official to discriminate between different kinds of cotton. I may insist that the cotton was good long staple cotton which is protected and not prohibited. The station master may say 'It is a prohibited cotton and therefore I forbid it.' Moreover, Sir, he will be too prone to refuse the transport, where cotton is handed over to him outside the notified area. For instance, under a subsequent clause, Sir, we have also provided—probably in clause 6—a penalty that if a station master or station official were to allow the transport of prohibited cotton from being sent to a notified area that station master or that station official will be liable to a penalty under this Bill. Now, in this case, Sir, we provide a penalty that if he lets cotton to be transported he will be punished. At the same time, we do not provide a penalty that if the station master or the station official were wrongfully to refuse to receive or transport it to that area he will be punished. There is no provision to that effect. All this goes to show that the Bill, as it has been put before us, is a defective measure and is not quite a perfect one. All of us, Sir, are fully cognisant of the corruption that went on during the period of control when priority certificates were required to be obtained for goods wagons. Everyone of us knows what mischief the railway officials played in those days. Corruption was prevalent not only amongst small station staff, but even amongst some of the high officers of the railway company. I do not mean to say that all the high officials of the railway behaved in that way or were corrupt, but there were to be found some officials who were corrupt. When such a thing could happen at one time, where could there be safety or check at other times also for the non-recurrence of such a thing at the hands of petty station officials who are not much literate and who cannot have proper power of discrimination between long staple cotton and short staple cotton. I could very well have understood if any provision had been made in this Bill of giving such power only to some expert licensing authority or agricultural authority. But no such provision has been made. The Honourable Mr. Innes might say that the Local Governments may make rules in that respect, but I doubt whether the Local Governments can make rules for checking or controlling the station officials for abuses under clauses 4 and 5. And, Sir, I submit that the safeguards or checks that we might put by way of amendments may not be sufficiently proper safeguards. It has also been seen during the last two or three days that when an amendment is moved and if there is any slight mistake in it, we are taken to task and no such amendment can succeed. Under these circumstances, Sir, it will be very difficult for us to put in proper amendments. Moreover very few amendments have been notified in this Bill. I do not mean to say that amendments have not been notified because there are no objections or imperfections in the Bill. I shall be very much obliged if any Honourable Member can point out the safeguards that have been provided against wrongful actions on the part of the station officials in this Bill. I shall be very much obliged if any Honourable Member will point out the safeguards that have been provided against the transport of cotton by road or by way and the agency that has been provided for in this Bill. It might very well be said on behalf of the Government that this agency could very well be declared by the Local Government, but may I know where the funds will come from? No such source of revenue has been provided here, and therefore I submit that these imperfections could only be remedied if the Bill goes back again to the Joint Committee for amendments. With these words, Sir, I commend for the consideration of the House that the Bill be recommended to the Joint Committee.

.. **Mr. Chairman:** The original motion was :

" That the Report of the Joint Committee on the Bill to provide for the restriction and control of the transport of cotton in certain circumstances, be taken into consideration."

Since when an amendment has been moved :

" That the Bill be re-committed to the Select Committee."

Captain E. V. Sassoon (Bombay Millowners Association: Indian Commerce): Sir, the interests which I have the honour to represent have desired even stronger measures than those afforded by the Bill. But we accepted it as it stands as a step in the right direction. I confess, Sir, that I have been rather at a loss to understand some of the remarks that have fallen from the lips of the last speaker. He talks of growers who grow long staple and short staple cotton and he appears to think that this Bill would cause some grievance to these growers. I do not see anything in the Bill which prevents any person from exporting from his district long staple as well as short staple cotton. It merely prevents anybody from importing short staple cotton into a long staple district. As to the further point which the last speaker made as to the powers in the hands of the station staff, supposing that a consumer in a district wanted to import cotton and was in some doubt as to whether it would be accepted by the station master, his district being a notified area, there would be no difficulty for him to obtain a license as is available under this Bill. The moment he has got his license, the station staff have no power to withhold his right to import. He has, furthermore, the right under the license to import any sort of cotton that he may need for his particular purposes. He may need in a long staple area to import short staple cotton if he happens to have a mill there and under the safeguard, that is to say, by having a license, he is enabled to do this. I therefore fail to see any reason, Sir, why this Bill should be recommitted to the Joint Committee and on behalf of the interests, which I represent. I strongly support it.

Mr. B. H. R. Jatkari (Berar Representative): Sir, I rise to support the motion which has been made by Mr. Agnihotri. It is very necessary that the Bill as it stands should be improved further. From the opinions of the several Local Governments that have been received, it appears that the Bill as it stands, if passed, would be a dead letter and would not be availed of by many of the Local Governments. Mr. Agnihotri has only given the opinions of two of the Local Governments. If I read to the House the opinions of the other Local Governments, I can positively say that the majority of the Local Governments say that the Bill is either not necessary for their provinces or impracticable and unworkable. In the face of these opinions of the Local Governments should we consider and adopt a Bill which would be a dead letter soon after it is passed? Probably the Bombay Government alone is wholeheartedly in support of this measure. And I think to meet the wishes of only one province this Government should not adopt a Bill which will not be of any use to the other provinces. Moreover, the defects in the Bill have been pointed out by my Honourable friend, Mr. Agnihotri. I would add something more to what he has stated. Where is the classification of the variety of cotton which are to be protected? Is it to be left to the Local Government to specify the varieties of the cotton or is it to be left to the Station Masters to whom the goods are consigned to detect the variety of cotton that is being consigned. The Bill itself does not make any provision for the classification of the several varieties of cotton. The Indian Cotton Committee have specifically stated

that it should be the first concern to classify the varieties of cotton before any other thing is taken in hand. I therefore consider that classification is necessary whether in this or in any other Bill, because the present varieties of cotton are named after railway stations or after provinces. For instance, the House may be surprised to learn that the cotton which is known as Bengal cotton does not grow in Bengal at all. So I think it will be desirable to have the classification of the varieties of cotton before we give protection to any area for growing that sort of cotton. Moreover, the evil of mixture about which so much has been said is with the middlemen or the ginning and pressing factory owners. It has also been recommended that there should be some Act to provide for the licensing of ginning and pressing factories, and I think that legislation must also be considered along with this legislation, otherwise it would be of no use to pass this Bill without checking the malpractices in the ginning and pressing factories.

The last speaker pointed out that there is absolutely no hardship to the cotton growers, but I think there will be a hardship to them in this way. Suppose the Khandesh area is protected or the Berar area is protected for certain varieties of cotton. Up to now the cotton growers take their cotton carts from one province to another, and he has only to cross the border to take it to the nearest cotton market, but if you give protection to any such area, it will certainly cause hardship to the cotton growers in the adjoining area.

Moreover, in the definition of 'cotton,' cotton seed has been included. Cotton seed if restricted wholesale would cause very great hardship to the public. One of the Local Governments,—I believe the Government of the United Provinces—has stated that cotton seed should be excluded. There is also this difficulty. Where cotton seed is imported for sowing purposes it must be restricted, no doubt, but the wholesale restriction of importing cotton seed which is meant for oil or to be used as food for cattle would be a great hardship to this province or that province, because it would be very difficult to detect what cotton seed is imported for food, for cattle or for seed.

One of the provinces has also condemned the wording of section 4 because it gives too much discretion to railway officers and I do not know how it can be removed by an amendment here or an amendment there. For this purpose, therefore, it would be necessary to recommit the whole Bill to the Joint Committee once again. The Joint Committee that was appointed consisted of 10 members, and the House will be surprised to know that 5 members had not taken part in the deliberations of the Committee at all, and out of the 5 members who have taken part, three represent Bombay. Of course I have nothing to say personally against any one of them, but I submit that all the provinces were not represented on this Joint Committee and the advantage of their experience has not been taken in regard to this Bill. With these remarks, Sir, I support the motion before the House.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I oppose the amendment. I believe both my friends Mr. Agnihotri and Mr. Jatkar have entirely misconceived the object of the Bill. I do not think the Bill, as it has emerged from the Select Committee, is so radically defective as to deserve a recommitment to a Joint Committee. Mr. Agnihotri spoke about the safeguards which he wanted. May I point out to him an unusually good safeguard which this Bill introduces, namely, the safeguard under clause 8? That is the best safeguard which I can think of. "No notification under section 8 or rule under section 7 shall be issued by the

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Local Government of any Governor's province, unless it has been laid in draft before the Legislative Council of the Province, and has been approved by a Resolution of the Legislative Council, either with or without modification or addition, etc." I think, Sir, this is a safeguard which we ought to value. No Local Government under this Act will be in a position to issue any notification restricting the transport of cotton unless the Members of the Local Legislative Council get an opportunity to see the draft.

Mr. Jatkar spoke about the classification of cotton, and he thought that every Station Master on every railway should be conversant or should be made conversant by rules or by the Act with all the thousand and one varieties of cotton in the country. I believe, Sir, it is a task so stupendous that no Act or Railway Administration can ever hope to accomplish. All these things could be done with reference to specific tracts of the country only by the Local Government of the province, by special notifications and with the consent of the Legislative Council of the province concerned. That is, I believe, the safest safeguard which one can think of.

Then again Mr. Agnihotri seemed to labour under another misapprehension. He seemed to think that under clause 4 of this Bill the whole responsibility of determining the quality of cotton is thrown on Station Masters. Sir, the Bill attempts to do nothing of that sort. The only duty of the Station Master under this Bill will be to ask for a licence from the consignor. If the consignor is honest enough, he will be able to produce his licence, and I don't think Mr. Agnihotri is against the principle of licensing. At the beginning of his speech he admitted that the objects of the Bill were good. He also admitted that the transport of cotton ought to be checked. He also admitted that it could be checked only under a system of licences. All these three premises being granted, I believe it follows that somebody must issue licences, and the duty thrown on the station master is only to see that the consignor has got a licence in his hands. The terms and conditions of the licence will be determined by the Local Government and placed in draft before the Legislative Council, so that every condition in the licence, the very form of the licence, will be shown to Members of the Legislative Council. I believe that is a pretty good safeguard.

Then Mr. Jatkar spoke about the growers' inconveniences and hardships. I do not know where the hardships for the grower comes in. The Bill does not check the cultivators from growing any particular variety of cotton. They can sow in their fields, even side by side, and acre by acre, any class or variety of cotton. The only attempt which the Bill makes is to prevent smuggling under a false name and consigning under false pretences. I believe, Sir, cotton, especially when it is exported, is getting a bad name if the whole cotton is mixed up and adulterated with different varieties. What we want to save is the name of Indian cotton, particularly in foreign countries so that we may get a good price for it. Secondly there is often adulteration in the cotton seed which the cultivator gets. Cotton is mixed in ginning and pressing factories under this process of smuggling. The seed which the cultivator sows in the fields is after all not pure, good seed of a good quality but it is mixed seed which comes from ginning factories, and therefore the crops which he realises are never pure, unadulterated cotton which he exports, with the result that he suffers by this process of mixing of seed. It is therefore to his interest to pass the Bill. I do not think anything would be gained by recommitting this Bill to the Joint Committee, and, if at all my friend Mr. Agnihotri thought that there were

serious difficulties in the Bill, he could have sent in any number of amendments. I see, however, that there are only two or three amendments in his name showing that either he or his friends had very little else to suggest to improve the Bill, and from this very fact I think we can take it for granted that nothing can be gained by recommitting it to the Joint Committee.

The Honourable Mr. C. A. Innes: I desire, Sir, to add a few words in support of what my friend, Mr. Karnat, has said. I wish to make this point. Mr. Agnihotri and Mr. Jatkar in their speeches both attack what I might call the whole scheme and the whole principle of the Bill. It is no use sending points like that to a Select Committee. A Select Committee must work upon the assumption that the scheme of the Bill, the general principle of the Bill, has been accepted by the House. A Joint Committee could not alter materially our clauses (4) and (5). They could not deprive the station master of the power we give him to refuse a consignment of cotton unless it is accompanied by a licence without altering the whole scheme of the Bill. A point of that kind, Sir, is a point which has to be decided by the whole House. This is a Bill of only 7 clauses. It is not a very difficult Bill to understand and I think, Sir, that this House is quite competent to deal with the points raised by Mr. Agnihotri.

I desire to make just one other point. Mr. Jatkar pointed to the fact that 3 out of the 4 non-official members of the Select Committee had come from Bombay. He suggested that the Bill had been drawn up in the interests of the Bombay cotton trade and the Bombay mill owners. Now, Sir, that is entirely untrue. This Bill is intended largely for the benefit of the growers. Does Mr. Jatkar realise what are the evils that we are trying to meet? One of the evils is the dishonest middleman. He rails cotton from a short staple tract to a station inside a well known long staple tract. He thereby gets on his bale the station mark of the long staple tract. He thereby gets a better price for his cotton, but in the process he helps to destroy the reputation of the cotton in that long staple tract. Again, cotton from a short staple tract is railed to a long staple tract and is there mixed with cotton of the superior variety. Again, it is fraud pure and simple and again it is the cultivator that suffers. And finally, and this is the worst of all, you get unginned cotton railed from a short staple tract to a long staple tract. The cotton is ginned in the long staple tract. It is mixed with the long staple cotton and gets the higher price. Again, it is fraud. And the seed is used for sowing in the long stapled tract. Thus you set up a process of deterioration in the whole of the cotton of that tract which it may take years to arrest. I say without fear of contradiction that the purpose and object of this Bill is to maintain the reputation of our best cottons in India. It is a Bill which offers Local Governments a remedy if they desire to use it and it is for each Local Government and local Council to decide whether they will apply the remedy which we offer them. But let no one in this House say that we are here introducing a Bill against the interests of the cultivator and solely in the interests of the trade, for it is not true. I submit, Sir, that this amendment should not be accepted.

Mr. Chairman: Amendment moved:

"That the Bill be re-committed to the Select Committee."

The question is that that amendment be made.

The motion was negatived.

Clauses 1, 2 and 3, as amended by the Joint Committee, were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That to sub-clause (1) of clause 4 the following proviso be added:

'Provided that the railway officials so refusing shall without any unreasonable delay inform the consignor and the authority entitled to grant a licence for transport, the fact of such a refusal and shall carry out the order that the licensing authority may pass directing him to so receive for carriage or to so forward, or allow the cotton to be so carried.'

Sir, in clause 4 of the Bill we read:

"the station master of any railway station or any other railway servant responsible for the booking of goods or parcels at that station may refuse to receive for carriage at, or to forward or allow to be carried on the railway from, that station any cotton consigned to a notified station, being cotton of a kind of which delivery at such notified station has been prohibited, unless both stations are in the same protected area, or unless the consignor produces a certified copy of a licence for the import of the cotton into the protected area in which such notified station is situated."

Sir, as will appear from what I have read out, the station master or a railway official can refuse to receive or to transport the cotton consigned to any notified area, if it is cotton of a kind of which the delivery at such notified station has been prohibited. Sir, when I moved my amendment for the recommitment of the Bill to the Select Committee, the Honourable Mr. Sassoon and the Honourable Mr. Kamat were pleased to say that the licence would have to be produced before the station master and on seeing that licence the consignment would be received or transported. But, Sir, on reading this clause, I find that the cotton that has been prohibited from being sent to a notified area requires a licence, but for cotton of a variety that has not been prohibited from being transported to that area no licence is necessary. And so the difficulty would come in where any consignment of the variety of cotton that is not prohibited from being sent to that particular area, is tendered to the railway official for transport. In that case the official may be pleased to say that in his opinion the cotton tendered to him was of a different variety or of the prohibited variety, and he may refuse to receive it for transport. This point was not cleared up by any of my Honourable friends who opposed that motion. Neither was this point touched by the Honourable the Commerce Member. If we say that the licence could be applied for and was required even for such a variety of cotton, then there will be another difficulty. Every place is not expected to have a licensing authority. It is only big places or the large trade centres that may be the headquarters of the licensing authority and the dealer, the trader or the agriculturist or the cotton grower, who wants to transport that cotton, shall have to go to that licensing authority, and shall have to request him to have an inspection of the variety of cotton that he wants to transport and to give him a licence and only when he is able to satisfy the licensing authority he would be entitled to transport that cotton to such a station in a notified area but not otherwise. This will necessarily involve much inconvenience and trouble to the dealers. The Honourable Mr. Innes said that I objected to the principle of the Bill. Not in the least: far from it. I do welcome the principle on which this Bill has been based and, if I had any objection to the principle of the Bill, I would not have requested for its recommitment to the Select Committee but I would have opposed it outright. If my interpretation of this section is correct, the station master has to discriminate and find out for himself and to judge whether or not the consignment of cotton that is produced before him is one of the prohibited varieties. The consignor comes and says, "This is not of the prohibited variety" while

the station master says, "This is of the prohibited variety and I refuse to receive it." Where is the remedy? My friend Mr. Kamat said that he should obtain a licence and then produce it. But if he thinks that it is of a variety which is not prohibited, where is the necessity for a licence? If he goes to the licensing authority, that officer will say, "Well, I am only required to grant a licence for such varieties of cotton that may be prohibited from going into a particular notified area." Therefore, I submit, Sir, that this state of things will lead to real hardship to agriculturists and to persons who may have occasion to consign goods at wayside stations. With this view, Sir, I propose a safeguard in the form of a proviso to clause 4. I am conscious of my weakness in the English language, and it is just possible that my amendment may not be in a proper form or be properly worded. But my sole object is that there should be a check, a safeguard, over the station official when he refuses to receive or to transport a consignment of cotton, and that that safeguard should be provided in the Bill. That is my object, and with that object I move the amendment that in case the station official refuses to receive such consignment, he should inform the consignor and at the same time he should send an intimation to the licensing authority, if any, appointed within the area and that such licensing authority's orders shall be final in that respect, and that if the licensing authority issues a licence to him or advises the station master to transport that cotton, then the station master should obey him. That is the proviso which I wish to put in. With these words, Sir, I put my amendment before the House for consideration.

The Honourable Mr. C. A. Innes: Sir, Mr. Agnihotri has so completely misapprehended the scope of this clause that I find it rather difficult to answer him. Mr. Agnihotri appears to be under the impression that certain varieties of cotton will be allowed to be imported into a prohibited area and that other varieties will not be so allowed, and that it will rest with the unfortunate station master to decide whether any particular consignment which is offered to him for carriage belongs to the prohibited or to the non-prohibited variety. Let me assure Mr. Agnihotri that we intend no such thing. We have defined "cotton" in clause 2 (c) as meaning every kind of unmanufactured cotton; that is, ginned and unginned cotton, cotton waste and cotton seed. We have adopted that particular form of definition in order in clause 3 to allow a Local Government to exercise its discrimination whether it should prohibit the import into the notified area of every kind or only of one kind of cotton. The Local Government may say that in a particular season, they will allow cotton seed to come in without any restriction, or they may allow cotton waste which may be required for some particular purpose. But the Local Government will not say that particular varieties of cotton may come in under licence and other varieties may not. We recognise that in these notified areas there may be mills which may require for perfectly legitimate purposes cotton from outside. What will happen then is that the Local Government will issue through a licensing authority a licence to that mill to import so much cotton into that area. (Mr. K. B. L. Agnihotri: "Any kind of cotton"?) Yes, every kind of cotton. When the cotton comes before the station master of the consigning station, the only obligation that we lay upon him is to see whether or not that particular consignment is covered by a proper licence from the licensing authority. The station master will have no other duty than to see whether or not the consignment is covered by a licence. He will have nothing to do with the variety of the cotton or anything of that kind. His duty is perfectly clear. And the reason why we have had to

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put in this clause is this. Under the Railways Act, every railway administration is required to provide reasonable facilities for the transport and carriage of goods. The railway administrations are not entitled to refuse to receive goods for carriage unless they are particularly dangerous goods in which case they may receive it on conditions. But ordinarily, a general carrier like a railway administration must receive the goods, and that is why we propose to empower the station master to refuse to receive cotton for consignment to a notified area except when there is a licence. We must make provision for that in this Bill and that is why we have put in the words "Notwithstanding anything contained in the Indian Railways Act." Now this amendment suggests that if the railway official refuses to receive cotton which is not covered by a licence, and which it is proposed to send to a notified area, he should at once without delay inform the consignor of the fact. There is no need to provide anything of that kind. What happens when you take goods to a railway station? You tender it. If it is refused, you are told on the nail why it has been refused. Moreover, in all these cases when a notification has been issued by the Local Government, that notification will be communicated to the railway administrations and posted up in all goods sheds. Then it is suggested that the station master must inform the licensing authority, in order presumably, that the licensing authority may issue a licence if he so thinks fit. That is not the job of the station master. That is for the person who wishes to consign cotton. If he has got any particular reason why he wants cotton to get into a particular area, it is for him to go to the licensing authority in that area and get the necessary licence. I do not see that there is the slightest necessity for making the amendment suggested by Mr. Agnihotri. As I have pointed out, Mr. Agnihotri has entirely misapprehended the whole scope of this clause. I oppose the amendment.

Mr. K. B. L. Agnihotri: Then may I know why you have inserted the words 'being cotton of a kind of which the delivery at such notified station has been prohibited'? If you were to omit these words, then the interpretation which you suggest will be correct. But so long as you retain those words, you give the station master discretion to find out whether the cotton is of that variety or not.

The Honourable Mr. C. A. Innes: It is explained by clause 8 of the Bill.

Mr. Chairman: The amendment before the House is:

"That to sub-clause (1) of clause 4 the following proviso be added:

'Provided that the railway officials on refusing, shall without any unreasonable delay inform the consignor and the authority entitled to grant a license for transport, the fact of such a refusal and shall carry out the order that the licensing authority may pass directing him to so receive for carriage or to so forward, or allow the cotton to be so carried.'

The question is that that amendment be made.

The motion was negatived.

Mr. Chairman: The question is that clause 4, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, my second amendment is similar to the one that I moved before. The Honourable Mr. Innes was pleased to point out in answer to my amendment dealing with the necessity for information

to the consignor that the consignor was informed at the moment his consignment was refused and not booked. But the Honourable Mr. Innes I regret to say has not seen to this that there are three stages when the consignment could be refused. The station-master may refuse to receive or to forward or to allow it to be transported. He may receive it and may subsequently disallow its transport. It may happen like that, and therefore such information was necessary, but as the clause is thrown out, I need not say anything further. I beg to move:

"That in clause 5 the following proviso be added:

'Provided that the railway officials so refusing the delivery of the cotton shall, without any unreasonable delay, give an intimation of such refusal to the consignee and the authority entitled to grant a licence for transport and shall not return the cotton but will give delivery to the consignee if so ordered by the licensing authority.'

The Honourable Mr. Innes has pointed out that I am under a misapprehension as to the railway station official's right to judge or find out for himself the quality or variety of cotton consigned, but he has done me an injustice in not looking to the subsequent insertion made by the Joint Committee and to its effect on clause 4 and to its effect on the whole of clause 5. If the insertions had not been made, the station official would have on non-production of the licence been simply entitled to refuse the delivery or refuse to receive for transport, as the clause in the Bill had a provision that unless both the stations be in the notified area or the consignor produced a licence, the railway official could refuse. He could have done that even before, but by this insertion you do give him further power to discriminate and find out for himself the variety of cotton consigned. The moment the Local Government notifies that a particular variety of cotton is prohibited from being sent or transported to a particular area, it will certainly mean according to my interpretation that he shall certainly be justified in making that discrimination and finding out for himself whether or not that particular variety of cotton has been prohibited. In the subsequent amendment that I put before the House I provide that if the delivery has been refused, the consignment should not, *ipso facto*, be returned to the station from which it had been received but the station official should inform the licensing authority and the consignee also in order to enable them to take such steps that they may be pleased to take in order to have the delivery made. With these words, I commend my amendment again for the consideration of the House. It will be very hard for the consignee to have the goods transported back to station from which they emanated even though, in the meantime, he may be taking steps for obtaining a licence from the licensing authority. Therefore, it is necessary that the consignee should be intimated and at the same time the licensing authority should also be intimated of the refusal of delivery of such consignment to the consignee. With these few words I move my amendment.

The Honourable Mr. C. A. Innes: Sir, Mr. Agnihotri spent the greater part of his speech not in dealing with the amendment to clause 5 but in expressing his dissatisfaction at the rate of his amendment to clause 4. In the circumstances, perhaps, I need not speak at any great length upon the amendment to clause 5.

I should like the House to consider what the objects of this Bill are. They are, as I have said, to stop a real danger to our cotton in India, a danger which is based upon a fraudulent practice. We have been accused in this Bill of not going far enough. The Bill is an experimental Bill and

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we have deliberately made the penalty as light as possible. There is no penalty at all upon station master who forwards cotton not covered by a licence. But a statutory obligation is placed upon the station master of the receiving station. All that he is required to do is to return the cotton. Surely, we could not have a Bill which is much more lenient than that. But Mr. Agnihotri wishes to destroy the effect of even the modest measure which we propose. He wishes the station master to delay and to inform the consignee and to give him a chance of obtaining a licence. Surely, that is unnecessary. The cotton will have to wait for 14 days. The consignee, if he is an honest consignee or if his licence is wrong, will have that period in which to appeal to the licensing authority. But I wish again to say that it is not the business of the station master to have any concern at all with the licensing authority. The duty laid upon him is perfectly clear. It is to see whether or not a particular consignment is covered by a licence. Sir, I hope that the House will not accept this amendment.

The motion was negatived.

Clause 5, as amended by the Joint Committee, was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move an amendment to clause 6 which is to this effect:

"After the words and figure 'sub-section (1)' the words and figure 'of section 4 and' be inserted."

Clause 6 provides for penalties for the import of prohibited cotton. It also provides that if any station master allows delivery of cotton in a notified area, of a variety which has been prohibited by the Local Government, that station official is liable to a penalty under clause 6. I regret to say that I have not yet been convinced that clause 4 does not serve. . . (Laughter) I beg to revert to clause 4 because I move an amendment for the inclusion of that clause in clause 6, and with that view I am constrained to make a comment on the wording of clause 4 again. If the insertion printed in italics in that clause had not been made, clause 4 would have had the same interpretation as has been given by the Honourable Mr. Innes, but by that insertion, I am still of the same opinion, that you authorise the station officials to discriminate the variety which has been prohibited from the variety permitted by the Local Government. If my interpretation is correct, in that case I submit that the insertion of sub-clause (1) of clause 4 is absolutely necessary in clause 6 also. If the station master wrongly or maliciously refuses the transport of cotton or does not allow the cotton other than the prohibited variety to be transported from his station to a station in the notified area he should be made equally liable to the penalty as has been provided for in the case of his giving delivery of the prohibited cotton within the notified area. Therefore I submit that the penalty should also be provided against a station master wrongfully refusing to receive the cotton or to transport it to a station in the notified area. This will provide a check on the railway official who would otherwise be prompt in refusing until he is bribed or satisfied otherwise, and this will lead to much corruption and obstruction of trade.

Mr. Chairman: You are moving all the clauses (a), (b) and (c). Otherwise it will be meaningless.

Mr. K. B. L. Agnihotri: It comes to the same thing. If (a) fails then the others go.

Mr. Chairman: Then they have been moved together.

Mr. K. B. L. Agnihotri: You may take it that way, Sir.

The Honourable Mr. C. A. Innes: I have some difficulty in understanding what is intended by this amendment. Mr. Agnihotri is still harping upon the failure of his amendment to clause 4 and apparently he wishes by this amendment to clause 6 in some way to achieve the object he had in view when he proposed his amendment to clause 4. Shall I be in order in again explaining away his difficulty in regard to clause 4.

Mr. Chairman: That is not necessary.

The Honourable Mr. C. A. Innes: At any rate his amendment to clause 6 is as follows. He wants in clause 6 to introduce a penalty for a station master who refuses to forward cotton. That is not within the scope of this Bill. As I have explained we are placing in this Bill a statutory obligation upon a station master at a receiving station to refuse the delivery of the cotton unless that cotton is covered by a licence. Naturally when we place a statutory obligation upon an officer or upon a person we provide a penalty for that person. Mr. Agnihotri wants us now to revert to clause 4 and wants us to provide that a station master who refuses to forward cotton improperly should also be penalised. Mr. Agnihotri however has not realised that matters of this kind should be dealt with by an amendment of the Railways Act or of the Carriers Act. I am not quite sure which it is. It is under these Acts that Railway Administrations have to provide reasonable facilities and if any penalty is to be provided when those facilities have been withheld improperly by a station master, it should be provided by an amendment of these Acts and not by introducing entirely unnecessary sentences into a clause of this Bill which is intended for an entirely different purpose.

Mr. Chairman: The motion before the House is—

That in clause 6:

- (a) after the words and figure 'subsection (1)' the words and figure 'of section 4' and 'be inserted;
- (b) after the words 'upon him' the words 'refuses to receive, forward or allow to be carried, or returns or' be inserted;
- (c) after the words 'other person' the words 'fails to carry out the order of the licensing authority' be inserted."

The motion was negatived.

Mr. Chairman: The question is that clause 6, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clauses 7 and 8, as amended by the Joint Committee, do stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clause 9, the Title of the Bill, and the Preamble of the Bill do stand part of the Bill.

The motion was adopted.

The Honourable Mr. C. A. Innes: Sir, I move that the Bill, as amended, be passed.

Mr. Chairman: The question is that the Bill to provide for the restriction and control of the transport of cotton in certain circumstances, as amended, be passed.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 31st January, 1923.

LEGISLATIVE ASSEMBLY.

Wednesday, 31st January, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

MESSAGE FROM THE GOVERNOR GENERAL.

Mr. President: I have received the following Message from His Excellency the Governor General:

'For the purpose of sub-section (1) of section 67A of the Government of India Act, and in pursuance of rules 43, 46 and 47 of the Indian Legislative Rules and of Standing Order 70 of the Council of State Standing Orders, I, Rains Daniel, Earl of Rothesay, hereby appoint the following days for the presentation to the Council of State and to the Legislative Assembly of the statement of the estimated annual expenditure and revenue of the Governor General in Council (in the said Rules and Standing Order referred to as the Budget) and for the subsequent stages of the said Budget in the Council of State and in the Legislative Assembly, namely:

Thursday, March the 1st, Presentation of the Budget in both Chambers.

Monday and Tuesday, March 5th and 6th, General discussion in the Legislative Assembly.

Wednesday, March 7th, General discussion in the Council of State.

Monday to Saturday, March the 12th to 17th, Voting of demands for grants in the Legislative Assembly.

*(Signed) READING,
Governor General.'*

GIFT OF BOOKS BY SIR WILLIAM GEARY BAR

Mr. President: I have further to acquaint the Assembly that through the generosity of an English gentleman interested in the welfare of the Indian Legislature, namely, Sir William Geary, Bart., the Library of the Indian Legislature now possesses some interesting Parliamentary records of English history. These records are mainly in the form of Reports of the Proceedings of the House of Commons, and in some cases also of the House of Lords, during the 17th and 18th Centuries. They have an historical interest of their own, and they form the foundation of the procedure which we ourselves are engaged in practising from day to day within these walls. I am sure I shall be voicing the unanimous feeling of the Assembly if I transmit to Sir William Geary, the donor of these volumes, our very cordial thanks for this substantial pledge of his interest in the welfare of the Indian Legislature. (Cheers.)

THE INDIAN NAVAL ARMAMENT BILL.

Mr. E. Burdon (Army Secretary): Sir, I move:

"That the Bill to give effect in British India to the Treaty for the limitation of Naval Armament be taken into consideration."

When I introduced the Bill in this Assembly last September I explained briefly its purpose and significance. The legislation contemplated arises out of the Treaty for the limitation of Naval Armament signed at Washington on behalf of His Majesty, the King, and certain other Powers on the 6th February 1922, the object of the Treaty being to contribute to the maintenance of the general peace and to reduce the burden of competition in armament. The Bill requires no further justification or explanation from me.

Mr. President: The question is:

"That the Bill to give effect in British India to the Treaty for the limitation of Naval Armament be taken into consideration."

The motion was adopted.

Mr. President: Clause 1. The question is that this clause stand part of the Bill.

The motion was adopted.

Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14. The question is that these clauses stand part of the Bill.

The motion was adopted.

Mr. President: The question is that this be the Schedule to the Bill.

The motion was adopted.

Mr. President: The question is that this be the Title and the Preamble of the Bill.

The motion was adopted.

Mr. E. Burdon: Sir, I move that the Bill be passed.

Mr. President: The question is:

"That the Bill to give effect in British India to the Treaty for the limitation of Naval Armament be passed."

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now resume consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

On the last occasion when the proceedings were interrupted the Assembly was engaged in the consideration of the amendment by Mr. Agnihotri to the effect that in clause 33, in the proviso to sub-section (1), insert the words 'allow inspection to the accused and'.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I think it is advisable in the first instance to endeavour to remove the misapprehensions which have been disclosed in the debate which has already proceeded

on this amendment. Clause 33 proposes to substitute a new sub-section for sub-section (1) of section 162. That, Sir, is one of the most important sections in the Code of Criminal Procedure, not only from the point of view of the investigation of offences but also from the point of view of the proper prosecution of offences, particularly, if I may say so, in our Magistrates' Courts. Now, Sir, in the course of the debate, my Honourable friend, Dr. Gour, said that "under the Code copies of these statements were furnished to the accused. Later on in the consolidating Act this proviso was modified and found its place as it does in the current Code of Criminal Procedure." He was referring, Sir, to the Code of 1882. Section 162 in that Code ran as follows:

"No statement, other than a dying declaration, made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced to writing, be signed by the person making it or be used as evidence against the accused."

I am aware, Sir, of the different rulings under that section, but it is clear that Dr. Gour was not quite correct in suggesting that it expressly gave the accused the right to obtain copies of these statements. That section was replaced by section 162 of the present Code, and we are dealing now with the proviso inserted by the Lowndes Committee in lieu of the proviso to sub-section (1) of that section. That proviso, Sir, introduces a difference in the ordinary rule of evidence regarding the use of previous statements made by witnesses. Generally speaking, they may be used not only for corroborating the evidence of witnesses in Court but for discrediting the evidence. The proviso in the Code of 1898 and the proviso in the clause as drafted by Sir George Lowndes' Committee restricts the use of these statements to the purpose of impeaching the credit of a witness produced for the prosecution. I want also, Sir, to impress upon the House that we are dealing here with statements recorded by a police officer. We are not dealing with the police diary. Police diaries are dealt with under section 172, and in the police diary the police officer day by day enters his proceedings, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and the statement of the circumstances ascertained through his investigation. That, Sir, is a different thing entirely to the statements which we are now dealing with. In the police diary there may be the purport of the statement of a witness to the police, but the record of the statement will not usually, or ought not to, be contained in the diary. Now, under the proviso it will be seen that the court is required on the request of the accused person to refer to such writing and may then, if the court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof. The Honourable Mover of the amendment wishes to make it compulsory on the part of the court to allow to the accused person inspection of the statements in all cases. What were the arguments used in support of this amendment? In the first place my Honourable friend Mr. Agnihotri said, referring to the time when the accused was brought up for trial: "It therefore generally happens that though the accused knows nothing about the statements, still he requests the court to go through them to find out if there are any contradictions, and the Magistrate has therefore to waste his time unnecessarily." The whole ground, therefore, of his amendment, as stated by him, was that the present procedure involves a waste of time. I submit, Sir, that in the circumstances of India, in view of the prosecuting agency which is usually available to our Magistrates, it is most necessary that the Magistrate should refer to these statements. It is his duty to do so; that is the only way in which he can

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find out what the witness is able to testify to, and it is the only way in which he can be sure that he is conducting the trial properly. I think, therefore, Sir, that we may at once neglect this argument.

My Honourable friend Sir Henry Stanyon stated that he did not remember one single instance in seven years' work as a Divisional Sessions Judge in which he was ever asked to delay the trial so that copies of these statements might be prepared and handed over to the accused. As regards that suggestion, Sir, I will merely remark that in my own experience I have used the provisions of the proviso and I am sure that that must be the experience of other persons in this Assembly who have experience as Magistrates or as Sessions Judges.

I turn now, Sir, to the objection raised by my Honourable and learned friend Dr. Gour. He says, "Ever since this proviso was inserted I have had numerous cases in which I have asked the Judge or the Magistrate, as the case may be, to refer to the statements of witnesses made before the police. He has looked at it and he says to me, 'I have referred to it' and thus complied with the provisions of this proviso; but I was none the wiser by the Judge's reference to the police diary and the result was that I was not able to cross-examine witnesses with reference to the previous contradictory statements which in the appellate court were a revelation to me." Well, Sir, that is an entirely different question and I propose to return to that later. We must remember, as I have said already, that we have here a **modification of the ordinary rule of evidence as to the use of previous statements**, and I submit, Sir, that it is impossible for us to provide in the Code that it shall be compulsory on the part of the Magistrate to allow to the accused person inspection of these documents in every case. Let us refer, Sir, to the remarks in the report of the Select Committee on the present section 162—I mean the Select Committee which sat on the Code of Criminal Procedure Bill which became the present Code of 1898. They said:

"In the first place, it is essential in the interests of public justice that the sources of police information should be kept secret. If the names of informers or detectives and the nature of their information be disclosed the detection of crime would be seriously crippled."

Well, Sir, does this Assembly wish to cripple the detection of crime? I am sure that the answer is 'No.' But if this amendment in the form in which it has been moved is carried, I submit that we shall be going a long way towards crippling the detection of crime. These statements, Sir, are the statements of a witness; a portion of them may be of use to the accused, it may be in the interests of justice that he should see them in order to be able to discredit the statements made by the witness in the court afterwards. But, Sir, they may contain all sorts of other information. Why do we have that provision in section 125 of the Indian Evidence Act which says that:

"No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence."

The sources of police information may well, Sir, be contained within the four corners of these statements, and we cannot therefore amend the Code so as to require that in all cases the accused person shall be able to inspect these statements. I agree, Sir, that in cases such as those referred to by

Dr. Gour the intention of the present provision in the Code is that, if it is in the interests of justice that the accused should be supplied with a copy, and unless there is some paramount reason against this course being taken, the court ought to supply a copy of the statement. I hope that most Courts would do that at the present time without requiring any amendment of the provisions in the proviso. But in order to meet the wishes of the Mover of this amendment and of those who supported him, I would suggest that in lieu of the present amendment the following amendment should be made, *viz.*,

"That in clause 33 in the proviso of the proposed new sub-section (1) of section 162 for the words beginning with 'may then' and ending with 'in order that any part of such statement,' the following be substituted, namely:

'shall then direct that the accused be furnished with a copy of such part, if any, of the statement as the Court thinks it expedient to furnish in the interests of justice in order that such part '

and so on. (*Dr. H. S. Gour*: "That is no good at all.") I will read out the proviso as it will stand:

"Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall, on the request of the accused, refer to such writing and shall then direct that the accused be furnished with a copy of such part, if any, of the statement as the Court thinks it expedient to furnish in the interests of justice in order that such part may be used to contradict such witness in the manner provided"

(*Dr. Nand Lal*: "I do not think it will serve the purpose.") That, Sir, meets entirely any substance that there is in the arguments which have been adduced in favour of the amendment now before this House. We must, Sir, retain for the Court the power of deciding. It is impossible, Sir, for us to provide in the Code that these statements shall in any case be given over to the accused. That would be the result of the amendment proposed. As soon as any witness appears the accused will ask the Court to refer to the statement. It will be the normal course; it will be done every time, and then the Court is bound to hand it over. That, Sir, I submit, would entirely cripple the detection of crime in this country. (*Voices*: "How?") because as I have said already these statements not only contain statements which may be of value to the accused person but they will also contain all sorts of other information. (*Dr. H. S. Gour*: "That is part of the case diary.") (*Dr. Nand Lal*: "Confidential reports are quite separate.") Before I sit down, Sir, I would like to refer to another point. It will be remembered that in the course of the discussion of Mr. Pantulu's amendment on the first part of section 162, an arrangement was come to between the Honourable Members opposite and the Members on this Bench. The amendment moved by my Honourable friend Mr. Pantulu was for the substitution of the words "as evidence" for the words "for any purpose". We, on this Bench, were prepared to accept that amendment, but at the instance of Honourable Members opposite, we decided not to vote for it, because they agreed that when discussing section 172 later we should provide in it for the use of these statements in the same way as the diary may be used to assist the Court in its inquiry. The Court, Sir, must be able to use these statements to this extent; otherwise, what, Sir, is the use of the police officer recording these statements? It will be of no value at all if it cannot be used for any purpose in the inquiry or trial of the offence which is then being investigated. This, Sir, is not a new amendment at all. It follows definitely from the discussion of Mr. Pantulu's amendment, and after the amendment which I have just

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moved has been put to the House, I should propose, with your permission, Sir, the following amendment also:

"That in clause 33 to the proposed new sub-section (1) of section 162 the following proviso be added, namely:

"Provided further that the Court may in the course of the inquiry or trial send for the record of any such statement and may use such statement not as evidence in the case but to aid it in the inquiry or trial."

We propose, Sir, that this should be included in section 162 rather than in section 172 which was suggested by my Honourable friend, Mr. Seshagiri Ayyar, because section 172 refers to the diary, and this section, which refers to the recorded statements taken down by a police officer is the proper section in which to provide for this provision.

Mr. President: I cannot put the amendment moved by the Honourable Member on my right, because, though it offers an alternative to the amendment standing in the name of Mr. Agnihotri, it cannot be included in the same place. I propose, however, to allow the discussion to proceed on the basis of the alternative proposed, so that the matter open now is not only the original amendment of Mr. Agnihotri but the alternative proposal of the Government, on the understanding that if hereafter we come to the actual moving of the amendment by Mr. Tonkinson that will be treated as a formal stage.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, this is a very important amendment before the House. If the administration of criminal justice in this country is to be improved at all, this amendment ought to be carried. It is not only my opinion, Sir; it is only yesterday I received a letter from a gentleman who is practising in Coimbatore for the last 35 years and he is not a politician at all, as he says. He says:

"The reason for my troubling you is my very grave anxiety and concern in the matters which I am now placing before you. I have had nearly 35 years' experience in the mofussal Courts mostly on the criminal side, and I feel very strongly that as the law is now being administered in the mofussal, unless these amendments are embodied in the Bill, accused persons are gravely handicapped and there will be a strong feeling that there is no longer British justice. As you know, I have never been an Indian politician, never joined the Congress and I am supposed to be an anti-Congressman. The amendments that I consider very essential are that the grant of copies of statements under section 162, etc., to the accused should be made mandatory and imperative and not discretionary as it now is and that they should be granted as soon as the inquiry or trial has commenced and before the accused are called upon to cross-examine the prosecution witnesses."

Sir, let us remember where we are and what the matter is. We are now in a Court of Justice. The police have passed the stage of investigation of the crime and placed the accused before the Court; and, as a matter of fact, under this section, the witness is actually in the box, mark the words—provided that when any witness is called for the prosecution, etc.,—then only this question arises. Therefore it is not the detection stage which my Honourable friend has in view and which he is so anxious to safeguard. The detection stage is already over; we have now come to the prosecution stage. The police are in possession of evidence which they place before the Court, and this witness is actually put in the box against the accused person. And what is wanted? His previous statement recorded by the police. For what purpose? In order to see if he has made contradictory statements. Sir, it is admitted in the section as it stands that

it will be useful for the accused that these previous statements shall be available to the Court, but what the section now lays down is that the Court is to determine whether it should allow a copy to be given or not. Sir, those of us who have to practise in the profession know how little the Courts know as to what the accused wants. The accused is the man to judge. He knows his line of defence; he knows what the weakness of the prosecution witness is. He knows best how to deal with the previous statement made by a witness in the defence. How is the Court in a position to judge? The Court is not in possession of the full facts of the case. The prosecution has just begun; the prosecution witnesses are being examined. The Court does not know what the case of the accused is and what his evidence will be. Therefore the Court is called upon to do a thing which it is humanly difficult for any human being to perform. Therefore I say this is a futile provision. And it is not only a futile provision. In this country as we know all executive and judicial functions are combined in the same individual and Magistrates depend for their promotion and livelihood on the goodwill of the District Superintendent of Police, and also on the District Magistrates. Sir, what is the meaning of leaving this discretionary power in the hands of Magistrates like that? I can understand Sessions Judges being entrusted with discretionary powers like that; they are only concerned with justice. We, Sir, in this Legislature are anxious to promote the administration of justice. Courts do not exist merely to secure convictions; Courts exist to promote justice. Let the accused have full opportunity. What is it after all? Here is a public officer—a policeman is a public officer—who records a statement from a witness. It is that statement which is asked for. How is it going to prevent a detection of crime, I fail to see. That is the substantial argument used by Mr. Tonkinson, because the accused looks at the previous statement of a witness. Is it my Honourable friend's contention that the witness in the box has made statements not relating to the case about some other crime? Is it that the witness has not made statements with reference to the crime under investigation, but has been called upon to make statements irrelevant to the crime? Then, Sir, if that is the practice, the sooner that practice is abandoned, the better, and this will be the best method of having that practice abandoned. Let all statements be confined to the particular case concerned. Why should the police go about hunting for information about other cases from witnesses connected with the crime? Therefore I fail to see how detection will suffer. My Honourable friend referred to section 135 of the Evidence Act. I fail to see what that has got to do with it. We are now concerned with the previous statement of the witness, not with the source of knowledge of the policeman or the officer. It is not a question of the accused trying to ferret out information which the policeman may know. This is a record made of this man's statement who now comes forward as a witness. What the prosecution will be afraid of is that this man has made a contradictory statement beforehand and they will carefully suppress it. They do not want the accused to know what this man has said. That is the real secret of the opposition of the police in many cases to showing these statements to the accused person. Therefore, Sir, justice suffers by this provision remaining as it is. It is a futile provision to entrust this discretion to the hands of Magistrates who are not judicial officers pure and simple. Therefore, Sir, I think this right ought to be given to the accused person, and I strongly support the amendment.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, as one who I think may claim to take just as much interest in the proper

[Sir Henry Moncrieff Smith.]

administration of justice as my Honourable friend, Mr. Rangachariar, I feel very anxious indeed that the House should not treat this matter lightly, and that they should understand most carefully what it is they are setting about to do. I still see some indication that there is some confusion in the minds of Honourable Members with regard to these two matters, sections 162 and 172. Members are freely talking about diaries. 162 does not deal with the diaries. Do let us get that point clear in our minds. Members have talked about diaries being shown to the defence.

Rao Bahadur T. Rangachariar: We did not say anything about diaries.

Sir Henry Moncrieff Smith: Section 172 lays down what the diary contains:

"Every police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation."

Now the statement of the circumstances ascertained through his investigation will mean the purport of the evidence that he has received from the witnesses; it won't be the statement, certainly not the statements recorded under section 161 of the Code. Now we are not concerned in this case with showing the defence the diaries at all. These are statements recorded in full and verbatim, quite apart from the record of his proceedings which the police officer makes in the diary. Now what Mr. Agnihotri's amendment of this clause contemplates is this. A case comes before the Magistrate. A prosecution witness is called. That is how the proviso begins. A prosecution witness is called and the Court hands the defence the statement. This is to be obligatory and is to take place on every occasion on which a prosecution witness is called. That will be sometimes on the average 25 times a day in every Magistrate's Court; the Court will hand across this statement. (Mr. K. B. L. Agnihotri: "No.") My Honourable friend says no. He has not the slightest idea of the amount of criminal work our Magistrates have got to get through. If they take up twelve cases a day, and two witnesses per case is not an extravagant number to allow, I say and I repeat that some 25 times a day the Magistrate will have to hand over to the accused a copy of the statement which has been made by the prosecution witness who is being called at that moment and who is stepping into the witness box. Now, Sir, what will be the effect of that? The police will know that this is going to happen. They record what the witness says to them. What the witness says may be relevant or it may not. My Honourable friend, Mr. Rangachariar, said everything that a witness said, everything that is recorded is relevant, and therefore the accused should have it. Now, Sir, is the ordinary investigating officer so familiar with the law of evidence that he knows what to record and what not to record, which statements made by the witness are to be relevant and which are not? He does not know, Sir. He takes down everything that is said to him by the witness hoping that there may be something which, though for the moment he cannot see the relevancy of it, will aid him in his investigation. Now the police officer, as I say, being in the habit of recording this statement in full, will say to himself "if I put the witness into the witness box, the whole of his statement will have to be handed by the Court to the defence." What is going to be

the effect of that? Honourable Members will find that there is no provision in the Code which makes it compulsory for a police officer to record a statement in writing. Section 161 gives the investigating officer power to examine witnesses orally. If the statement is of any importance he records it in writing; if it is not, there merely goes down in the diary a record that such and such a witness was examined and corroborated another witness, or just the purport goes into the diary. If these statements are all going to be made available to the defence, every word of them, the police officer will say "If I am to disclose to a particular accused person all the sources of my information, I shall record nothing; I shall merely put into the diary a bare purport of what I have discovered from examining a witness under section 161." The defence will get nothing, the Court will merely get the assistance under section 172 of that brief record; the Superintendent of Police will be prevented from checking thoroughly the work of his subordinate investigating officers; the diaries will not be of much help to him, to the Court or to the accused. That is the first effect. 25 statements handed over by the Magistrate daily to the defence to use or not to use as they think fit. Surely, Sir, this House will realise that the present system, where discretion is left with the Magistrate, is much more convenient and tends much more to the speedy administration of justice. Cases will be intolerably delayed when the witness is put into the witness-box and the defence pleader says: "Give me ten minutes: I want to read this and see what I can get out of it." The duration of every case will be prolonged and, if you go by the figures of cases that the Magistrates try, the delay in the disposal of criminal cases will be intolerable.

Mr. Bangachariar said that the courts do not exist merely for the purpose of securing convictions. I would seriously ask this Assembly to put it to itself whether the Legislature exists merely for the purpose of securing acquittals.

Mr. Pyari Lal (Meerut Division: Non-Muhammadian Rural): Sir, may I know from the Honourable Sir Henry Moncrieff Smith, what is the object of the criminal administration of justice? The object is to secure justice to a man who is supposed to have committed a crime. The police are asked to investigate. Why? Simply to save the time of Magistrates in going over matters which may, after all, result in nothing. The object is that the police officer may go to the place where the crime is supposed to have been committed at once, that is, at the earliest opportunity, collect together the men who are living in the locality and learn from them as to what is the real state of things. If he does his duty, he records the statements made to him. Having done so, what is there to hold those statements back from the accused. It is perfectly plain that the police must place their cards on the table. If they have done their duty, they have nothing to fear; but what I know happens, especially in the mufassil, is this. It is all very well in the abstract to say the Magistrate shall in every case exercise his discretion. But I know, as a matter of fact, that they do not, especially in the mufassil, where you have a number of Honorary Magistrates, who, to use an Urdu expression are *anari* Magistrates, that is to say, they are perfectly ignorant. I happen to be an Honorary Magistrate myself, and, therefore, I have the courage of my convictions to say before this Assembly what I generally notice. These Magistrates, Sir, are under the thumb of the police. (Mr. R. A. Spence: "Are you not an Honorary Magistrate?") Are there no exceptions, Sir? In the mufassil what happens is this. When the police chalaan a case

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they consider it to be a point of *izzat*, they consider it to be a point of honour, with them, that the man whom they have sent up should be convicted. For this purpose they bring pressure to bear on the Magistrate and if, unfortunately, he is an Honorary Magistrate, a kind of pressure which he is not able to withstand. The result is that this provision in the law that a Magistrate is allowed a discretion remains a dead letter. Sometimes, when the Magistrate is a mild sort of a gentleman, he smiles at the request of the counsel for the defence and says: "Yes, I will go into it," and in the end you find he has not done so and that you have trusted to his mere word. As the saying goes "It is much better that 100 guilty men should escape rather than that one innocent man should suffer." What I submit is that the Magistrates and the Courts exist for the purpose of doing justice, and no matter what amount of time they have to spend over it they must do their duty. I do not quite realise what the Honourable Sir Henry Monierieff Smith means by saying that it would mean any amount of inconvenience to the Magistrates who have got very heavy work. There may be 80 witnesses that they have to go through and if they are to supply copies, how will they get through their work? That is all very well, but, if they are there, they must do their work properly; whether it takes them two days or a week, they must get through it, because it may be a matter of life and death for the person who is standing in the dock as an accused. I submit, Sir, that these statements made to the police are not only necessary for the purpose of contradicting witnesses, who appear before the Court, but they are very important in other respects, and I say this from my experience of the last 40 years both on the Bench and at the Bar. You find a particular witness comes before the Court and deposes to a certain state of things. The private information of the counsel for the defence is that this witness is not speaking the truth and that this witness said something very different before the police, and that this witness was procured 8 or 10 days after the actual occurrence and at the instance of the accused's enemies. Now, how are you to clear up those points? The man may say exactly what he had said, but he has said so to the police 8 or 10 days after the crime, whereas, if he were a truthful witness, he ought to have been present when the police officer went to investigate the crime, on the same day. We also want to know whether this witness has come forward of his own accord or whether some pressure of the kind suggested by the accused has been brought to bear on him.

Now will not these things matter very seriously in deciding as to whether the witness is credible or otherwise, and therefore from all points of view I do not see any purpose in the Government withholding those police papers from the accused at the time when he is put on his trial.

Mr. P. P. Ginzwa (Burma: Non-European): Sir, in my opinion no case has been made out by the Government for the rejection of this amendment. The last speaker on behalf of Government made the remark that it would be extremely inconvenient if on every occasion a Magistrate had to give a copy of a witness's statement as he was being examined in Court. I do not understand what he means by that argument at all. Why does he suppose that if the Magistrate is deprived of this discretion and if the furnishing of copies is made obligatory, copies will have to be as these witnesses are produced in Court. The accused can apply for copies of statements made before the police in the same way as he applies for copies of evidence, in the ordinary way.

Mr. H. Tonkinson: What is the position if any witness is not called by the prosecution?

Mr. P. P. Ginzwa: That is so, no doubt. But before the case actually commences a list of witnesses is drawn up and is filed on the record as the Honourable Member (Sir Henry Moncrieff Smith) must be aware. But even if there is a certain amount of inconvenience involved in this, it will be counter-balanced by the convenience of the accused and the safety of the accused. I can see no objection whatsoever to the copies being furnished as soon as the police have made up their minds as to what witnesses they are going to call. True the prosecutions are conducted in the lower courts in the most perfunctory fashion. The police do not know what witnesses they are going to call. They call them as they require them, so to say. But if the furnishing of copies was made obligatory, it would be incumbent on the police to make up their minds before the case begins in Court as to which witnesses they are going to examine, and as soon as they have made up their minds it would be quite convenient to furnish copies to the accused if he applies for them.

Now I will tell the House my experience of this business. I come from a province from which my friend Mr. Tonkinson also comes, and as he knows, the administration of justice in that province is not as developed as in India. And what happens there? We have Magistrates there who would refuse to refer to the police papers if the accused asked them to do so. I say that from personal knowledge. They will say "Oh, what is the use of that? The witness is being examined in Court, we shall do it later on." If the Counsel for the Prosecution happens to be fair-minded especially when the accused is unfetted, he draws the attention of the Court to some statement by a particular witness before the police. The Magistrate, instead of feeling grateful to the Counsel for the Prosecution, goes for him and says it is no part of his business to draw the attention of the Court to what took place before the police. I am not exaggerating at all. I have heard it with my own ears and I have been rebuked by the Court on several occasions and the Court has been rebuked back by me—it is needless for me to say. Things like that do happen.

Sir Henry Moncrieff Smith: In Burma.

(Some Honourable Members: "In other Provinces also. All over India.")

Mr. P. P. Ginzwa: In Burma; I have experience of another Presidency also, but I hope that Presidency has improved since I left it.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Burma is a part of India.

Mr. P. P. Ginzwa: The point remains, Sir, that,—I would put it in this way—that prosecutions are conducted in such a perfunctory fashion in the courts of the Magistrates that unless a Magistrate is extremely conscientious, and, what is more, not afraid of the police at all, all the facts will not be produced before the Court.

I will give you another instance. On several occasions even in the Sessions Court—the High Court this time and not the Court of a Magistrate—I have discovered that when a case was committed to the Court the Magistrate had been so careless as not to have made a reference to the statement made before the police by a witness though it was entirely

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different from that made before the Court, and no Court could have convicted if the Magistrate had been careful enough to go into the police papers and get the truth out of the witness.

And do you think you are going to prevent the accused from obtaining copies of these statements? If an accused person is a well-to-do individual I have always noticed that he is extremely well prepared as to the facts which have been taken down by the police. How does that happen? I have seen, in a large number of cases, actual copies of statements made before the police in the possession of the Counsel for the accused.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): The police is fraud-minded, I suppose.

Mr. P. P. Ginwala: I have known a Judge of the High Court ask Counsel for the accused, how he had come to know what a certain witness had said to the police; and this Counsel for the accused had to tell the Court to mind its business. In any case, the facts were in his possession. On the other hand, in the case of an undefended accused, even if the Counsel for the Crown has read the statements recorded by the Magistrate; and he is, unfortunately more interested sometimes in obtaining convictions than in securing justice. There are such men, there is no doubt about that. He himself has not studied the police papers. The Judge sits there. He has never examined the police records. The poor accused is undefended. A most important statement might have been made to the police which escapes the attention of the Court, the Counsel and the Jury, and the accused is convicted.

Now, Sir, is it worth while running so much risk in order that some time may be saved to the police and to the Courts, for that is what the argument amounts to.

Another argument put forward by the last speaker on behalf of Government was that the police do not know what is relevant and what is irrelevant when they take down a statement. Well, I say if the police is so incompetent, change it. They ought to know their business and because they do not know their business that should not be an argument. When they are investigating a case, they must know what facts are relevant and what are not; and supposing a fact that is irrelevant is recorded by the police, what injury will it do to the prosecution that an irrelevant fact gets into the hands of the accused. If the accused were entitled to obtain copies of statements, there would be a certain guarantee that the police would do their work in a more efficient manner, would be more careful, would be more honest; and, it would certainly lead to the purification of police administration. You may take it from me, Sir, when I say this, that it is true—that when an accused is a well-to-do individual he manages to obtain copies of statements or is placed in possession of statements made before the police. And that is a thing that ought to be put a stop to.

Then it was stated that it is not obligatory on the part of the police to record statements. What police officer is going to run the risk of keeping in his memory a statement which was orally made to him? He will never be able to get a conviction. He knows his business too well to run that risk; for a witness may be examined by him to-day and may not be produced in Court for a month. Is the police officer going to take the risk of his forgetting or remembering what that witness stated? He is bound

to take it down for his own protection and for the protection of justice. A statement which ought to be taken down under section 162 can not be entered in the diary alone. He must take down the statement in the ordinary way. In addition to that, he has to summarize it down in the diary. The diary is more for the guidance of the police themselves, whereas these statements are more for the guidance of the Court, and he can not impose on the Court by transferring to the diary what he ought to have recorded in another place: that would be thoroughly dishonest—to record statements in the diary in order to prevent the accused from knowing what a particular witness stated. There is also another reason. He has got to have a certain guarantee that a statement made to the police will be adhered to by the witness when examined in Court. And where is the guarantee if he does not take the statement down? For his own protection he has got to take the statement down. If the prosecution is

12 Noon. prepared to take the risk of the statement not being taken down the accused is prepared to do so likewise. The accused does not care whether the prosecution witnesses' statements are taken down by the police or not. I repeat, Sir, that for his own protection the police-officer should make a point of taking down the statements unless he wishes to be thoroughly dishonest and takes it down in some other record to which the accused cannot have access in the ordinary way. I submit, further, that far from taking more time it would facilitate the ends of justice, it would expedite the prosecution cases if the accused before he is tried is furnished with copies of the statements because it is common experience that many questions have to be put by the counsel for accused to witnesses as to what they might have stated to the police, and that is a way in which more time is likely to be wasted than would be the case if counsel were to be prepared with copies of the statements before he comes into court; and if he finds there is nothing in those statements, if he knows his business, he will not waste the time of the court. On the other hand you cannot shut out counsel from asking questions, very often irrelevant questions, which take up more time than the relevant questions and which he would not have put if he had got copies of the statements. On these grounds I support the amendment and I hope there will be no question of a difference of opinion on this point on the part of those at least who are interested in the administration of justice and who have practical experience of the working of magisterial courts as well as courts of sessions.

The Honourable Sir Malcolm Hailey (Home Member): Sir Henry Moncrieff Smith has given so luminous a description of our position, that I should not have attempted to add to it, if we had not since he spoke heard lately to my own astonishment and, I think, to the astonishment of the House also, some very extraordinary statements. We were told, for instance, that Magistrates are entirely under the thumb of the police. I shall illustrate to the House, by one of the best methods of testing the truth of such statements, the extent to which our Magistrates are under the thumb of the police. I assume that where you have a highly developed police system the police must have all the greater authority over Magistrates, and you would in such circumstances secure, if the charge is true, almost universal convictions. Now take the figures for a single year in one province, Bombay. (*Mr. K. Ahmed*: "Take Calcutta.") My case would be even stronger in Calcutta. Out of 207,735 persons who were under trial, these extremely subservient Magistrates only convicted 125,000 or under 62 per cent. Take the most serious classes of offences, offences against person

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Official): Were they all police cases, may I know, or cases on complaint also?

The Honourable Sir Malcolm Hailey: Take the police cases only if you will—instance for offences affecting life—1,164 persons under trial and 443 convictions; or serious hurt—25,000 persons under trial—2,000 convictions. This is the extent to which our Magistrates are under the thumb of the police. I have been told again that the statements recorded under this section under discussion must be open to inspection because they are useful for a good number of other purposes—that is Mr. Pvari Lal's description of them. Well, if they are used for any other purpose, then it is a clear breach of the law; the law lays down that they are to be used for one definite and defined purpose only and for no other.

Then Mr. Ginwala tells us that cases are put forward in the courts by the police in a haphazard way; he says that since the list of witnesses is prepared in advance, the accused ought to be able to obtain, as soon as that list of witnesses is put in, a copy of their statements. The police officers, he says, ought to make up their minds what witnesses they would put in. Is it for the police to do that or for the prosecution? Does the Government Prosecutor or the police choose what witnesses should appear? He also says in addition that the threat which Sir Henry Moncrieff Smith held out—though indeed it is more correctly described as an apprehension from my point of view—that if this amendment were carried the police officers would not record statements—he says that that would be an act of distinct dishonesty on the part of the police. Why? I suppose that he holds the theory that the police only record these statements to assist the court or the accused. That is not so. The statements are recorded mainly for the assistance of their own superiors in deciding on the necessity for and for guiding prosecution. It is true that the law by a somewhat exceptional provision allows these statements to be used for challenging the credibility of certain witnesses; but the primary object of recording these statements is not, as he suggests, in order that they may be used as any species of evidence before the court; they are primarily recorded for police purposes. That we in India allow them to be used for the specified purpose provided in the Act, constitutes an unusual procedure, confined, I imagine, to India alone. Do you in English courts have statements made before the police regularly recorded, and utilised for purposes of rebutment or conviction by the Court? Of course not, the law nowhere compels the police to record statements, and the exceptional procedure for the utilization of such statements as have been recorded for police purposes has only been introduced because such statements happen to be recorded; it would be no act of dishonesty at all if the police officer did not record those statements; the law does not direct him to do so. Nor would it be an act of dishonesty on the part of the senior police officers if they ordered that statements, instead of being recorded at length by police officers, were simply to be taken orally, and the purport given in their diaries. He says that the police officer would do it for his own protection. He seems to regard a statement recorded by a police officer as something equivalent to a statement recorded by a Magistrate for the purpose of binding down a witness to his statement. It is obviously nothing of the sort, the law does not allow it to be used in that manner. Now, will or will not the passing of this amendment mean that such statements will not be recorded? I say emphatically that the chances are that it will have this consequence. It will be likely to have this consequence, because the police will have

reason to see real harm in making such statements public. Some doubt has been passed upon Mr. Tonkinson's substantive statement that if this amendment is carried it will be a serious hindrance to detection. Mr. Rangachariar argued that we are now at the stage of prosecution and that detection is over; the making of these statements public could not, he says, hinder detection. But I will give a concrete instance within my own experience, an instance which could perhaps be paralleled by other officers here, to know how the placing of statements of this nature, (and the amendment demands that the whole and not part of the statements should be given) in the hands of the defence would seriously re-act on detection. We were investigating a widespread conspiracy case which ended in the throwing of bombs. I believe that the approver's statement to the police ran up to 40 printed pages. Certain accused were subsequently brought up in regard to one stage only of those transactions. It was a largely ramified conspiracy which operated all over India; one particular case was brought up before the courts in regard to incidents which occurred at Lahore alone. Now I ask you—was the whole of that approver's statement to be placed in the hands of the defence? (*A Voice*: "Yes.") An Honourable Member says: "Yes". I welcome his interruption as allowing me to show the absurdity of any such contention. It is obvious that if you had placed the whole of the statement of the approver as recorded by the police in the hands of the defence, you would have prejudiced very gravely indeed the possibility not only of conviction but even of arrest in other cases. You would have endangered the life of more than one informer. We could not wait in that case until we had traced the whole of that conspiracy with its many ramifications throughout India; we prosecuted in the one section where we had the evidence. There must be many such cases. Take a big dacoity case. Look at its development. The police do not know exactly in the first instance what to look for, what is likely to be relevant or irrelevant; but thinking that their witness knows something about it, take down the whole of his evidence. It turns out to refer to a large series of transactions of a gang. I have known gang cases which have taken in the trying many months, have involved hundreds of accused, and a vast series of transactions. Are you going to place, in the course of the trial of one small transaction only, the whole of the statement of a witness who made a statement referring to some 10 or 20 different transactions? Is that a reasonable proposition? If you do demand this and if you secure this, then the inevitable result will be that the police will be chary of recording statements in this way. They will depend on a number of records in their diaries, and there will be no statements available for the purpose which you suggest. In the alternative if such statements are recorded, and are placed in the hands of the defence, they will very gravely impede the course of detection. That is the point I wish to make against Mr. Rangachariar. We are, it is true, considering here the stage of prosecution; that is perfectly true. We wish as much as anybody here to give the accused every fair chance of rebutting the evidence against him. We are no more anxious that a sentence of conviction should be passed on an innocent man than any one else. But at the same time we must realise that although we are now at the prosecution stage yet there are cases, it may be many cases, in which to place in the hands of the defence a large number of statements ranging over a very considerable number of transactions, may re-act on the possibility of detection of crime, may endanger the lives of informers, may allow other guilty men to escape, and I do not think that anybody here seriously desires that result. If we are anxious to secure justice for the accused, we should be equally anxious to secure

[Sir Malcolm Hailey.]

the protection of life and property by aiding as far as possible in the detection of crime.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): I have listened to the arguments on both sides in regard to this question with great interest. I have experience of a Magistrate's duties for about 20 years both stipendiary and honorary as my friend Mr. Pyari Lal calls it. There can be no denying the fact that in the mofussil some Magistrates, particularly of the second and third class, are considerably in the hands of the police; but I have also noticed in some cases weak first class Magistrates are also guided by police inspectors and sub-inspectors. I may say that probationary *mamlatdars*, what are called in Sind Mukhtiarars, or Tahsildars in other Provinces and acting men are so prone to police influences that very often justice in their courts cannot be properly obtained. No doubt Magistrates of position and education and having an independent character are not so much under the thumb of the police as others of the class I have mentioned are; and so far as the province of Sind is concerned I know when I was in service orders had been issued by the Police Superintendents to all inspectors and sub-inspectors not to send copies of statements to courts at all and sometimes it happened that even when the Magistrate called for these statements they were refused. So far as Sessions Courts are concerned, they always call for these statements through the Magistrates committing cases to their courts, almost invariably, because they know that these statements are not supplied to Magistrates. Within my own experience, when Sessions Courts fixed the hearing of cases committed to their courts, they particularly called for these police statements to be submitted to their courts. This will show how anxious the police always are to suppress these papers from the Magistrates to whose courts they send such cases. I know, Sir, that very often these statements are very important and very often contradictions are brought to light between the statements made by witnesses in courts and the statements they made before the police, which have a considerable bearing on the cases themselves. But at the same time I can imagine cases in which it would be extremely unwise and hazardous to allow the accused to have a look at these statements or to allow them to take a complete copy. Yes, it may be in the interest of the accused to allow him to have copies of extracts from these statements, and that will lead to better justice being dealt out to the accused. But in every case to give a complete copy of the statement will be prejudicial to the interests of justice itself. For instance, if a person belonged to a secret society and he gave certain information to the police, and his statement was recorded, what would be the result if the statement is made public and the secret society learns how the police got at them through this particular individual. I think the result of such a course would be that in 9 cases out of 10 the man would be murdered immediately—and cases have occurred in which witnesses have been murdered. Therefore, it is no doubt not a very reasonable thing to allow in every case the accused to take complete copies of statements made by witnesses before the police. I see, Sir, however, that there are arguments for both sides. I quite admit that in 9 cases out of 10 it is very important that the Magistrate or the trying Court should allow copies of statements to be given to the accused, and more especially in ordinary cases. But in delicate cases and extraordinary cases it would be very unwise to allow the accused to have complete copies of these statements. I would, therefore, Sir, with your permission suggest a sort

of a compromise between the two parties; I would say, if the Government accepts that compromise, that in ordinary cases copies should be allowed to the accused, but if the Magistrate or the trying Court, for special reasons to be recorded, thinks it inexpedient to allow copies of such statements to the accused, he may have the power of refusing the same to him. I think a compromise of this kind would suit both sides, and ought to be accepted by the Government as well as by my friends on this side.

Mr. T. V. Seshagiri Ayyar: Sir, the section under discussion is of such a far reaching character that it is desirable to clear the air to some extent, especially as regards one answer which the Honourable the Home Member gave regarding the objection put forward on this side. The answer was this; if there is to be a detection of crime—and that also was voiced by the last speaker—if the statement made by one of the witnesses is in the hands of the counsel for the defence, the probability is that the accused will know who are the persons who gave the information; that may lead to unsavoury consequences so far as the persons who gave the information are concerned. Sir, the answer to that is very simple. Ordinarily speaking, a statement recorded by the police must be relevant to the case which is to be put up against the accused. If there is to be any information regarding the origin of the crime, and regarding the complicity of others in the crime, that matter would probably go into the diary and not into the statement recorded for the purpose of proving a case against the particular accused. If we make this difference, namely, that the statement must be confined as far as possible to the case to be charged against the accused, and any extra information that may be obtained during the course of the inquiry regarding the origin of the crime, regarding the existence of a conspiracy and so on, should find a place in the diary, there would be no difficulty in accepting the amendment. If, on the other hand, you refuse to give the accused a copy of the statement, the result of it will be that he will have to be groping in the dark, he will not know what evidence has been given against him, and he will have, as pointed out by Mr. Ginnwala, to ask his counsel to put a large number of questions which will take more time of the Court than is necessary. Executive instructions can be issued to the police to take down in the statement, only such facts as are relevant to the case under inquiry and to relegate to the diary all the information which will be required for the purpose of following up the clue and finding out where a particular conspiracy has been hatched and where the conspirators are to be found. In that way information which you are anxious to safeguard and keep back from the accused can be very easily kept back, and information which it will be necessary for the accused to have for the purposes of defending himself will be available to him. Sir, one inconvenient question was put by Mr. Pyari Lal, and that is, what is the object of the Criminal Procedure Code if you are going to keep back information from the accused which would enable him to defend himself? There has been no answer to that. After all, the object of Criminal Procedure Code is to enable the accused to defend himself. It was stated by the Honourable Sir Henry Moncrieff Smith that the result of compelling the Court to give copies of the evidence will be that the police will only note down a very meagre statement and that would be of no use to anybody. Sir, I take it the police will be acting honestly,—that the police are not dishonest. I take it that the police, if it is good, will be recording all the statements which have been made by a witness relevant to the inquiry and it is that statement which it is necessary for the accused to have, in order to enable him to show that the witness has not been speaking truth. Sir, it

[Mr. T. V. Seahagiri Ayyar.]

will also have this further effect. If a witness knows that he will be confronted by the statement previously made by him he will take care to speak the truth; if on the other hand he knows that there is no chance of his previous statement being used against him, he will boldly speak falsehoods, and he will not be inclined to place the true facts of the case before the Court. Therefore, the amendment will have a good effect also upon the witness. Sir, there is one other aspect of the case as to which I take a very different view from others who have preceded me and it is this. I consider it is a misfortune that in this country the Magistrate is given the discretion either to refuse or to allow any portion of the statement to be given to the accused. What is the result? Supposing the Magistrate is honest. He is asked by the accused on information which he has obtained from elsewhere to look into the statement and to find out whether there is anything in it which is favourable to him. The Magistrate finds that there is nothing favourable but a great deal that is unfavourable to him. What is the position of the Magistrate? The Magistrate ought to keep an open mind until the whole of the evidence is recorded; and he must be in a position to judge impartially between the accused and the Crown; but where he has got some information which he considers is prejudicial to the accused and not favourable to the accused, can a second or third class Magistrate be expected to wipe out from his memory all that he has learnt from the statement, and could he be expected to judge as between the complainant and the accused and fairly,—if this information is kept back from the accused and at the same time the Magistrate is allowed to pursue it; Sir, in every other country the Magistrate is asked to keep his mind altogether free from anything which has not been recorded and which will not be part of the evidence of the case on which he is to give his judgment. *Per contra*, this section enables the Magistrate to look into the diary and to find out whether it is favourable to the accused or unfavourable to him. If he considers it to be favourable and if he considers it is in the interests of justice that the accused should have it, then he is directed to give a copy; if he considers it unfavourable, certainly his mind will be prejudiced and the accused will be all the worse for having made the request to the Magistrate. Under those circumstances, the discretion given to the Magistrate to look into the statement and to keep the information to himself without furnishing a copy to the accused is likely to be prejudicial both to the Magistrate and to the police. I am speaking of the statement, not the diary. Under these circumstances, Sir, it seems to me that the provision as it is proposed to be enacted is not in the interests of justice. On the other hand, I think it is likely to stand in the way of the accused getting fair play and is also likely to make the position of the Magistrate very irksome. For these reasons, Sir, I think the amendment which has been moved is a very reasonable one and should be accepted by the House.

Dr. Nand Lal: Sir, the desire of the House, in the main, is that the discretionary power of the Magistrate or the court may be taken away and that a right may be given to the accused that he may obtain copies of the statements of those persons who have been called as witnesses against him in that prosecution. Now, Sir, there are Magistrates and Magistrates and there are courts and courts. There is no doubt about it that some Magistrates are very efficient and very conscientious. But the Honourable the Home Member cannot deny the correctness of the proposition that there are some Magistrates and some courts who are not efficient and who do not

perform their duties conscientiously. Now, the desire of the Assembly is that no room for doubt should exist and that those who are not efficient and are not conscientious may be made to perform their duties in a certain fixed manner. That is the real object of the House. The House is not prepared to say in a sweeping way that the whole judiciary is inefficient. That is not the object of the House. The object of the House, I may be allowed to repeat, is simply that the grievances which are occupying the mind of the public in these days may be redressed, and the easiest method of extending redress to them is by taking away this discretionary power from Magistrates and courts. Now, the Honourable Mr. Tonkinson said that there will be a mass of irrelevant evidence . . . (Mr. H. Tonkinson: "No") a mass of irrelevant things brought on to the records of the police, namely, persons, to whom questions may be put by the investigating officer, may make reference to things which have no concern with the case, and the answers, given by them to the investigating officer, may expose them to prosecution. May I invite his attention to the provision which is incorporated in sub-section (2) of section 161 of the same Code:

"Such person shall be bound to answer all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."

Therefore the fear which has been entertained by the Honourable Member seems to have been misplaced.

The other ground which was advanced by him was that the police diary, for all intents and purposes, will be placed in the hands of the accused. In reply to that I may say at once, it will not happen at all. The accused will, simply, be entitled to obtain copies only of those statements in regard to which witnesses are called. He has not got the right to ask for copies of the statements of all the persons who have given answers to questions put by the investigating officer, namely, only of the statements of those witnesses who will be called by the prosecution. This proposition, therefore, Sir, will advance the cause of the administration of justice; the witnesses who come before the police officer investigating a case will realize their responsibility, they will know that a copy of the statement which they are making before the police, can be obtained by the accused and they will be subjected to cross-examination; they will consequently speak the truth and know that if in their depositions in court there is any contradiction, that contradiction will be brought on the record under the provisions of section 145 of the Evidence Act. They will therefore be induced to speak the truth. But in the present condition of the law in this behalf, they do not care; they, in some cases, regard themselves as irresponsible men who can make any statement they like. To my mind the procedure, proposed, now will improve the administration of justice and the statements recorded by police officers will become more accurate.

The other ground, which has been advanced on behalf of the opposition to this amendment, is that it will be very inconvenient and the work of the courts and Magistrates will be impeded. Of course there is some force in that; it will not be so convenient as it is now; work will not be done so expeditiously as it is done now. But, Sir, consider the advantage which the Government will derive—an advantage of sterling worth; for justice will be done; there will be no room for injustice. Is not that a good return, Sir? Even if two hours more are spent in arriving at the correct conclusion, I think that expenditure of time may be considered as worth while. So, on the ground of convenience, or on the ground of expedition, I may say, the opposition has got no case.

[Dr. Nand Lal.]

Then the Honourable Sir Henry Moncrieff Smith said, " Oh, then the police will not do their duty; they won't put many questions to witnesses; they will simply put down a line or two giving the gist of the whole thing." Why should we grudge that? If the police officer writes his diary in full and the statements in a brief manner, that will save public time. So on that ground also the opposition has no case.

Then the Honourable the Home Member took this exception, namely, that this amendment will not be of any utility, because, confidential documents will be open to the public through the medium of that accused, and most probably that will spoil the prosecution. In reply to that I may submit that the statement of the approver is recorded generally by a very responsible officer, the Superintendent or Deputy Superintendent, and that is if I mistake not, no part of the investigation within the scope of section 161, Criminal Procedure Code. I think the Honourable the Home Member will accede to this contention which I am placing before him in reply to his argument. In the second place, that statement is recorded before the Magistrate. So the statement of the approver will not, if I think aright, come within the purview of section 162.

On these grounds, in brief, I support this amendment which speaks for itself and will be very useful both to the public and to Government. I trust that the Government Benches will accept the recommendation of the amendment.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I venture to suggest that after this lengthy debate the question before the House has narrowed itself to two points of importance. The first point for the House to decide is whether these statements recorded by the police can safely in the interest not only of the accused but of other witnesses and of the maintenance of peace and order, be practically made public, and if the House is of the opinion that this cannot be done, that such statements cannot without any restriction be made public, to what extent it should be permitted and who is to regulate it. Now, Sir, with regard to the first point, I trust the House has listened with attention to the remarks that fell from Mr. Hussanally. Mr. Hussanally spoke as a stipendiary Magistrate of many years' standing and also as an Honorary Magistrate. He spoke as one having full knowledge of police methods. He said that in his opinion many subordinate Magistrates, especially of the lower grades, were at times unduly influenced by the police, and yet he said he could not recommend that any such statements should as a matter of course and as a matter of right be practically made public in Court, because of the grave danger involved to other witnesses in the case or to other persons whose names may be mentioned in the statement. I hope the House will take that seriously into consideration, because it is a point that, I suggest, those who have supported this amendment are rather apt to overlook. The Honourable Mr. Seshagiri Ayyar stated that the whole object of Criminal Procedure is to enable the accused to defend himself. I suggest that there are other considerations. There is such a thing as the maintenance of law and order, the maintenance of peace, the protection of innocent persons, the protection of witnesses who honestly give evidence in the Courts. These are not things to be lightly overlooked or entirely ignored. It has been suggested, that the difficulty can be overcome if only the police will record in these statements what is strictly

relevant to the case; and Mr. Ginwala made some very scathing remarks on the utter incompetence of a police officer who could possibly include in a statement of this kind things that were not strictly relevant to the statement that the witness now before the Court is about to make in Court. Possibly Mr. Ginwala has never taken part in the investigation of a crime. (Mr. P. P. Ginwala: "I am very thankful for it.") Well, he may be congratulated on not having had that unpleasant duty to perform, but had he taken part in the investigation of a crime, he might not have been perhaps so scathing in his remarks upon the unfortunate investigating policeman. How is a police officer when he begins to investigate crime and to record the statement of a witness to know exactly what is relevant and what is not? He goes to a village where a dacoity or a murder has been committed. Perhaps a man comes forward who appears to know a good deal about what was going on in the village on the night of the occurrence and for the sake of getting an accurate record of what that man says, not trusting to his memory, he proceeds to record what the man tells him. How can he possibly conceive at that stage what is and what is not going to be relevant to the case? Minutest facts may come out which appear to have nothing whatever to do with the case and yet may prove of vital importance later on. The man may depose, for example, 'I went the day before to see about a buffalo or something of the kind' an apparently trifling occurrence, which may in the end be the very fact on which detection is based. It is absurd to suppose that these statements recorded by the police in the course of investigation can refer simply and solely to just the fact about which the witness will be asked to depose in Court. (Dr. H. S. Gour: "These are not the statements.") I do not understand what Dr. Gour means by saying that these are not the statements. These are the statements in the case; and these are the statements Dr. Gour wants to have produced in Court. Well, Sir, I submit, that if we once grant that these statements must contain much that may be irrelevant to the immediate statement of the witness that is going to be made in Court, it is essential that the disclosing of them should be a matter of discretion, because we cannot take the risk of allowing all these things to be published and possibly not only to interfere with the detection of the offence itself, but to involve other persons and other witnesses. The Honourable the Home Member has given a striking example in the matter of the big conspiracy case that he referred to, and I do not need to cite any further examples. That is one very convincing instance of a case in which the whole statement could not be allowed to be disclosed. Well, in that case, who is to exercise the discretion? No other person can possibly do so except the Magistrate or the Judge. You cannot leave the matter entirely to the police as to whether they are to exercise a discretion, or to the prosecuting counsel. The only person who can be vested with the discretion is the Magistrate in charge of the case. With regard to these Magistrates, I venture to make a reference to something that Mr. Rangachariar was pleased to say. He said that Magistrates "depend for their promotion on the good will of the District Superintendent of Police," and he added (as an after-thought), and "also of the District Magistrate." Well, Sir, so much has been said in the course of this debate about the influence of the police over Magistrates that I venture to contradict categorically that statement that subordinate Magistrates depend on the District Superintendent of Police for their promotion. The District Superintendent of Police has nothing whatever to do with the promotion of Magistrates. (Laughter.) Honourable Members laugh, but I know . . . (Rao Bahadur T. Rangachariar: "We know the contrary"; Dr. Nand Lal: "Secret

[Mr. P. B. Haigh.]

reports are more valuable than the open recommendation of superior officers.") Possibly Honourable Members will allow me to proceed. Promotions of subordinate Magistrates are made on the recommendation of the District Magistrate after consultation with the Sessions Judge; and the District Magistrate has every opportunity of forming his own opinion on the work of subordinate Magistrates. Not only does he see the record of their cases which he may call for from time to time, but he hears appeals from them. Every time they convict a man they send a summary of the case to the District Magistrate, and he has every opportunity of forming his own firsthand opinion on their work. He does not, as a matter of fact, consult the police at all. I have referred to this matter at some length because I think too much has been made of the supposed subservience of our Magistrates to the police officers. I do not wish to detain the House any longer after this somewhat lengthy debate but I trust that Honourable Members will not, in order to serve the interests of the accused, be led astray into failing to consider altogether the other side of the question and the imperative necessity of protecting the other persons whose interests may be gravely involved if the publication of these statements is allowed in the ordinary course of procedure.

Mr. President: Amendment moved :

" In clause 33 "

Sir Deva Prasad Sarvadhikary: May I have your leave, Sir, to move an amendment on the lines suggested by Mr. Hussanally.

Mr. President: The amendment which the Honourable gentleman has placed before me necessarily can only be moved later on.

Sir Deva Prasad Sarvadhikary: It will depend upon certain words being deleted on the lines of Mr. Agnihotri's amendment.

Mr. President: I am only pointing out that I cannot put the amendment laid before me at the present moment as an amendment of Mr. Agnihotri's amendment; it is in substance an alternative, but in form it cannot be put now, because it comes at a later stage. The House will understand that if Mr. Agnihotri's amendment should be defeated, such a proposal as the one made by Sir Deva Prasad Sarvadhikary would still be in order. But I cannot put one proposal against the other, because they do not stand together in the same position in the clause.

(An Honourable Member: " The question may now be put.")

Mr. N. M. Samartha (Bombay: Nominated Non-Official): May I speak on Mr. Agnihotri's amendment? I fully appreciate the difficulties which are at the bottom of Mr. Agnihotri's amendment and the arguments of those who have supported it to meet them, but I put it to the House, do they or do they not appreciate also the strength of the argument that to make it obligatory to give a complete copy of the whole of the statement made would, in the interests of justice and on grounds of expediency, be sometimes undesirable. I am not drawing upon my imagination; I can recall a case in which there was a statement taken down by a police officer of about 40 pages, in which the names of five different public men were said to have been involved, and it would have been unfair to these men if the giving of a copy of that whole statement were made obligatory. I trust, therefore, that a *via media* will be found acceptable to the Members of

this House, as suggested by Mr. Hussanally, in some terms which will make it ordinarily obligatory on the Magistrate to furnish copies, but the Magistrate may refuse to do so for reasons to be recorded by him in certain cases, or may cause extracts only to be given in certain cases and not the whole statement. I trust Mr. Agnihotri will agree to that.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhamadan): That will come in after my amendment has been accepted.

Mr. H. M. Samarth: Meanwhile the proposal for a complete copy to be invariably furnished, which is the nature of Mr. Agnihotri's amendment, should be thrown out.

Mr. President: The question is:

"That in clause 33, in the proviso to sub-section (1) insert the words 'allow inspection to the accused and'."

The Assembly then divided as follows:

AYES—38.

Abdul Quadir, Maulvi.
Abdul Rahman, Munshi.
Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahsan Khan, Mr. M.
Asad Ali, Mr.
Asjad-ullah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Ibrahim Ali Khan, Col. Nawab Mohd.
Irwar Saran, Munshi.
Jatkar, Mr. B. H. R.

Kamat, Mr. B. S.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sen, Mr. N. K.
Sircar, Mr. N. C.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Zahiruddin Ahmed, Mr.

NOES—36.

Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Davies, Mr. H. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Lunes, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.

Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Nabi Hadi, Mr. S. M.
Nayar, Mr. K. M.
Percival, Mr. P. E.
Ramayya Pantala, Mr. J.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Sinha, Babu L. P.
Spence, Mr. R. A.
Tonkinson, Mr. H.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, the next amendment which I beg to move is consequential on the amendment that has just been allowed by the House. If we allow inspection of the statement to the

[Mr. K. B. L. Agnihotri.]

accused, as we have just done, then this clause becomes unnecessary and superfluous, and I therefore propose:

"That in clause 33 in the proviso to sub-section (1) after the word 'shall' omit the words 'may then if the Court thinks it expedient in the interest of justice'."

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, the next amendment which I beg to move is:

"That in clause 33 in the proviso to sub-section (1) omit the words 'if duly proved'."

We have allowed that the statement made before police be shown to the accused in the Court. Then, when the statements coming from the police are used for the prosecution, it is not necessary that, for the purpose of contradicting a witness, the statements should be proved. Therefore, Sir, the words 'if duly proved' become unnecessary and should be deleted.

Sir Henry Moncrieff Smith: Sir, I did not quite follow Mr. Agnihotri's reasons for cutting out these words "if duly proved". If the words are removed—he suggests that they are unnecessary—then this copy of the statement which is furnished to the defence will be used in the manner provided for by section 145 of the Indian Evidence Act. Perhaps Mr. Agnihotri suggests that section 145 lays down that the statement must be proved. This is what section 145 of the Evidence Act does say: "but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him." Therefore, section 145 clearly contemplates that the statement must be proved though it does not actually require it, and it is necessary to retain these words in section 162. The removal of the words will simply mean that any statement made to the police officer, though it may be proved or may not be proved, can be used to contradict the witness. That, surely, I think the House will realise, will be extremely dangerous.

The motion was negatived.

Mr. President: The question is that clause 33, as amended, stand part of the Bill.

The Honourable Sir Malcolm Hailey: May I suggest that the further consideration of this clause be postponed. Many of my friends here have, I think, a feeling that it is justifiable, in view of the previous decision of the House, to place on the Bill some proviso which would obviate the danger, to which many of us referred, of the whole of the statements referring to a large number of transactions being handed to the defence. From several parts of the House we have heard an admission that that would be dangerous; and I suggest that the consideration of this clause be not completed until we have had an opportunity of considering the advisability of inserting some such proviso.

Mr. President: The original question was:

"That clause 33, as amended, do stand part of the Bill,"

since which an amendment has been moved:

"That further consideration of clause 33 be postponed."

The question I have to put is that that amendment be made.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 34, sub-clause (i) omit all words commencing from the words 'and any Magistrate' to the words 'Government may'."

This clause 34 of the Bill provides that the authority may be given by the Local Government even to a second class Magistrate to record confessions of accused persons. The recording of confessions is a very complicated affair and it is better that it should be restricted only to experienced first class Magistrates and not to other Magistrates. As the Honourable Mr. Wali Mahomed Hussanally and the Honourable Mr. Pyari Lal have pointed out, there are Magistrates of the second and third class who are not quite experienced enough to realise that they are not to be guided by any outside influence but are to do justice in the case and they are often influenced by the police. Under section 164 we have provided for the admissibility of these confessions when they are made before the Magistrate and have excluded the confessions made before the police. It is necessary that the second and third class Magistrates should not be authorised to record confessions and this could be done by omitting the words as suggested in my amendment. Sir, the Honourable Members must be aware that the complications and difficulties in the recording of confessions have been recognised by the various High Courts. They will find from the law reports that the confessions recorded even by first class Magistrates were often not recorded with the proper safeguards, and care necessary in such cases. Therefore, Sir, I submit that it is undesirable and would be very dangerous to extend this power of recording confessions to second class Magistrates.

With these words I move my amendment.

The Honourable Sir Malcolm Halley: As the House will see, what the Honourable Member proposes, is that:

"Any Magistrate of the first class may, if he is not a police officer, record any statement or confession made to him."

In consequence, no Magistrate of the second class, even though specially empowered by the Local Government, would be able to record a statement. I do not know whether the Honourable Member, who laid great stress on the question of confession, realised that that would be the effect of his amendment. Such, however, is the effect. The original Bill proposed a distinction between statements and confessions; it contemplated that any Magistrate could record a statement but only first class Magistrates, or specially empowered second class Magistrates, should record a confession. The Joint Committee, however, went further and limited the recording of a statement to first class Magistrates and to second class Magistrates specially empowered in this behalf.

Something may, of course, be said perhaps for special safeguards in regard to confessions. They must be recorded with particular care and by highly responsible Magistrates. That may be the case, but in the case of statements, is it necessary that the House should show such mistrust of even second class Magistrates, even when specially empowered by Local Governments, as to refuse to allow them to record statements? What would be the consequence? Often these statements are not of the

[Sir Malcolm Hailey.]

highest importance; very often they are not even brought on to the record of a trial. But that as many Magistrates as possible should be allowed to record statements is obviously a distinct convenience in the course of investigation. Take the case of a woman who has merely to testify to the simple fact, that she recognises a particular article or object concerned in an investigation. The statement is a simple one; and yet the result of the Honourable Member's amendment, if carried, would be that she would have to go into headquarters to record the statement before a first class Magistrate. That can hardly commend itself to the House. Second class Magistrates have powers up to imprisonment of six months, and yet you will not allow them to record the simplest facts testified to by a witness brought before them by the police—an unreasonable mistrust of the Magistrates, an undue hindrance, to the course of investigation, and possible source of inconvenience to witnesses themselves. For that reason, I oppose the amendment.

Mr. President: The amendment moved is:

"In clause 34 in sub-clause (i) omit the words 'and any Magistrate of the second class; specially empowered in this behalf by the Local Government'."

The motion was negatived.

Sir Henry Moncrieff Smith: Sir, before we leave sub-clause (1) of clause 34, I would like to invite the attention of the House to what is obviously a somewhat serious omission in the clause as drafted by the Joint Committee. It has till just this moment escaped the notice of the House. In the way it is drafted, no Presidency Magistrate can record a statement or confession. I think this is a most serious defect and I would like to ask the indulgence of the House to enable me to move an amendment which will remedy that defect. The amendment will run as follows:

"That in sub-clause (i) of clause 34, before the word 'Any Magistrate', the words 'Any Presidency Magistrate,' be inserted."

The motion was adopted.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadden Rural): Sir, on behalf of Dr. Gour, who is absent, I move that:

"In clause 34 (ii) (a) after the word 'that' insert the words 'he is not bound to make a confession, and that if he does so'."

Sir, this clause is practically in force in some Provinces—that is, under departmental instructions Magistrates are enjoined to tell a person who is put before them to make a confession, to tell him that he is not bound to make a confession. This clause is intended to give statutory force, to make it obligatory upon the Magistrate, to say that as well, to tell the man that he is not bound to make a confession and that if he makes a confession it will be used against him. There is no harm in this, it is only a safeguard.

Mr. H. Tonkinson: Sir, as my Honourable friend, Mr. Subrahmanayam, says, this is one of the precautions which are laid down in some Provinces by executive orders as to the course which a Magistrate must take before he records a confession. It is only one of many instructions which have been issued to the Magistrates to guard against any abuse of the recording of confessions. I do not think, Sir, that any very great purpose would

be served by inserting it in the section; but we have no objection, if that is the wish of the House. But, of course, if it is inserted in this place, it must also be inserted in the memorandum.

The motion was adopted.

Mr. H. Tonkinson: Sir, that amendment having been adopted, I should like to move the amendment of the memorandum:

"In clause 34, sub-clause (ii) (b) after the words 'that' insert the words 'he is not bound to make a confession and that if he does so'."

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 34 in sub-clause (ii) after sub-clause (a) insert the following sub-clause (aa), 'after the word 'unless' the words 'when satisfied that the deponent has been free from police influence for at least twenty-four hours and' shall be inserted'."

Sir, under the present clause when an accused is put before a Magistrate for recording a confession, the Magistrate may record it. What I wish to provide is that when the accused is put up before the Magistrate the accused should be kept away from police custody for about 24 hours before his confession be recorded. It may be within the experience of many of my lawyer friends that when an accused has been brought up before the court and has made a confession, he often retracts his confession afterwards,—sometimes before the trying Magistrate or sometimes in the Sessions Court. This retraction may be due either to his second thoughts or it may be due to the fact that he is away from police custody; and some times he confesses before the police but if Magistrates before recording such confessions put the accused in jail custody and when the accused appears the next day, he declines to make any confession. All these things go to show that when the accused is put before the Magistrate he is often under the police influence. In order, therefore, to do away with that influence it is necessary that some time should be allowed to enable the accused to think over for himself as to his best course and whether or not he should make a confession. Therefore I propose for the acceptance of the House that the insertion be made and the accused be allowed at least 24 hours time free from police custody before his statement is recorded.

The Honourable Sir Malcolm Halley: We should all agree that a confession made directly under police influence (to use Mr. Agnihotri's words) ought not to be admitted in evidence at all; on that we should all agree. Mr. Agnihotri seeks to prevent this by providing that no confession shall be recorded unless the deponent has been free from police custody for 24 hours; but let us see in what terms he proposes it. The deponent, he says in his amendment, shall have been free from police influence for 24 hours. I do not know how he seeks to define influence; nor how he will set and limit on the duration of the effects of a threat or of force. He supposes that the magistrate will have such psychological skill that he will be able to probe into the mind of an accused person—a mind disturbed and unbalanced by the recent commission of crimes and by arrest—and to determine exactly at what time, to the very second, the effect of such a threat or such inducement has passed away. An inducement in itself is not an easy thing to define. I have had the curiosity to look into a commentary on the Evidence Act and I saw that the discussion on what

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constitutes inducement, occupies some four or five pages; the effect of influence, if it could be defined would, I imagine, establish a case law which would occupy not five but twenty-five pages. But that is the sort of problem which he proposes to set before the Magistrate.

Mr. K. B. L. Agnihotri: I will put in 'custody' instead of 'influence' if you like.

The Honourable Sir Malcolm Hailey: I do not like it at all; and wish to point out that when Mr. Agnihotri sets out to draft amendments to a Code of this complexity, which has stood so long in the Statute Book, he should exhibit more thought if he is to avoid the most obvious and glaring mistakes. However I shall not further argue the question of influence; because the Mover has already given it up. One could have developed, had it been necessary, a sufficiently interesting and even amusing argument on the subject. He would now, recognizing his mistake, propose that the deponent should not have been within police custody for 24 hours. Therefore, if the police find a murderer red-handed and glorying in his crime and bring him immediately before a magistrate, that officer is not to be allowed to record his confession. Again, will Mr. Agnihotri tell me how his stipulation is possible in practice? The magistrate has a man brought before him by the police. This will not do; he must send him to the jail. Here he must wait till 24 hours are up. But who, Sir, will bring him from the jail but the police? The magistrate is here again at a stop; he must send him back to jail until he can be brought back thence by some other agency, or keep him in his court for 24 hours in order that he may not see a policeman before his confession is recorded. It will all end in one thing only, the magistrate will in every case have to go to the jail to record a confession. Is all this reasonable? It is so unreasonable that I would again attempt to bring home this lesson to the Honourable Member, that a little more thought, a little more care, a little more prevision is required in attempting to modify a code which has served our purpose so long. I have answered Mr. Agnihotri; but lest any one should think that there remains the shadow of substance in what he says, I would refer the House to the very ample guarantees and safeguards that are provided already under section 24 of the Evidence Act in regard to confessions, and those safeguards ought to be sufficient.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, this section 164 deals with the statements and confessions made to magistrates at any time before the commencement of the inquiry or trial. If they are accused persons they make confessions; if they are witnesses they make statements; but an accused person may make a statement which may not amount to a confession. We are now concerned with a magistrate who really takes part in an investigation, as is were, who assists in the investigation of a crime, not the Magistrate who actually tries the case. This is because this section deals with cases at any time, i.e., either during investigation or at any time afterwards before the commencement of the inquiry or trial. The object of my amendment is that any oral statement which may be made by the accused person to a magistrate who is taking part in this way in an investigation should not be used against the accused person. I have come across cases where the provisions of this section have not been complied with. Still the magistrate who

holds the inquiry as it were in the course of the investigation prior to inquiry or trial sometimes gives evidence that the accused told me so and so, probably to contradict the defence which the accused may put forward later on. Supposing in the course of the investigation, the accused person is casually asked by the magistrate and he says something to the magistrate, that statement is sometimes used against the accused person at the trial or inquiry. I want to prevent the use of such statement and I do not want the accused person's statement to be brought in against him—that is as amounting to admissions but not amounting to confession. Of course if they amount to a confession, then they should be recorded in the manner required for a statement under section 364 and, under section 91 of the Evidence Act, oral statements cannot be used in evidence. I am quite alive to that, but there may be oral statements which may be used against the accused person but not amounting to a confession. In such cases sections 364 and 164 would not apply and it is not safe to rely on the memory of a magistrate who goes and takes part in an investigation or assists the police in investigating the crime and it is not safe to allow that evidence to be used against the accused person. That is the object of this amendment. Of course confessions do not require this clause. It is only statements which do not amount to confessions which will come under this saving clause which I provide and therefore I move, Sir, that to clause 34 the following sub-section be added, namely:

" To clause 34, add the following sub-clause at the end :

' (iii) After sub-section (3) the following sub-section shall be inserted, namely :

' Oral statements made to Magistrates by accused persons shall not be admissible in evidence against them unless the provisions of this section are complied with.'

The Honourable Dr. Mian Sir Muhammad Shaif (Law Member): Sir, under the main section, as my Honourable friend has admitted, it is only the confessions made by accused persons that are recorded in the manner prescribed. If the amendment which my Honourable friend seeks to introduce into the section were accepted by the House, it would mean that a Magistrate, during the course of the investigation, would be bound to record any and every statement that an accused person may make to him, whether it amounts to a confession or not, before he is able to make any statement in court with regard to such statement. I submit that neither the ends of justice nor any principles of law justify the enactment of such a provision as this by the Legislature. My Honourable and learned friend said that he had come across cases in which Magistrates had made statements in order to contradict what the accused stated in court, that is to say, they have stated that on a certain occasion during the investigation the accused had made such and such a statement. That may or may not be. When the Magistrate makes a statement like this in the witness-box he is just as much a witness as any other person produced as a witness by the prosecution. That statement by the Magistrate is subject to cross-examination by the accused and the counsel for the accused just as much as the statement of any other witness. If the Magistrate has told a lie, I have no doubt that the court will be in a position to judge for itself whether it ought or ought not to believe that statement. But to say that no Magistrate shall be allowed, practically it comes to that, to make any statement as a witness during the course of the trial with regard to statements made by the accused to him, statements other than confessions, is, I submit, carrying legislation a little too far. Such a provision introduced in an Act would be unreasonable and the Legislature is presumed to be reasonable in all the provisions that it may enact into a

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Statute. It seems to me, Sir, that when you remember that the witness who is deposing to an oral statement made to him by an accused person is not a police officer, is not even an ordinary witness but is a Magistrate, who *prima facie* at any rate is believed to realise the consequences, the serious consequences of any statement that he may make in the witness-box against an accused person, surely to exclude the Magistrate's statement, unless the oral statement to which he is deposing has been reduced into writing by him during the course of the investigation, is I respectfully submit somewhat unreasonable and I would earnestly appeal to my Honourable friend that the administration of justice will not be promoted if a provision of this kind is introduced in our Code.

Sir Henry Moncrieff Smith: I wish to add two words to what the Honourable the Law Member has said. Mr. Rangachariar has argued one amendment and then at the end he moved another. He explained that his intention in this amendment is to confine its operation to oral statements made to Magistrates by accused persons in the course of a Magisterial inquiry and he argued that they should not be admissible in evidence against them, unless the provisions of this section are complied with. Now, Mr. Rangachariar's amendment merely says that oral statements made to Magistrates by accused persons shall not be admissible in evidence. Sir, I want the House to realise how wide that is. I do not know whether Mr. Rangachariar has forgotten section 342 of the Code, which lays down how oral statements to Magistrates are to be dealt with. An oral statement is always an oral statement, if made by word of mouth, even though it has to be reduced to writing under section 164 or 364, and an oral statement made in the course of the trial therefore under section 342, according to Mr. Rangachariar's amendment, could not be used against the accused unless all the provisions of this section had been complied with. It is not this section that has to be complied with but it is sections 342 and 364, which have to be complied with in those cases. Section 342 is the section which enables the court to examine the accused for the purpose of explaining the circumstances appearing in the evidence against him and sub-section (3) of that section says:

"The answers given by the accused may be taken into consideration in such inquiry or trial and put in evidence for or against him in any other inquiry into or trial for, any other offence which such answers may tend to show he has committed."

Mr. Rangachariar's amendment is a direct contravention of that provision of sub-section (3) of section 342. I have one more point to make with regard to this amendment. Section 533 of the Code deals with the admissibility of confessions and statements made under section 164, and if Mr. Rangachariar wants to add anything to the provisions of the Code in that respect the amendment should be in section 533 and not in section 164. The present amendment is far too wide, is not confined to statements made under section 164 and covers any conceivable sort of statement made by an accused person to a Magistrate, and to require that the provisions of section 164 should be complied with in all cases is I think entirely unnecessary, if not ridiculous.

Mr. President: The amendment moved is:

"To clause 34, add the following sub-clause at the end:

'(iii) After sub-section (3) the following sub-section shall be inserted, namely:

(4) Oral statements made to Magistrates by accused persons shall not be admissible in evidence against them unless the provisions of this section are complied with.'"

The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clause 84, as amended, do stand part of the Bill.

The motion was adopted.

The Assembly then adjourned for Lunch till Twenty Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty Minutes to Three of the Clock. Mr. President was in the Chair.

MESSAGE FROM THE COUNCIL OF STATE.

Mr. President: The Secretary will now read a Message received from the Council of State.

Secretary of the Assembly: From the Secretary of the Council of State to the Secretary of the Legislative Assembly. The Message runs as follows:

" Sir, I am directed to inform you that the Message from the Legislative Assembly to the Council of State desiring its concurrence in a motion to the effect that a Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India be referred to a Joint Committee of the Council of State and the Legislative Assembly and that the Joint Committee do consist of twelve Members, was considered by the Council of State at its meeting to-day and that the motion was concurred in by the Council of State.

" 2. The following Members of that body were nominated to serve on the Joint Committee, namely:

The Honourable Sir Maneckji Dadabhoy,

The Honourable Mr. Purshotamdas Thakurdas,

The Honourable Mr. Lalubhai Samaldas,

The Honourable Sardar Jogendra Singh,

The Honourable Khan Bahadur Nawab Muhammad Musammillullah Khan, and

The Honourable Mr. Sarma."

Mr. J. Hullah (Revenue and Agriculture Secretary): In connection with that Message, Sir, have I your permission to make a motion in order to complete the Committee?

Mr. President: Yes.

Mr. J. Hullah: I move:

" That the following six Members of the Legislative Assembly be nominated to serve on the Joint Committee to consider and report on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India, namely:

Mr. T. V. Seshagiri Ayyar,

Baba Ujagar Singh Bedi,

Mr. Jannadas Dwarkadas,

[Mr. J. Hullah.]

Captain E. V. Sassoon,

Mr. J. N. Mukherjee, and

the Mover."

Mr. President: The question is:

"That the following six Members of the Legislative Assembly be nominated to serve on the Joint Committee to consider and report on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India, namely:

Mr. T. V. Seshagiri Ayyar,

Baba Ujagar Singh Bedi,

Mr. Jamnadas Dwarkadas,

Captain E. V. Sassoon,

Mr. J. N. Mukherjee, and

Mr. J. Hullah."

The motion was adopted.

THE INDIAN OFFICIAL SECRETS BILL.

The Honourable Sir Malcolm Halley (Home Member): Sir, I beg to present the report of the Select Committee on the Bill to assimilate the law in British India relating to Official Secrets to the law in force in the United Kingdom.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now resume consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870.

Rao Bahadur T. Rangachariar: Sir, to facilitate business, some amendments of mine which have been put in have been redrafted by the department, most of which I accept; only they have not accepted some portions. Therefore, I propose, with your permission to move them in parts, Sir. The first amendment relates to section 165, and I move it. It reads:

"That in sub-clause (1) of clause 35 in the proposed new sub-section (1) for the words 'in the diary hereinafter prescribed relating to the case' the words 'in writing' be substituted."

The object of this amendment is, so far as the search records go, they need not be embodied in the diary of the case. The object of the proposed amendment is, in case it is made in writing, not in the diary, then copies can be freely given to the persons who are entitled to copies. If it is made in the diary, there may be objection to showing the diary or giving copies of the diary to the persons interested. Therefore, there is no object served in maintaining the words "in the diary hereinafter prescribed relating to the case." I therefore move that the words "in writing" be substituted.

Mr. President: Clause 35. Amendment moved:

"In sub-clause (1) of clause 35 in the proposed new sub-section (1) for the words 'in the diary hereinafter prescribed relating to the case' the words 'in writing' be substituted."

Mr. H. Tonkinson: Sir, I accept that amendment.

Mr. President: The question is that that amendment be made.

The motion was adopted.

Rao Bahadur T. Rangachariar: I move my next amendment, Sir, which is as follows:

"In clause 35 (i) after the word 'belief' insert the words 'and specifying therein the thing for which the search is to be made.'"

Mr. President: It is on the printed paper.

Rao Bahadur T. Rangachariar: Yes; it is there. The word 'and' is not there. I add the words "and specifying therein the thing for which the search is to be made". Honourable Members will remember that the scheme of the Code as regards searches is three-fold. First of all you can obtain warrants for search.

Mr. President: The Honourable Member wants to have the words 'therein' as referring to the writing and not to the diary?

Rao Bahadur T. Rangachariar: Yes.

Mr. President: It has been suggested to me that the amendment ought to run "and specifying in such writing".

Rao Bahadur T. Rangachariar: I accept it. Probably it is more correct. As I was stating, the scheme of the Code is when a thing could not be got at under section 96, the Magistrate is empowered to issue a search warrant for the production of any document or thing which is required for the purpose of a case, and the Magistrate is also empowered under section 105 to make a search himself for which he could issue a search warrant. Section 165 deals with cases where the police themselves can search without a warrant, in urgent cases where it may not be possible for them to go to the Magistrate to get that warrant, where perhaps the thing might disappear and all that. Therefore the Code provides that the police themselves may have the power in certain cases. Now, the section as it stands would enable a general search to be made of the person's house. As the section stood originally in the Code of 1898, Honourable Members would remember that the language there was:

"Whenever an officer in charge of a police-station, or a police-officer making an investigation, considers that the production of any document or thing is necessary to the conduct of an investigation, into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or thing"

then he was entitled to search himself, and the Calcutta High Court and other High Courts have held that under this section a general search is not possible, because you can search only for specified articles. Apparently to get rid of that ruling this amendment is made. I think, Sir, that it is a very vicious thing to allow a police officer to have power to conduct a general search. A policeman has to resort to this method as he believes he cannot go to a magistrate and get a warrant because time would be lost, it is only then the police are entrusted with power to make this search. Making a search without knowing what it is you are going to search for, but merely to see if you can find something incriminating in a person's house, is

[Rao Bahadur T. Rangachariar.]

not contemplated nor wise to allow. I think it is not wise to entrust the police with such power. And this is recognised in the latter portion of this clause, even in the amended clause (3) of section 165 where the police officer authorises somebody else to make the search where he is unable to do it. Under clause (3) Honourable Members will notice he must give the other person an order in writing specifying the thing for which the search is to be made. So that when this officer has to ask somebody else to do it, he is called upon to specify the thing for which the search is to be made, and when he makes the search himself under this clause, why should he not be under the same obligation to specify what the search is to be made for? General searches ought to be avoided. General warrants ought to be avoided. And Honourable Members will notice that he has to satisfy himself, before he takes action, "that such a thing cannot in his opinion be otherwise obtained without undue delay." The clause itself contemplates that the man himself has some information and he thinks that such a thing cannot be otherwise obtained. Therefore that very clause itself contemplates that the man must know what it is that he is after, and it will be necessary for him to record this in writing and forward the record to the magistrate, so that it will be a check upon irresponsible general searches which have frequently disfigured the police administration in various parts of the country. Even as the section stood the police have resorted to general searches, and the Calcutta High Court and the other High Courts had to come down upon them and hold such searches to be illegal, and now the intention of the Government amendment is to get rid of that ruling. I submit it is no sound to do that and I therefore move that these words be inserted and specifying in such writing the thing for which the search is to be made.

The Honourable Sir Malcolm Hailey: I do not think that the ruling of the Calcutta High Court to which Mr. Rangachariar refers carries him quite as far as he would lead the House to believe. If I am correct what happened in that case was, a report of a dacoity had been made and the sub-inspector of police had been investigating it. A constable was sent to look for the accused person and get a search witness, and when a search was made in the house of the accused and while the search was going on the police party was attacked; certain persons were in consequence charged with rioting and assault of a police officer in the discharge of his duties. They were all convicted under these sections. The High Court said that section 165 refers to a specific document or thing which may be the subject of a summons or order under section 94. The main argument was that section 165 did not authorise a search for stolen property in the house of the absconding offender. The judges remarked (and this is the material part of the judgment) "remarkable as it may appear there is no other section, admittedly, which would cover such a search." The convictions for riot were set aside. I do not think that quite amounts to a statement on the part of the judges so general as was indicated. Still we may agree that a warrant should be definite and a search should, as far as possible, be for a definite object. We have in the succeeding sub-clause, as Mr. Rangachariar says, certainly provided, that where an investigating officer has to issue instructions to another officer, he should tell that officer what he is to search for, though we there put in the words "so far as possible." And I would agree myself that so far as possible, it is right that an investigating officer should state in writing, the object for which he is searching.

Rao Bahadur T. Rangachariar: I accept the addition of those words.

The Honourable Sir Malcolm Halley: If the Honourable Member will accept that, I will not pursue my argument further; he will himself recognise that there is a very wide range of circumstances under which we could not insist on a precise statement of the object of search.

Mr. President: The further amendment to the amendment moved is:

"That the words 'so far as possible' be inserted after the word 'specifying,' in clause 35 (i)."

The motion was adopted.

Mr. President: The amendment moved is:

"In clause 35 (i) after the word 'belief' insert the words 'and specifying in such writing, so far as possible, the thing for which the search is to be made'."

The motion was adopted.

Rao Bahadur T. Rangachariar: I do not move the amendment to clause 35 (a) as printed but I move that:

"For the words 'in the diary relating to the case,' the words 'in writing' be substituted. I have already explained in my former remarks why I wish these words to be substituted."

The Honourable Sir Malcolm Halley: We accept this as a consequential amendment.

Mr. President: The amendment is:

"In clause 35 (ii) for the words 'in the diary relating to the case' the words 'in writing' be substituted."

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, I move:

"That after sub-clause (iii) of clause 35 the following sub-clause be added, namely: (iv) After sub-section (4) the following sub-section be added, namely:

(5) Copies of any record made under sub-section (i) of sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate:

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost."

As Honourable Members will see, the object of this amendment is that, as soon as a search is made, an immediate report should be made to the nearest Magistrate. That is one of the objects. The second object is that the person whose house is searched should have copies of the records made under sub-clauses (i) and (iii). Sub-clause (4), as it stands, enables

the provisions of section 103 to apply, that is, the general rules relating to searches are made applicable. Under section 103, the occupier of the place where the search was made gets only a list of the articles taken, but what I want him to get is the reason for the search which has to be recorded in writing, which has to be sent to the Magistrate, and he gets a copy thereof. That is the object of this further sub-clause (5) which I move, Sir, as it stands.

Mr. H. Tonkinson: Sir, I accept the amendment. I do not think it is necessary to explain it any further than has already been done by my Honourable friend Mr. Rangachariar.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That after sub-section (4) the following sub-section shall be added:

'(5) No search shall be made without having first given an opportunity to the owner or occupier of the place, if present, for the production of the thing for which the search is to be made'."

Sir, we have so far considered that the article that has to be searched for, should be specified. When we specify the article to be searched for to any police officer, that officer should, before entering the house ask the owner or occupier to produce that article, if possible. If he produces it the search may be abandoned; if he does not produce it the search may be made. The objection may be raised on the other side that, if such an opportunity is given to the owner or occupier it is just likely that he might hide or conceal it. My object is that it is not necessary to give him such a long time to produce it. The police might surround his house and ask him to produce it. If he does not produce it, then they may enter and search the house. It would obviate much of the inconvenience that is involved in searches, for instance, the damage or destruction of his property which is involved in such searches. To avoid such things, it is better that the police officer should, the moment he goes to search a house, ask the occupier to produce the article for which a search is to be made.

Rao Bahadur T. Rangachariar: I am afraid my friend is under a misapprehension. If you enact this clause, you will be contradicting clause (1). Clause (1) contemplates that a police officer has to be satisfied that he cannot otherwise obtain it; then only he resorts to this course, and he has to record it in writing. That in itself is a sufficient guarantee. Therefore, it becomes unnecessary and it is a contradiction of clause (1).

Mr. K. B. L. Agnihotri: I beg your permission to withdraw this amendment, Sir.

The motion was, by leave of the Assembly, withdrawn.

Mr. W. M. Hussanally: I suggest an addition to this section, which I hope will be accepted by the Government. I want to add a sub-clause to this section that "a police officer before commencing a search shall offer himself and his party to be searched by the owner or occupier of the house searched."

I suggest this amendment for this reason, that in several provinces executive orders have been issued to all police officers undertaking a search to offer themselves and the whole of their party to the owner or occupier to be searched before they commence the search

The Honourable Sir Malcolm Hailey: May I interrupt the Honourable Member. I submit that it is not fair either to the House or ourselves to introduce at this stage without any notice of any kind whatever, an amendment of a substantive nature.

Mr. President: The Honourable the Home Member takes objection to the moving of the amendment, of which due notice has not been given. I think I must uphold the objection.

Clause 35, as amended, was added to the Bill.

Rao Bahadur T. Rangachariar: Sir, I have amended the printed amendment somewhat, in order to suit drafting requirements. The amendment which I move will run as follows:

"That in sub-clause (2) of clause 36, to the proposed new sub-section (4), the following be added, namely:

'and shall also send to the nearest Magistrate empowered to take cognisance of the offence copies of records referred to in section 165, sub-sections (1) and (3)'.
and

"That in sub-clause (2) of clause 36, after the proposed new sub-section (4) the following sub-section be added, namely:

'(5) The owner or occupier of the place searched shall on application be furnished with a copy of any record sent to the Magistrate under sub-section (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.'

This follows the previous amendment made in clause 35, and it is similar to it. I therefore, Sir, move it.

Mr. President: Amendment moved:

"That in sub-clause (2) of clause 36, to the proposed new sub-section (4), the following be added, namely:

'and shall also send to the nearest Magistrate empowered to take cognisance of the offence copies of records referred to in section 165, sub-sections (1) and (3)'.
"

Mr. H. Tonkinson: Sir, I accept that amendment.

The motion was adopted.

Mr. President: Further amendment moved:

"That in sub-clause (2) of clause 36, after the proposed new sub-section (4) the following sub-section be added, namely:

'(5) The owner or occupier of the place searched shall on application be furnished with a copy of any record sent to the Magistrate under sub-section (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.'

Mr. H. Tonkinson: Sir, I accept the amendment.

The motion was adopted.

Clause 36, as amended, was added to the Bill.

Mr. T. V. Seshagiri Ayyar: Sir, I move the amendment standing in my name, which is in these terms:

"In clause 37 (ii) insert at the beginning the following:—'in sub-section (2), after the words 'he may' the words 'either release the accused after recording reasons for taking that step or forward him to a Magistrate having jurisdiction to try him with his reasons for recommending the release or' shall be inserted and '."

Sir, in this section power is given to a Magistrate who has not himself got jurisdiction to try a case to order the detention of an accused in jail for a particular period. Sub-section (2) of section 167 runs as follows:

"The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction."

But, Sir, no power is given to the Magistrate himself to release the accused if he considers that no case has been made out for his detention.

[Mr. T. V. Seshagiri Ayyar.]

It may be said that as the Magistrate has got no jurisdiction to try, therefore, such a power should not be vested in him. But, if the House will turn to section 169, it will find that such powers are given to the police.

The police can have such powers under section 169, which runs:

"If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial."

If the police officer can be trusted to exercise his discretion as regards release, I submit that the Magistrate, who has been given power to order the detention of a man in jail, can be trusted to direct his release if he considers it desirable. It is for that reason that I have brought forward my amendment.

Sir Henry Moncrieff Smith: Sir, I think some distinction can be drawn between the police officer who has investigated the case and who is empowered to release an accused person on bail if he has not found sufficient evidence, and the Magistrate to whom the accused person is taken for the purpose of getting a remand. Mr. Seshagiri Ayyar's proposal, I would point out, is not on the same lines as section 169. He makes no provision for bail. It is absolute release he provides for. A murderer is taken before a third class Magistrate. The only reason he is taken there is that that Magistrate is the nearest one and the police have not been able to complete the investigation within 24 hours. The law lays down that nobody should be retained in custody for more than 24 hours without an order from a Magistrate. Therefore he comes before a Magistrate. Now that Magistrate has very little information before him with regard to the case at all. He has not got jurisdiction to try the case or to commit it for trial, and therefore, Sir, is it reasonable that that Magistrate should be able to release the murderer forthwith and send him away—not even to take bail? I think the only proper provision in a case like this is for the Magistrate to report what he has done to the Magistrate who has jurisdiction in the case and for that Magistrate, who has jurisdiction, then to take such steps as may seem to him proper—either to release the man or to detain him in custody.

Mr. Seshagiri Ayyar's amendment, I would point out, will read rather curiously in the section. As he would put it, it will run:

"If he has not jurisdiction to try the case or commit it for trial and considers further detention unnecessary he may either release the accused after recording reasons for taking that step or forward him to a Magistrate having jurisdiction to try him with his reasons for recommending the release or order the accused to be forwarded to a Magistrate having jurisdiction."

What is the difference between forwarding a person to a Magistrate and ordering him to be forwarded to a Magistrate? It does not read very well in the section, and I think it is undesirable that a Magistrate who has not jurisdiction should be allowed to release without any security whatever serious offenders whom he has not power to try or commit for trial.

The motion was negatived.

Mr. J. Ramaya Pantulu (Godavari *um* Kistna: Non-Muhammadan kural). Sir, my amendment runs as follows:

"In clause 37, sub-clause (ii), omit the words 'and no Magistrate of the second class not specially empowered in this behalf by the Local Government'."

The present law is laid down in section 167, sub-section (1), which runs as follows:

"Whenever it appears that any investigation under this Chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused (if any) to such Magistrate."

Then, the second sub-section empowers the Magistrate to order that the man be detained in such custody as he thinks fit, for a term not exceeding fifteen days in the whole. Well, under the law as it stands any Magistrate can order the detention of an accused person pending investigation by the police. The section as it is amended in the Bill takes away the power from a third class Magistrate and confines it to first class Magistrates. In the case of second class Magistrates, it says the power may be exercised by a second class Magistrate if he is specially empowered by the Local Government. My amendment would invest both first class and second class Magistrates with the power to detain in custody. I move this amendment in the interests both of the investigation by the police and of the accused himself. As a rule only Revenue Divisional officers are first class Magistrates, and they are in charge of large Divisions. Some of these Divisions are very large, being in some cases 100 miles from one end to the other; and if the accused, in the course of the investigation, has to be produced before a first class Magistrate for the purpose of obtaining an order of detention, it will take some time—a week or more to go and come back, and during all this time no investigation can be carried out. Now it is only an order for detention. After all, the case may go before a second class Magistrate, and a second class Magistrate has got the power of ordering detention in the course of the inquiry. So, two things will have to be done, if this section of the Bill stands as it is. Either there will be long delay caused in the investigation of cases by the police as the accused person will have to be taken long distances for the purposes of obtaining an order of detention; or the Government will have practically to empower all second class Magistrates to exercise the powers under this section. And if the Government invests all second class Magistrates, what is gained? Practically nothing is gained. I, therefore, think that in the interests of speedy administration of justice and in order to minimise the unnecessary detention of the accused himself in custody, my amendment should be accepted, so that all second class Magistrates can exercise the powers under this section.

The Honourable Sir Malcolm Hailey: Sir, Mr. Pantulu has explained the case clearly to the House. It is not a point on which we ourselves feel very deeply; but the Bill represents the views of the Joint Committee, and while naturally preferring their views, we are prepared to leave the decision to the House.

Rao Bahadur T. Rangachariar: Sir, I beg to oppose this amendment. This power of detention should be given only to experienced Magistrates

[Rao Bahadur T. Rangachariar.]

I would not even empower Government to empower second class Magistrates to do this. However, we may trust to the discretion of the Government in this, but let us not extend it further. This period of detention in police custody is just the time which is taken advantage of for extorting confessions and other things. Therefore, we have to be very careful that this power is given only to experienced Magistrates.

The motion was negatived.

Dr. H. S. Gour: Sir, the amendment I propose is to clause 37, sub-clause (4), which Honourable Members will see, as at present drafted runs as follows:

"If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate."

The amendment I propose runs as follows:

"To clause 37 add the following sub-clause:

(iii) To sub-section (4) after the word 'subordinate' the following shall be added, namely:

'who may reverse it and order that a person ordered to be detained in the custody of the police shall be committed to jail custody or be released on bail or on his own recognizance as he may deem fit.'

Honourable Members will see that this express power which I propose to confer upon the magistrate to whom the proceedings of the police are reported is necessary and is not implied as might be suggested by the Honourable Members sitting on the Government benches. It might be argued that it is painting the lily and that magistrates do possess such power under section 496 of the Code of Criminal Procedure. But if Honourable Members will turn to section 496 they will find that the initial words of that section are:

"When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail."

That is only in the case of a bailable offence where bail may be given as a matter of right. Then section 497 says:

"When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused."

Now, neither of these sections answers the purpose I have in view. The object of my amendment is to arm the magistrate with jurisdiction not merely to release a person on bail, but as I have pointed out, also to order that a person ordered to be detained in the custody of the police shall be committed to jail custody or be released on bail or on his own recognizance as he may deem fit. Now what is the object of a police officer reporting the matter to the magistrate? The section provides that the magistrate authorising detention under this section in the custody of the police shall record his reasons for so doing. The magistrate passes a judicial order that the accused, whether guilty of a cognizable or non-cognizable, bailable or non-bailable offence, might be detained in police custody instead of being sent to jail custody which is the ordinary rule. A copy of his order

is sent to the Magistrate superior to him in jurisdiction under sub-clause (4). What is the object of sending up a copy of his order to his superior officer? The object obviously is that he may satisfy himself as to the propriety of the action he has taken in the case; and if that is the object it follows as a matter of necessity that such Magistrate should be empowered to reverse that order or to modify it in the manner suggested in my amendment, I think, therefore, Sir, that this is a salutary amendment and should be accepted by the House.

Mr. H. Tonkinson: Sir, in section 167, in the circumstances in which we are now dealing with, a Magistrate must have recorded reasons in writing for the detention of this person. He must then send a copy of his order to the District Magistrate or the Sub-divisional Magistrate if he is not a district Magistrate or a Sub-divisional Magistrate. My Honourable friend likened this amendment to the painting of the lily; he did however see that what he was doing was to affect another chapter altogether. He is affecting the chapter of the Code which deals with bail. Sir, when we were discussing an earlier clause on the motion, I think, on the suggestion of my Honourable friend, Mr. Seshagiri Ayyar, it was decided that we should postpone consideration until we came to consider the bail provisions. That, Sir, is exactly the position with regard to this present amendment. I would like, however, to draw the Honourable Member's attention to the fact that he was reading section 497 as it stands in the Code to-day and not as it will stand in the Code, if this Bill ever does become law. Let me read section 497 which deals with the release of persons accused of non-bailable offences. As it is proposed to be amended by this Bill:

"When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life:

Provided that the Court may direct that any person under the age of 16 years or any woman or any sick or infirm person accused of such an offence (i.e., an offence punishable with death or transportation for life) shall be released on bail."

Does, Sir, my Honourable friend intend by his amendment to modify these already very startling provisions as they stand in the Bill? Does he intend, Sir, to suggest that if a man is accused of an offence punishable with death or transportation for life and further if there are reasonable grounds for believing that he has been guilty of such an offence, that then it is necessary to give here, in another provision which deals with another subject altogether, power to the courts to release him? I think, Sir, the amendment is entirely unnecessary, quite misplaced, and I would suggest to my Honourable friend that he should withdraw it.

The motion was negatived.

Mr. President: The question is that clause 37 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 38 do stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That after clause 38 insert the following clause 39:

'39. In the proviso to section 171 of the said Code after the word and figures 'section 170' the words 'and declines to give his proper address' shall be inserted.'"

[Mr. K. B. L. Agnihotri.]

Sir, section 171 was dealt in clause 39 of the Bill before it was sent to the Joint Committee but that clause 39 was omitted by the Joint Committee and I therefore propose that clause 39 be re-inserted and that the amendment which I beg to move be entered. Section 171 requires that a complainant or witness, refusing to attend or to execute a bond for appearance in court on the day on which the police case be put up, be taken into custody and sent to the court in custody. I beg to propose an amendment to the effect that the complainant or witness should not even though he refuses to execute a bond, be taken into custody but his name and address be taken and he may be asked to appear. If he declines to give his name and address, he may in that case be arrested and taken in custody. The practice in the mofussil is that a Government servant or a public officer is not required to execute a bond or is not required to attend on the date on which the police case be put up but is generally summoned by the court to appear when the case is taken up for consideration. That is when the police prepare their chalan, they take down the name of the witness if he happens to be a Government servant and instead of taking any bond from him or asking him to appear on the day on which the chalan is put up before the Magistrate, he is required to appear on receipt of summons from the court. Probably this is done to avoid interference in his duties and to provide that he should not be required to leave his work unless the head of the department is apprised of that fact. I suggest that a similar privilege or concession be extended to a person whose residence is known or who himself is known to the police or who gives his proper address to the police officer. It should not be necessary for him to appear in court along with the accused on the date on which the chalan is put up by the police. He may be summoned later on as is done in the case of the Government servant. Therefore I submit that though he refuses to execute a bond to appear on the day when the chalan be put up, he may not be taken into custody unless he declines to give his name and address. With these words I commend my amendment to the acceptance of the House.

Mr. H. Tenkinson: I do not know whether it is necessary for me to argue at length against this amendment. In section 170 of the Code it will be seen that the police officer has decided that there is sufficient evidence or reasonable grounds for sending the accused person up for trial. Then under sub-section (2) he sends to the Magistrate weapons, articles and so on and requires the complainant and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence as the case may be in the matter of the charge against the accused. Now, section 171 which my Honourable friend proposes to amend is a section designed in the interests of the complainant and the witnesses, designed to obviate subjecting them to unnecessary restraint. The proviso, however, goes on to say that if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer concerned is required to forward him in custody to the Magistrate. Now, will Honourable Members think of the stage we have reached. The final charge sheet of the police has been prepared. A list of witnesses is included in the charge sheet. That is laid before the Magistrate with the accused person and also the witnesses. That is the ordinary procedure for the beginning of a warrant trial. The Magistrate begins the trial at once. Now, according to the amendment moved by my Honourable friend witness A. B. is not there. He was a

man who refused to attend who refused to execute a bond. He merely gave his name and proper address. What happens then? This witness may be one of the most important witnesses in the case. In that case all the witnesses are sent back to their homes and any person who has any experience of trying cases as a Magistrate will know how grievously witnesses object to being summoned again and again to appear to give evidence in Court. In that sense the amendment moved by my Honourable friend is very much against the interests of the class of persons in whose favour he proposes that it should be made. Take the case of the accused person. A number of Members of the House have objected very strongly to placing the accused person unnecessarily under restraint. The amendment that has now been moved would merely have the effect of lengthening the trial of every case in which a person has taken advantage of the privilege which my Honourable friend proposes to give to him and that must always be against the interests of the accused person. I will suggest also that the amendment is somewhat inconsistent with section 170, subsection (2), which requires a police officer to call upon the witnesses to execute a bond. I do not think it is necessary to argue this amendment any further. There is I submit no doubt that it should not be made.

Dr. Nand Lal: I oppose this amendment . . .

(Voice: "The question may now be put.")

Mr. President: The question is that the question be put.

The motion was adopted.

Mr. President: The question is:

That a new clause 39 be added to the Bill, namely:

"39. In the proviso to section 171 of the said Code after the word and figures 'section 170' the words 'and declines to give his proper address' shall be inserted."

The motion was negatived.

Rao Bahadur T. Rangachariar: I beg to move, Sir, amendment No. 154 in a slightly altered form:

"(1) Clause 40 be renumbered 40 (1) and that to said clause the following sub-clause be added, namely:

"(2) After subsection (3) of the same section the following sub-section shall be inserted, namely:

"(4) A copy of any report forwarded under this section shall on application be furnished to the accused before the commencement of the inquiry or trial;

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost."

This amendment relates, Sir, to the supply to the accused person of a copy of the charge sheet in the case on which he is being prosecuted. There has been considerable difficulty in this matter on account of the rulings of various courts that copies of charge sheets should not be furnished to accused persons. Some courts went to the length of holding that till the accused begins his defence, a copy of the charge sheet should not be furnished to him. It has worked as a great hardship. The accused has to grope about in the dark as to what case he has to meet, who the prosecution witnesses are and what their evidence is going to be. This amendment is therefore very necessary. Before a case begins, or the inquiry or trial commences, an accused person ought to be furnished with a copy of the charge on which he is being prosecuted. Just as he is

[Rao Bahadur T. Rangachariar.]

furnished with a copy of the complaint on which he is being prosecuted, so also this charge sheet is the information on which the Magistrate takes cognizance, and it is but right therefore that the accused should be granted a copy of it.

Mr. President: The question is that that amendment be made.

The motion was adopted.

Clause 40, as amended, and clauses 41 and 42 were added to the Bill.

Mr. T. V. Seshagiri Ayyar: Sir, in moving my amendment, I wish to preface my remarks by saying that I have no doubt the Honourable Sir Henry Moncrieff Smith will be able to say that it is a very badly worded amendment. I move, Sir, that:

"In clause 43 for sub-section (2) of proposed section 185, substitute the following:

"(2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence or of an offence which includes the one under the cognizance of the other Court, any of the High Courts which has jurisdiction over either of the subordinate Courts may direct the trial of such offender to be held in the Court subordinate to it, and on such decision proceedings against such person in the other Court shall be discontinued."

In the section as introduced by the Government there are some very obvious defects, and it is desirable that those defects should be removed. It is practically a new section. Difficulty was felt both in Madras and in Calcutta with the section as it was originally worded, and it is apparently with the object of removing those difficulties that this section has been introduced in the form in which it has come before the House. I will mention one or two defects which are on the surface. Section 185 (2) as drafted says: "Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence" Now the Government would realize that two Courts in two different places may take cognizance upon the same facts of two different offences. No provision has been made for that. For example, upon the same set of facts, in one Court a man may be charged for breach of trust, in another jurisdiction he may be charged for cheating. If you leave the words "for the same offence" as they are, a man is likely to be tried twice upon the same facts for different offences.

Another matter is, there may be a minor offence and a major offence. A man may be charged for theft in one place, and in some other court for extortion. Suppose there is a charge of theft in one place and extortion in another, is he to be tried on two occasions for these offences in the two places? These are the defects which I notice in the section as it has been drafted.

Another difficulty which has been felt in Madras, and I think the same difficulty was felt in Calcutta, was this. A charge may be brought against a person in a particular Presidency where the accused does not reside, and the prosecution may not be diligently pressed; in another place where the accused resides and has facilities for defence, the charge may be pressed against him. Why should we restrict the power for ordering stay of proceedings to the place where the original suit was instituted? If any of the High Courts is moved, and if that High Court finds that it is desirable in the interests of the accused that the case should be tried within its jurisdiction, then all the proceedings in the other High Court should be stayed. If you make a provision for that, there will be no difficulty,

but if you leave the matter where it is, then the accused will be subjected to great inconvenience by compelling him to make the motion in the place where the charge was originally instituted. After all the convenience of the accused and the facilities he has for defending himself should be the guiding factor. Therefore, whichever High Court is moved for the purpose of stopping proceedings in another jurisdiction, the order passed in that High Court should be binding upon the other High Court. Those two factors should be taken into account; they must be provided for. It may be better to postpone the consideration of this section for the purpose of bringing in a section which will satisfy the two requirements which I have just now mentioned. Otherwise the section as it has been worded by the Government draftsman will not meet the cases. I move, Sir, the amendment standing in my name.

Sir Henry Moncrieff Smith: Sir, I admit that this is rather a difficult provision. It was drafted and re-drafted many times before it found its way into the Bill. My Honourable friend suspects me every time of distrusting his own drafting. I must admit, Sir, I found a little difficulty as to his intention in respect of those words—"an offence which includes the one under the cognizance of the other Court". I understand now what he means by those words from the remarks which have fallen from him in moving his amendment. What we have aimed at is as far as possible to get a rule of thumb for these cases which will bring finality. That is why we have provided that the first High Court to take action in the matter should be the High Court within whose jurisdiction the proceedings were started. There is no particular reason why that High Court should come in; but we must start somewhere and that is why we have selected that High Court. Mr. Seshagiri Ayyar would leave it to any High Court to move, but I think that possibly he has not contemplated the case where both High Courts act simultaneously. It is not at all impossible. Both High Courts are moved and both give orders, each without the knowledge of the other; both give orders that the trial should continue in courts within their jurisdiction; what is the result? The two trials come on; there is no getting away from that. I think, Sir, the clause in the Bill will obviate that difficulty. At any rate we shall not get simultaneous orders from two High Courts. The High Courts will take it in rotation; if one won't move then the other will. Mr. Seshagiri Ayyar thinks there will be some difficulty about the words used at the beginning of the clause "take cognizance of the same offence". It may be, Sir, that there are some cases which the clause in the Bill will probably not meet.

But it is impossible to draft this clause to make it comprehensive and to make it meet every possible case that will arise. We tried to do it, but we could not. The House must remember that until this clause was put into the Bill there was no provision whatever like this. We have gone as far as it is possible to go without unnecessary complications to remove this difficulty which has actually occurred in practice. I think the procedure which the clause lays down should be allowed to stand. Mr. Seshagiri Ayyar's proposal will leave us in a state of uncertainty in certain cases; there will be no finality at all.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadian Urban): May I suggest for the consideration of the Honourable Sir Henry Moncrieff Smith the addition of the words "of the same offence or of different offences on the same facts". That might probably obviate the difficulty.

Sir Henry Moncrieff Smith: It is not an expression which is used in the Code at all. Perhaps my Honourable friend has in his mind the words 'offences arising out of the same transaction'. But that is far too wide and I think my friend will agree with me.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clause 43 do stand part of the Bill.

The motion was adopted.

Rao Bahadur T. Rangachariar: I move, Sir, the following amendment:

"In clause 44 before the words 'In the first proviso' insert the words—"

'In section 188 of the said Code for the words 'Her Majesty' the words 'Majesty' and for the word 'Queen' the word 'Crown' shall be substituted."

I move this amendment with some regret, Sir, in that I am sure that the words which are dear to us should be removed from the Code as it stands. I think it is an oversight. I do not know if these words 'Majesty' and 'servant of the Queen' occur in other places, but they are an anachronism now. I do not know when we are revising the Code we should not put this right. The substitution of the words 'His Majesty' and 'servant of the Crown' will make it all right. I therefore move this amendment.

Sir Henry Moncrieff Smith: Sir, Mr. Rangachariar is correct in saying that the words 'Her Majesty' and 'His Majesty' are anachronisms now; but the unfortunate thing is that there are several similar anachronisms in the Code. It is not much use our putting it in one place, unless we can put it right in every place. There are in two places the words 'Her Majesty' occur, and also in sections 129, 130 and 131, and in innumerable places in the schedules to the Code. It is our intention to put these right. When this Bill is passed, and before two other Bills affecting the Code are passed, we shall introduce a consolidating Bill remedying these defects. It is not easy, I suggest, to take it in one particular place; we might leave it as it is for the present.

Rao Bahadur T. Rangachariar: I accept the suggestion, Sir.

Mr. President: Amendment moved:

"In clause 44 before the words 'In the first proviso' insert the words—"

'In section 188 of the said Code for the words 'Her Majesty' the words 'Majesty' and for the word 'Queen' the word 'Crown' shall be substituted."

The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clauses 44, 45 and 46 do stand part of the Bill.

The motion was adopted.

Rao Bahadur T. Rangachariar: I do not know, Sir, if it is convenient to adjourn the House now. There is a function to which all of us have been invited. The next amendments relating to sanction will probably take some time.

The Honourable Sir Malcolm Hailey: We are unwilling to put our old friend aside even for a short time, but we are prepared to agree in this case.

Mr. President: It suits my personal convenience to adjourn the House. But, on the other hand, I should like to say here that the business of this House—and particularly business of this character—ought in the minds of Honourable Members to take precedence over everything, even of their own personal convenience. However, I waive that to-day and adjourn till Eleven O'Clock to-morrow morning.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 1st February, 1923.

LEGISLATIVE ASSEMBLY.

Thursday, 1st February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

MEMBER SWORN:

Mr. Crewe Hamilton Townsend, M.L.A. (Punjab: Nominated official)

QUESTIONS AND ANSWERS.

PAYMENT OF PIECE WORKERS IN PRESSES.

297. ***Khan Bahadur Sarfaraz Hosain Khan**: Is it true that the Government had promised payment, according to class rates, to piece workers in the Press for periods in normal working hours during which they have to remain idle?

Mr. A. H. Ley: Yes.

BOMBING ON NORTH-WEST FRONTIER.

298. ***Mr. Ahmed Baksh**: (a) Will the Government be pleased to state the number of villages bombed or machine gunned from aeroplanes and also the quantity of bombs and other explosive matter dropped on the villages in the independent territory on the North-West Frontier from January, 1922, to 15th January, 1923?

(b) Have the Government any information as to whether the tribesmen possess any aeroplanes or anti-aircraft guns; if so, how many in each case?

Mr. E. Burdon: (a) Twenty one villages and various settlements have been bombed and 94 tons of explosives dropped between the dates mentioned.

(b) No.

MOSQUES IN NEW DELHI.

299. ***Haji Wajihuddin**: Has the attention of the Government been drawn to the article headed "*Nai Dehli ki masjid khatre men*" published in the vernacular organ of Lahore known as *Daily Paisa Akbar*, dated 18th January, 1923, on page 8, column 4, and whether Government propose to investigate the matter and declare its policy with regard to the safety and preservation of old mosques in question?

Mr. A. H. Ley: Government has not seen the article in question. All ruins of mosques in New Delhi are preserved from destruction. In addition those of archaeological interest are maintained and repaired, as necessary, in accordance with the advice of the Archaeological Department.

Mr. K. Ahmed: Is it not a fact that there were petitions after petitions with regard to the mosques which have been dismantled at Siki Burji and if so what has happened to them?

Mr. A. H. Ley: I am afraid I must ask for notice in the absence of my friend the Honourable Mr. Chatterjee.

Mr. K. Ahmed: Is it not a fact that two mosques have come within the Lady Hardinge Medical College and have been totally closed for the outside Muslims and even the Muslim medical staff in the hospital are not allowed by the Principal to give Ajan?

Mr. A. H. Ley: I am not aware of the fact.

Mr. K. Ahmed: Will you be good enough to inquire into the matter and do the needful by removing the anomaly?

EMPLOYMENT OF PROFESSOR RUSHBROOK WILLIAMS.

300. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

- (i) For what specific period was Professor Rushbrook Williams, Director of the Central Bureau of Information, on deputation in connection with the tour of His Royal Highness the Prince of Wales in India?
- (ii) What were his emoluments during the period and were they paid by the Foreign and Political Department or by his own office? and
- (iii) During that period who acted respectively as Director and Assistant Director of the Central Bureau of Information? What were their emoluments and by which Department were they met?

The Honourable Sir Malcolm Hailey: (i) Forenoon of 11th October 1921 to afternoon of 31st March 1922.

(ii) Rs. 2,000 per mensem paid by the Home Department *plus* a halting allowance of Rs. 15 a day for actual halts on the Royal tour. This allowance was paid from Royal Visit Funds presided over by the Royal Visit Finance Sub-Committee.

(iii) Mr. R. S. Bajpai acted as Director and received the full pay of the post, namely, Rs. 2,000. This expenditure was shared equally by the Home Department and the Royal Visit Funds. The post of Assistant Director was not filled during this period.

MORAL AND MATERIAL PROGRESS REPORT OF INDIA.

301. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

- (i) When was the Moral and Material Progress Report submitted by the Secretary of State for India to the House of Parliament in the years 1919, 1920, 1921 and 1922?
- (ii) Were all or any of these reports, in full or in parts, prepared by Professor Rushbrook Williams?
- (iii) If so, did he prepare them in his personal capacity or as part of the duties of the Director of the Central Bureau of Information?

The Honourable Sir Malcolm Hailey: (i) Copies of "India in 1919" were sent from India to the Secretary of State in June 1920 and presented to Parliament in July 1920.

Copies of "India in 1920" were sent in May 1921 and presented to Parliament in June 1921.

Copies of "India in 1921-22" were sent in July 1922 and presented to Parliament in August 1922.

(ii) They were prepared by Professor Rushbrook Williams with the help of material supplied by Departments of the Government of India and Local Governments.

(iii) As part of his duties as Director, Central Bureau of Information.

TOURING OF OFFICERS OF CENTRAL BUREAU OF INFORMATION.

302. ***Mr. K. G. Bagde:** Will the Government be pleased to lay on the table a statement showing:

- (i) The period during which (a) the Director and (b) the Assistant Director of the Central Bureau of Information were on tour in the years 1921, 1922 and 1923;
- (ii) The places which they visited;
- (iii) The travelling and other expenses incurred by the tours; and
- (iv) The purpose and result of the tours?

The Honourable Sir Malcolm Hailey: Statements giving the information required in parts (i) and (iv) will be supplied to the Honourable Member.

(a) The total cost for the period mentioned is:

					Rs.	A.	P.
Director	...	...	...	...	5,761	7	0
Assistant Director	...	...	...	...	6,154	0	0
TOTAL					11,915	7	0

(ir) The Director and Assistant Director, Central Bureau of Information, go on tour under the direction of the Home Department for the purpose of consulting on publicity matters with provincial publicity officers and local Governments and sometimes local officials. The Assistant Director also has to be in Calcutta for several weeks in connection with the publication of the annual Moral and Material Progress Report which is presented to Parliament. The results of the tours have been satisfactory.

Sir Deva Prasad Sarvadhikary: Have these officers any authority over the provincial officers in regard to publicity? If so, what?

The Honourable Sir Malcolm Hailey: They have no such authority.

SECRET SERVICE GRANT EXPENDED BY CENTRAL BUREAU.

303. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

- (i) Is it a fact that an annual allotment is made to the Central Bureau of Information called the Secret Service Grant?
- (ii) If so, what were the allotments made, and how were they spent in the years 1921 and 1922?

The Honourable Sir Malcolm Hailey: Government are not prepared to make any statement regarding expenditure from funds provided for Secret Service.

M. K. Reddi Garu: Is any account kept of the Secret Service Grant?

The Honourable Sir Malcolm Hailey: Certainly; but I am not prepared to reveal it.

Mr. T. V. Seshagiri Ayyar: Is this grant placed before the Standing Finance Committee—the way in which it is spent? Will the Committee have a voice in deciding the matter.

The Honourable Sir Malcolm Hailey: Secret Service funds are devoted for secret purposes and it is not possible to consult our Committee as to the manner in which they should be expended.

Mr. W. M. Hussanally: What are the objects upon which this fund is spent?

The Honourable Sir Malcolm Hailey: Secret objects.

Mr. K. Ahmed: Is the amount spent for secret service votable or non-votable and is it open to the Assembly to criticise the expenditure for the secret purpose?

The Honourable Sir Malcolm Hailey: It is part of the votable funds.

Mr. N. M. Joshi: Are these accounts audited by the Auditor General?

The Honourable Sir Malcolm Hailey: Yes.

RE-EMPLOYMENT OF PENSIONERS.

304. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

- (i) Is it a rule that Government pensioners should not, after retirement from service, be re-employed in the offices of the Government of India?
- (ii) Have any such men been so employed?
- (iii) If so, what are their names, ages, and the offices in which they are working?
- (iv) Will they consider the desirability of adhering to the rule rigorously in future?

The Honourable Sir Malcolm Hailey: (i) No. Government pensioners can be re-employed on public grounds under Article 520 of the Civil Service Regulations.

(ii) Yes.

(iii) The information is being collected and will be supplied to the Honourable Member in due course.

(iv) This does not arise.

Mr. K. Ahmed: Instead of giving or furnishing information to the questioner, would it not be desirable, for the benefit of the public, that each and every Member of the Assembly should also be furnished with the information in question and that it should be published in the proceedings of the business of the House?

Mr. President: It is not necessary for every answer to every question to appear in the Report. If the Member of Government answering the question considers it to be of sufficient public importance, then he may, on

his own responsibility, lay it on the table; otherwise it is an economical and proper procedure to supply the information only to the Member who asked for it. It is perfectly open, on the other hand, for any other Member to repeat the question and ask for the information in a public form.

RULES UNDER GOVERNMENT OF INDIA ACT.

305. ***Mr. K. C. Neogy:** Have Government any information as to whether and when it is intended to make rules under Section 19A of the Government of India Act for the purpose of regulating and restricting the exercise of the power of superintendence, direction and control, vested in the Secretary of State and the Secretary of State in Council, so as to give effect to the purposes of the Government of India Act?

The Honourable Sir Malcolm Halley: The attention of the Honourable Member is invited to the rules published with the Reforms Office notification No. 835-G., dated the 14th December, 1920.

UNSTARRED QUESTIONS AND ANSWERS.

MR. AGARWALA'S BILL TO: IMPROVEMENT OF CATTLE.

132. **Babu Ambica Prasad Sinha:** Will the Government be pleased to lay on the table Lala Girdharilal Agarwala's last Bill on the subject of the Improvement of Cattle with all correspondence on the subject?

Sir Henry Moncrieff Smith: As the Honourable Member is aware there is no such Bill before the House.

In the exercise of his statutory powers under section 67 of the Government of India Act, His Excellency the Governor General refused his previous sanction to the introduction of Lala Girdharilal Agarwala's latest Bill on the subject of the protection and improvement of cattle. The Bill cannot therefore be introduced. The Government cannot see their way to lay on the table either the Bill or the correspondence relating to it as they consider that such a course would not, in the circumstances, be proper.

PROTECTION OF CATTLE.

133. **Rai Sahib Lakshmi Narayan Lal:** (a) Has the attention of the Government been drawn to the resolutions passed for cattle protection in India at a public meeting of the citizens of Calcutta and suburbs presided over by Dr. H. W. B. Moreno in December last?

(b) Has the attention of the Government been drawn to the following rules for the restriction of slaughter of cattle in slaughter houses contained in Government notification No. 1236-955-XIII of the Central Provinces dated 31st May, 1922 (referred to in resolution No. 2 of the said meeting):

"Rule 6 of the said notification.

The following animals shall be rejected and returned to the owner:—

(1) Any animal which in the opinion of the supervisor is

(a) pregnant or

(b) in milk.

(2) All cows.

(3) Any animal other than sheep or goats which in the opinion of the supervisor is of or under the age of 9 years."

(c) Are the Government aware that all-India Cow Conference has, year after year, been craving some substantial steps by the Government for the protection of the cattle?

(d) Are the Government aware that substantial steps have been taken for the protection of cattle in Afghanistan and Hyderabad?

(e) Will the Government be pleased to consider the advisability of addressing other Provincial Governments regarding the desirability of restricting the slaughter of cattle in their provinces, on the lines of the aforesaid Government notification of the Central Provinces and take such other substantial steps for the protection of the cattle as the Government think fit and proper?

(f) Will the Government be pleased to state whether the Government are going to do anything in the matter?

Mr. J. Hullah: (a) and (b) Yes.

(d) The Government have no information as to what has been done in Afghanistan and Hyderabad.

(e), (c) and (f). A full statement on the subject was made by the Honourable Member in the Department of Revenue and Agriculture in the Council of State on the 19th September, 1922. The Government have nothing to add to that statement.

THE INDIAN FACTORIES (AMENDMENT) BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I move for leave to introduce a Bill further to amend the Indian Factories Act, 1911. I feel rather ashamed, Sir, standing before this Assembly with yet another Bill, but this time at least I can plead that it is a very small Bill. Sections 3, 4 and 5 are entirely unimportant. Section 3 clears up an ambiguity in the Act. Sections 4 and 5 correct obvious errors. The only clause of any importance is clause 2; and I hope, that if Honourable Members will read the Statement of Objects and Reasons, they will find that it fully explains why we have inserted this clause in the Bill. The fact of the matter is that when we introduced a Bill to amend the Factories Act two years ago we proposed to prescribe that the weekly rest day should always be on the same day. We did not propose to give employers any discretion at all to substitute other holidays for that day. That proposal was adversely criticised in many quarters, and it was represented very strongly that employers should be allowed to substitute an important Hindu or Muhammadan religious festival. Subsequently the Government proposal was turned down by the Select Committee and by the Legislature, and the Legislature left section 22 of the Act practically as it was before, that is to say, it enabled an employer to substitute for a Sunday a holiday any one of the three days preceding or any one of the three succeeding the Sunday. At the same time we introduced into the Bill a clause defining the week as beginning always on a Sunday and we also introduced into the Bill a prescription that the weekly hours of work must not exceed sixty. I am afraid that nobody realized what the effect of these three provisions, taken together, would be, and the effect of the three provisions taken together has been to neutralize what was the expressed intention of the Legislature. I can explain it by a very simple instance. Supposing an important religious festival occurs on a Saturday. The

employer gives his workman a holiday on that Saturday and makes him work on the following Sunday. That employer is working 10 hours a day. The result is that in the first week he works 50 hours, in the second week he works 70 hours because the week begins on a Sunday and in the two weeks together he only works 120 hours; but in the second week he has worked 70 hours, and therefore he has infringed the law which prescribes a weekly limit of 60 hours. We have consulted Local Governments and also our Standing Departmental Committee, and we have decided to put up to the Assembly this proposal to amend the law in order to bring it into accord with the expressed intention of the Legislature when the Factories Amendment Bill was carried this time last year. I move, Sir, for leave to introduce the Bill.

Mr. President: The question is that leave be given to introduce a Bill further to amend the Indian Factories Act, 1911.

The motion was adopted.

The Honourable Mr. C. A. Innes: Sir, I introduce the Bill.

RESOLUTION *RE* EMIGRATION OF UNSKILLED LABOURERS TO CEYLON.

Mr. J. Hullah (Revenue and Agriculture Secretary): I move, Sir:

"That this Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Ceylon, and recommends to the Governor General in Council that the notification be published in the Gazette of India."

This Resolution, Sir, is of a kind altogether unfamiliar in the history of the Indian Legislature. It is a direct outcome of section 10 of the Emigration Act which we passed about a year ago, and which lays down that emigration for the purpose of unskilled work shall not be lawful except to such countries and on such terms and conditions as the Governor General in Council by notification in the Gazette of India may specify in this behalf. The Act goes on to say that no notification shall be made under this section unless it has been laid in draft before both Chambers of the Legislature and has been approved by Resolution in each Chamber, either as it stands or with modifications. It will thus be seen that the Assembly has been given practically full power over the emigration of unskilled labour. It can not only regulate it, but it can control it, it can stop it, and let it begin, and so forth. That is a very big power and one which should obviously be exercised with the greatest care. It not only concerns the interests of the labouring population in India and the extent to which they should be able to avail themselves of outlets abroad, of work under conditions which are often far superior to those which they know at home, but it also involves the interests of those labourers when they reach the countries to which they emigrate and the interests of those who are already there; and lastly, it may involve, and I think it must involve, a very considerable degree of interference with the domestic arrangements of other countries and other Governments.

I hope that Honourable Members will bear with me for a while if I set forth certain facts many of which will be known to them; my reason for doing so is that although they are known to Members, it is possible that

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the important bearing which they have on the question before us may not be fully appreciated by those who have neither the time, nor the inclination perhaps, nor the opportunity to study the subject.

Ceylon, as we all know, is very close to India, being separated from India by the narrowest of narrow seas. The journey from India to Ceylon is as easy as that, say, from Delhi to Agra,—easier, certainly less formidable than the journey from London to Paris. Consequently, there is always a very great stream of traffic in both directions. Conditions in Ceylon are well known in southern India; conditions in southern India are well known in Ceylon. Many labourers have part of their families in one country and part in another; still more have their relations in Ceylon, though their own residence may be in India. The Indian population of Ceylon is very great. About a third of the Ceylon population consists of Indians and about a quarter of it consists of Tamils. In all there are more than 1,100,000 Tamils in Ceylon. A great deal of the movement between Ceylon and India consists of labourers going to Ceylon or returning from that country. In the last five years the average annual number of labourers going to the Ceylon estates has been no less than 49,000, and of those returning no less than 29,000. It is clear then that we have not here a new slate to write upon. It is not as though we were deciding whether to allow emigration to a country to which it is not allowed at present, such as Fiji, British Guiana, Mauritius or any other country which may desire Indian labour. We have to consider the conditions applicable to a movement which is already in force on a very wide scale and I think that our conditions should be such as to dislocate as little as possible a movement which has in the past been free and for the most part healthy. It was because we appreciated the difficulties of regulating this movement that we exempted, when we passed the Act last year, Ceylon and the Straits from the operation of the Act for a period of one year. But the Act will come into force in respect of these countries on the 5th of next month and we have therefore to make up our minds as to the conditions on which we shall allow emigration to proceed.

The coolie in Ceylon is on the whole well looked after. He lives in lines which are constantly inspected by the Government sanitary officers and the pattern of these lines was very favourably reported on by Mr. Marjoribanks and Sir Ahmed Thambi Maricair who were deputed by the Government of India to make an inquiry some years ago into the conditions of labour in Ceylon. There is plenty of provision for medical relief. There are 54 Government hospitals, 81 Government dispensaries, 63 private hospitals and 471 private dispensaries. There are numerous schools for the children of labourers and an Ordinance lays down that the Government Educational Officer can require any estate owner to establish a school on his estate. In practice that power has never been exercised because it is found that the estate owners are willing to establish schools and have done so on a very considerable scale. Recruitment for Ceylon at present is done by a body known as the Ceylon Labour Commission, which is financed by contributions from the estates. The Commission has a Commissioner in India with headquarters at Trichinopoly, who supervises all the arrangements and working of recruitment. Recruits are obtained by persons known as Kanganis, who are labourers themselves on the estates in Ceylon and are sent over by the estates to obtain labourers. When a Kanganis comes to India he brings with him from the estate an authority to the Labour Commissioner in India to obtain an advance for his expenses.

He is then given a certificate by the Labour Commissioner and he sets forth to recruit labourers, almost invariably in his own village or its neighbourhood; and the labourers which he recruits are usually his own relations or his own friends. In practice he recruits only about four labourers. He is not a professional recruiter; it has been the aim and object of the Ceylon Labour Commission throughout to discountenance absolutely the professional recruiter. Recruitment is simply done by one labourer coming over to India and inducing his friends to accompany him back.

Before we passed the Emigration Act and before we entered into negotiations with the Ceylon Government, that Government had already taken steps for the improvement of the conditions of labour in Ceylon. They repealed all the penal provisions of their labour law and they also tackled the very grave question of indebtedness among the labourers. They abolished a curious institution known as the Tundu. It would take me some time to explain exactly what that institution is, but briefly it is a contract to pay off labourers if the labourers pay off the debts due to the estate. Ordinarily the Kanganis were in debt to the estate and the labourers in their turn were in debt to the estate through the Kanganis in respect of advances which had been made to cover the expenses of their transport. In time abuses grew up. All kinds of advances were made by the Kanganis to the labourers and to a certain extent by the estates to the Kanganis; with the result that each Kanganis with his band of labourers was often saddled with a very heavy burden of debt. Now, when the Kanganis wanted more advances he went to the Superintendent of the estate and demanded them, and if they were refused he demanded a Tundu, the written contract that he could move off with his labourers if he paid up his debts. The Superintendent of the estate either had to give more advances or he had to stand the risk of the coolies leaving him by simply giving a month's notice, or he had to give the Tundu. The Kanganis then hawked the Tundu around the other estates and sold it, practically offering himself and his labourers as the price of the debt which he owed to his existing estate; he also demanded an extra advance for himself which he put into his own pocket and did not hand over to his labourers. The Ceylon Government has now abolished the Tundu altogether and has made its issue absolutely illegal. The penalty laid down in the law is a fine of Rs. 20,000 or two years' imprisonment.

So much for what the Ceylon Government had done. Before we entered into negotiations with them we held a meeting of our Standing Emigration Committee about June last, and settled the conditions that we should put forward to the Government of Ceylon. Those conditions were practically the same as we have now put before the House. I will briefly refer to them. The first refers to licensing. The fourth requires that the cost of recruitment shall be borne by a common fund to be raised in such manner and managed by such agency as may appear suitable to the Colonial Government. These were the only conditions to which the Government of Ceylon demurred. They said that they did not wish to be directly concerned with recruitment in any form. They said that the attitude which they desired to take up was one between the employer and the labourer and they pointed out that there were very serious disadvantages if the work of recruitment were practically thrown on them since it would then be necessary for them to appear, at any rate, to be identified with the interests of the planters. On the other hand, the Government of India took the view that the Colonial Governments who desire Indian labourers should be responsible for clean recruitment. The

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Standing Emigration Committee advised the Government of India to adhere to this attitude. We did so and the Ceylon Government has now accepted these conditions. The condition regarding contracts of service not exceeding one month was accepted without any difficulty at all; and it will be seen from condition (3) that the Ceylon Government will introduce legislation limiting contracts to one month. Condition No. (5) asks for the appointment of an agent; that was accepted without any hesitation by the Ceylon Government. Condition No. (6) refers to repatriation; that also has been accepted. Similarly the other conditions, which I need not detail, as they would only take up time, have been accepted. We also made certain inquiries and certain suggestions. The estates provide rice to their labourers, in many cases at below cost price. We asked the Ceylon Government to satisfy themselves that no profit was made on this supply of rice. A deputation that came over from Ceylon regarded that request with some surprise, and even with some amusement, pointing out that so far from any profit being made from these supplies of rice very heavy losses indeed had been incurred, especially at the time when the Government of India themselves imposed control of rice with the result that the price of rice abroad was extremely high and the Ceylon planters had to stand the loss. However, we have been assured that the estates make no profit on the supply of rice. We also asked for the prohibition of the employment of children below the age of 10 years; that has been accepted. We also threw out a suggestion for the introduction of compulsory education in Ceylon. We did not add that we had no compulsory education at the time in India. The Ceylon Government gave us a sympathetic reply, but they pointed out that power is already given by the Ordinance to provide schools at the expense of the estates, but it has never been found necessary to impose this by compulsion, and we have not pressed the point any further. We also asked for information regarding the cost of living and wages, and we threw out a tentative suggestion about the minimum wage. I will come to that later. We had the advantage of hearing a deputation from Ceylon and our enquiries, the enquiries which the Standing Emigration Committee made of that deputation, were exhaustive and lasted for several days. At those meetings a great deal of attention was concentrated on the subject of the minimum wage, but as one result of them we asked the Ceylon Government to make a further concession and undertake to repatriate not only those people who, as the condition lays down must be repatriated on the ground of their state of health, on the ground that the work which they are required to do is unsuitable or on the ground of unjust treatment, but also all persons who are thrown out of employment by a slump in the tea or rubber industries. That was a considerable concession to ask, but it has been granted.

The minimum wage, as I have said, was the subject of very prolonged discussion. The deputation that came over pointed out the difficulty of introducing a minimum wage and we fully appreciated those difficulties. But still we thought the matter was one of great importance and should be pursued. Finally the recommendation of the Standing Committee was "that the Ceylon Government should be asked to make an inquiry into the question of fixing a basic wage subject to a minimum and of the cost of living in relation to the wages now paid. In the meantime the Government of India should do its best to secure an improvement in wages. On receipt of the report of the inquiry suggested above the Emigration Committee will have to consider the findings and decide whether to ask for a

Joint Committee to settle what should be the rate of wages and other details." That is how the matter was left. We asked for an inquiry into the possibility of fixing a minimum wage. They replied at once that they agreed to institute an inquiry as we desired; at the same time they pointed out the very considerable difficulties involved. It may interest the Assembly if I read out those parts of their reply which deal with this subject. They say:

"They will at once institute the inquiry. It must be noted, however, that the question is complex and that no satisfactory solution can be ascertained without very careful inquiry and consideration. There are several important factors tending to raise the rate of wages in general which are now in course of operation, the chief of them being the abolition of the *tundu* and of the penal clauses in the labour ordinance. The full effects of these factors have not yet had time to develop and cannot be ascertained without careful analysis. Conditions in Ceylon vary greatly in the different districts. Such operations as plucking tea and tapping rubber are generally performed a piece work and the unit rates of payment vary according to conditions. Again, it will also be necessary to investigate the cost of living in Southern India on a standard basis of comfort in order to compute the allowance for provision for old age which is asked for."

We asked incidentally that the minimum wage should include provision for old age.

"It will, therefore, be no simple task to analyse", they say.

"the statistics collected and ascertained whether they can be reduced with any degree of accuracy to a uniform datum for the whole Island. Unless this can be done, the probable margin of error in calculating any basic wage might well be such that the establishment of such a uniform wage might operate to the disadvantage and not to the advantage of a large proportion of the labour on estates."

In this way they have pointed out the difficulties and have asked for time, which we have practically offered them, for we told them, in communicating our views about the minimum wage, that the Government of India would not insert in the draft Notification placed before the Assembly any stipulation on the subject. The reason why the Emigration Committee were anxious to have introduced if possible a minimum wage was that, they considered the rates of wages in Ceylon were too low.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Who did not consider that?

Mr. J. Hullah: The Standing Committee considered that the wages in Ceylon were too low, though they are above the rates of wages in Southern India.

Rao Bahadur T. Rangachariar: That is not correct.

Mr. J. Hullah: If they are not above the wages in Southern India, why do the labourers go in such large numbers to Ceylon?

Rao Bahadur T. Rangachariar: The Army of Kanganis.

Mr. J. Hullah: A possible suggestion, but one that I should not like to make, is that they are not so favourably treated by the landholders in Madras as they are in Ceylon.

Rao Bahadur T. Rangachariar: That is true also.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadian Urban): Mr. Joshi would not let them go if he could help it.

Mr. J. Hullah: The actual rates in Ceylon are unknown to us; they vary so much from estate to estate. We have had much difficulty in ascertaining them; so has the Ceylon Government in ascertaining them and giving them to us. The Labour Commissioner stated that the rates of wages for men are 6 annas 11 pies per day on rubber estates and 6 annas 9 pies per day on tea estates; for women 5 annas one pie and 5 annas respectively, and for children 3 annas 6 pies and 3 annas 8 pies but in addition the labourer is offered piece-work, and he can also, if he likes, work overtime. The rates with piece-work and overtime are for a man 8 annas 10 pies per day on a rubber estate, 8 annas 6 pies per day on a tea estate; for women 6 annas 10 pies and 7 annas 1 pie; for a child 4 annas in both cases. The information given to us by the Ceylon Government is in rupees per month. They tell us that the average rates with piece-work and overtime are, for a man 16 to 20 rupees a month on rubber estates, 12 to 16 rupees a month on tea estates; for a woman 10 to 12 rupees for rubber and the same for tea; for a child Rs. 6-8 per month for rubber and the same for tea. The cost of living for a man, his wife and two children is approximately Rs. 17 a month for bazaar supplies and rice, but does not include the cost of clothes, festivals and so forth. On this information as I have said, the Standing Emigration Committee were not satisfied that wages were sufficiently high, and they therefore proposed the institution of a minimum wage. We have asked that an inquiry should be made into the question of establishing such a wage and that the results of the inquiry may be submitted to our Emigration Committee, and possibly we may have to ask for a Joint Committee of India and Ceylon to investigate conditions before the minimum wage can be settled and imposed. It will thus be seen that a considerable time must elapse. The subject is an extremely difficult one. Conditions vary in different parts of the island; they vary between tea and rubber estates. There is always the possibility, almost the certainty, of considerable fluctuations in the products, rubber and tea; there is also the possibility that a minimum wage may not operate to the advantage of the labourer. For that reason we have not placed in our stipulations anything about a minimum wage, and we told the Ceylon Government that we should not insert anything of the kind in the notification that we should place before the Assembly.

I have now shown, I hope, Sir, that conditions in Ceylon are on the whole favourable, that it may be necessary to have wages raised, and that it may be necessary to have them fixed by Statute in the forms of a minimum wage. I have also shown that there is a very large movement of labourers in both directions, and that it would not be to the advantage of ourselves or of the labourers or of the Government of Ceylon that there should be any drastic interference with present conditions. I have shown that the Ceylon Government have met us as far as they can at present and that they have agreed to all that we have placed before them as the absolute conditions that we require. I now commend the Resolution to the House.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I move that the consideration of this question be adjourned to some day next week which you, in conjunction with the Leader of the House, may fix for the purpose. Sir, the Honourable Member who has just spoken has been very enthusiastic over the condition of the labourers in Ceylon. I am inclined to think that a planter could not have put it more enthusiastically and ably than the Honourable Member has done regarding the way in which the labourers are being treated in Ceylon. We, Sir, on this side of the House believe that the picture is quite different to what has been depicted

by the Honourable Member. We consider, at any rate, that the materials placed before us are not sufficient to enable us to come to a definite conclusion upon the question which we have to discuss. For example, we should like to have some information regarding the wages which are being paid by various industries in Ceylon; we should like to have some information as regards the sex proportion in Ceylon; we should like to know what the Standing Emigration Committee recommended as regards the various matters placed before them. It is not enough that you place certain materials before the Standing Committee, but it is necessary, to enable the House to judge rightly upon the question, that these materials should also be available to the House. Whatever may be the deliberations of the Standing Committee, those deliberations must be made available to us to enable us to come to an impartial decision upon the matters placed before us. Without that information it would be impossible to decide the very important questions which have been brought forward for consideration in the rules which have been promulgated. One matter which the Honourable Member mentioned was that the Government of India have informed the Ceylon Government that they would not insist upon the minimum wage being included in the rules. I do not think, as at present advised, that this House would agree with the advice which has been tendered by the Executive Government to the Ceylon Government on the subject. We should certainly like to know something about the minimum wages which are paid and also what it costs a family to live in Ceylon. Unless these matters are clearly placed before us, we will not be in a position to give our decision on these questions.

Sir, Some statements were made as regards the wages paid in South India and it was said that these wages compare unfavourably with the wages paid in Ceylon. We join issue upon that question. Some of us know what we pay to labourers in South India, and it is not at all right to say that the wages paid in Ceylon, ranging from five annas and nine pices to nine annas, are more than what is paid in South India by landlords. However, Sir, I do not want to enter into a discussion of the various questions which will have to be discussed later on, but I do think that, having regard to the materials which the Government have placed before us, it would be impossible for us to arrive at any satisfactory conclusion at present. As my friends point out, there are no materials before us whatsoever. Whatever may be the materials that have been placed before the Standing Committee, we have no materials before us. We want all these materials to be placed before us before we can arrive at any decision.

I therefore move, Sir, that the consideration of this Resolution be adjourned to some day next week.

Sir Deva Prasad Sarvadhikary: Sir, I desire to support the motion for postponement of the consideration of this Resolution. I am afraid, I cannot, like my friend Mr. Seshagiri Ayyar, characterise the statement of Mr. Hullah, that has been placed before us, as very "enthusiastic," in the sense suggested by Mr. Seshagiri and must admit that it was a balanced statement of the case which has been very helpful. I wish we had the materials before us earlier. Mr. Hullah has told us that this is unfamiliar in the history of Indian legislation and that under section 10 of the Emigration Act we have certain powers that are large. Following him up I say that those who have powers must also recognise obligations; they cannot be expected to assent to any proposition, however seemingly simple, without thorough investigation. Sir, I do not for a moment wish to suggest that this House should again go into a Committee of the whole House for the

[Sir Deva Prasad Sarvadhikary.]

purpose of traversing what our Committee has already done. Perhaps I am wrong in calling it our Committee, but I mean the Joint Emigration Committee which sat and will be still sitting. I think that every material that has been placed before that Committee should be made available to Members of this House. We tried to enlighten ourselves. We approached some of the Members of the Committee; they were good enough to talk to us, but when we asked them for papers, they said the papers were confidential and that they could not let us see them. Well, official secrets are being very well kept by those Members, and I congratulate them and the Government upon such loyal adherence to their instructions. At the same time, Sir, it cannot be expected that we, as a House, should agree to what is laid before us, without thoroughly knowing and appreciating the situation upon materials.

Sir, no one can deny that a considerable advance has been made in this direction. Thanks to Lord Hardinge's endeavours, indentured labour—shall I call it slavery—is at an end. We have just heard that the *toondu* system compelled people to go and sell themselves like King Harish Chandra of old at Benares, to keep himself out of indebtedness. That is a past thing now, but we should like to be satisfied that the *Kangani*, who has always lived to his own interest, is not able to profit by all the loopholes and openings there may be. Well, the indebtedness is wiped out; that is a matter for congratulation. Those who have gone into the matter know what that indebtedness was. It was mostly imaginary, such as any *Kangani* or *soucar* can work up, if he wants to. We have that in Bengal. I speak with some feeling, because it is not entirely a South Indian question. If the figures that I have got are anywhere near correct, about one-third of the labour goes from the Bengal ports. I do not say they are all Bengalis; there may be United Provinces people and Punjab people going through Bengal. But there is a point of view other than South Indian, and whatever the rapacious South Indian landlord may be doing, other parts of the country will probably claim to join issue in the same way that Mr. Seshagiri Ayyar joins issue with regard to South India. However, these are extraneous matters for the moment. What we in general wish to know is the exact condition of things. I quite agree that by the 5th of March some definite action will have to be taken because it affects many and large interests and probably the vexed question of minimum wages will have to stand over; and admittedly interim notifications will be needed, we shall be prepared to assent to them when we have the materials before us.

In the meantime, there are one or two points that have struck us, which will require elucidation. I do not want to go into the details now, if this motion is to be carried, but, if it is not, I should like to ask what is to happen after the expiration of the period of one year mentioned in article 6 of this notification? These are matters that require to be cleared up. We have provisions as to what is to happen between the expiration of the period of one month and one year, mentioned in item 6 of the notification, but, is it to be taken for granted that, if the man has been there for a year and has known all about the prevailing situation, that there is to be no further help afterwards? Several matters that are not in the notification have been mentioned by Mr. Hullah. It is very necessary that we should know all these definitely. Whether that is to be made a part of the notification or not is another matter, but, in order to enable us to judge whether we should assent to these notifications, these items of information

which have been now furnished to us or foreshadowed should be available in a more tangible form. I do not want to labour these points at the present moment because we are now speaking on the motion for postponement of the Resolution and, if that is assented to, it will not be necessary to go into the details now.

With these words, I support the motion for postponement of the consideration of the Resolution.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): Sir, the question before the House is as to whether postponement should be granted, in order to enable Members to study fully the subject before they come to any definite decision. I may state at once that the Government do not intend to oppose the motion; we are entirely in the hands of the House. Government welcome the desire on the part of Members to obtain all the information available to the Government in order that they may adequately judge the material issues before them and then come to correct conclusions.

They have no desire whatsoever to withhold from any Member of the Assembly any information which the Colonial Governments 12 No 8. may not have marked as confidential which would help them in arriving at correct conclusions. I may state that that proviso that I have mentioned does not preclude us at all, as a matter of fact, from giving information, substantial information on all the questions that have been referred to by Mr. Seshagiri Aiyar. There seems to be some slight misapprehension as to the position which the Government and the Emigration Committee have been taking in this regard with reference to some of the matters which came up for discussion before them being kept confidential. Honourable Members will realise that we were not dealing entirely with domestic concerns, but were entering into negotiations with Colonial Governments, and they will appreciate readily the desire of the Colonial Governments to keep certain matters confidential. It was with that object that some of the papers were marked confidential, when they were circulated among the Committee members. But on an analysis the Government have found that all the information that is necessary and that Honourable Members of this House would desire can be supplied to them. There is nothing secret about the facts at all. The conclusions to which the Emigration Committee have come on the several subjects which came up for discussion before them will also be open to every Member of the House. It may not be possible for us, inasmuch as we have not enough copies of all these papers, to supply each Member with a separate copy. But the information will always be available at the office and we shall try also to place all the material papers in the Committee Room, and if possible circulate them to the Eastern Hostel and any other place where the Members live together. I hope that arrangements will be made for circulation of the papers to all those who are interested in the matter. I appreciate the desire on the part of Honourable Members to assist us in arriving at conclusions at an early date. As Honourable Members have seen, we must come to our conclusions here soon and then proceed with the Resolution in the Council of State, then define the rules; and all this has to be done before the 5th of March.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): May I suggest that a copy be placed in the library.

Mr. President: The question is that further consideration of the Resolution be postponed.

The motion was adopted.

The Honourable Sir Malcolm Halley: (Home Member): I think perhaps in the circumstances it would be most convenient if we were to take this discussion on the Friday or Saturday of next week for which we have not hitherto assigned any work. We have not yet decided whether we will sit on Friday or Saturday.

RESOLUTION RE WORKMEN'S COMPENSATION IN AGRICULTURE.

Mr. A. H. Ley (Industries Secretary): Sir, I have to move the following Resolution:

"This Assembly recommends to the Governor General in Council that no action be taken on the Draft Convention relating to workmen's compensation in agriculture and the recommendation concerning social insurance in agriculture adopted by the Third Session of the International Labour Conference at Geneva in 1921."

Sir, I do not think I need trouble the House, for more than a few minutes on the subject of this Resolution, which, if I judge correctly, should cause no controversy, and, *pace* my friend Mr. Joshi, no material difference of opinion. It will be observed, Sir, that this Resolution refers only to agricultural workers, and it may be held that it is really so obvious, that I may reasonably be asked why it is necessary to trouble the House with the matter at all. I will briefly explain the reason. The reason is merely this, that India being a Member of the International Labour Organization, a Member of the League of Nations and a signatory to the Treaty of Peace, is obliged, under Article 405 of the Treaty of Versailles, to lay before the competent authority in India (that is to say, before the Legislature, in respect of matters which would require legislation) any draft Conventions or recommendations passed at any meeting of the International Labour Organization, within 18 months of the date of the Conference at which those Draft Conventions or recommendations were passed. Now, the Draft Convention and recommendation, which are dealt with in this Resolution, were part of various Draft Conventions and recommendations passed at the Geneva Conference in October 1921, and therefore they have to be laid before this House during the present Session, in order that India may fulfil its International obligation. That Sir, is the only reason why I have troubled the House with this subject at all.

Now it will be observed that the Resolution falls into two parts, two subjects which might be treated separately. But I have joined them together partly for the sake of brevity and convenience, and mainly because the principle which should determine the action taken on the Draft Convention is I submit exactly the same as the principle which should determine the discussion of the recommendation.

I think that Honourable Members of this House will have probably studied the recommendations and the Draft Conventions passed at the Geneva Conference. They have all appeared in Bulletin No. 26, published by the Department of Industries, which was circulated when published to every Member of this House. But perhaps it would be convenient if I just read the Draft Convention in question. I will take the question of Workmen's Compensation first. The draft Convention runs as follows: the material part of it—I omit the preamble and other matters which are irrelevant. "Each Member of the International Labour Organization, which ratifies this Convention undertakes to extend to all agricultural wage-earners its laws and regulations which provide for the compensation of workers for personal injury by accident arising out of or in the course of their employment."

Now, Sir, it would have been in many respects perhaps convenient—and certainly convenient for me—if I had had an opportunity of moving this Resolution a little later in this Session, at the time when we were considering or had just finished considering the Workmen's Compensation Bill, the report of the Joint Committee regarding which is already before the House. But I think it will be in the recollection of every Member of this Assembly, who has studied the subject at all, that that Bill was definitely and advisedly framed as a modest measure to begin with, in introducing an entirely new principle into India. It was definitely and advisedly limited to organised industries,—industries falling within the definition of the Factories Act, and to other occupations which fall under Schedule II of the Bill, such as hazardous occupations—occupations in which there is a material element of risk. I think in the first place, that that clearly does not apply to the case of agricultural workers. All Local Governments, every authority who has been consulted on the subject of workmen's compensation, I think I am right in saying nearly every authority, are agreed that that limitation is, in the existing conditions of India, a wise limitation. It is obviously impossible and impracticable to extend that legislation to all forms of agricultural labour. In fact, I do not think it is really necessary for me to argue that point further. There is one other point, Sir, which I should like to make—a practical point—in this connection, and that is this: that if this House, in disagreement with me, or if the Government of India, decide to ratify this draft convention, I think it is clear that they will be doing a disservice to workers in this country as a whole, and I will explain why. What would be the first result? The first and obvious result would be that the Workmen's Compensation Bill would have to be dropped; that is quite clear. It would be illegal, according to India's International obligations, for her to pass the Bill in its present form. It would have to be dropped altogether, and either the subject would be postponed until it becomes possible to rope in all agricultural workers in this country, or a new Bill would have to be framed in order to do so. I may observe in passing that it is impossible for India to ratify this Convention with reservations. They have either to ratify it or not to ratify it as it stands. The International Labour Organization and the League of Nations will not accept as fulfilling international obligations partial ratification or ratification with reservations. Well, it is perfectly clear that as far as agricultural workers are concerned, and indeed it has been admitted by everybody, that any measure of this kind at the present time is quite beyond the sphere of practical politics; (*Rao Bahadur T. Rangachariar*: "At any time.") At any time, possibly, but at this time certainly—and therefore I say that if this House and the Government of India were to ratify this Convention, all they would be doing would be indefinitely postponing, postponing for a period of years, possibly I think, as Mr. Rangachariar suggested, postponing to the Greek Kalends, what is, I think everybody will admit, a very desirable measure of social and economic reform. That is all I have got to say on the subject of workmen's compensation, and I think it is unnecessary for me to labour the argument further.

I pass on to the second part of this Resolution which deals with the question of social insurance. There is nothing very much in this, I think; and I shall read the recommendation in question. It runs as follows—I omit the preamble which is unimportant. "The General Conference of the International Labour Organisation recommend that each Member of the International Labour Organisation extend its laws and regulations

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establishing systems of insurance against sickness, invalidity, old age and other similar social risks to agricultural wage-earners on conditions similar to those prevailing in the case of workers in industrial and commercial occupations." Well, Sir, we have none of these laws at present, even with regard to industrial workers. We have no old age pensions; we have no laws relating to compulsory or state insurance of workers even in industrial undertakings; indeed, we have no insurance data on which such laws could be framed; and I think it is quite obvious that if ever a movement in this direction takes place it will first take place in regard to forms of labour in which it is easy and practicable, or may be found easy and practicable hereafter, to introduce such measures. That again, I think, is a point of view which it is perhaps unnecessary for me to labour.

In conclusion I would desire to express my opinion that the principle of this draft convention and this recommendation is in the case of India an unsound principle. The principle of it is to prevent any discrimination between industrial and agricultural workers in respect of laws which may be enacted to provide for insurance against accident, sickness, old age and the like; that is to say, it is designed to compel a nation which adopts it to legislate, at one and the same time and together, not only for industrial workers but for all kinds of agricultural workers. Whatever view may be held, Sir, as to the wisdom or the soundness of that principle in the case of countries like England and other European countries, whose agricultural and industrial workers are well-educated, comparatively speaking, fully organised and fully developed, I venture to put forward the view that it is an unsound principle in the case of a country like India where agricultural and industrial workers are not only uneducated on the whole, undeveloped and unorganised, but where the stages of development, education and organisation are so wholly different in respect of different classes of workers. It is much easier obviously to develop measures of this kind in the first instance in the case of organised industries, for example. It is surely a much better principle to adapt measures of this kind as time goes on to such classes of workers and in such conditions, in respect of which it may be found practicable and desirable to apply them. It is much better to do that, I say, than to make, if I may say so, a leap in the dark and adopt wholesale a measure for which I think it is obvious the country as a whole is not ripe. With these words, Sir, I move this Resolution.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I beg to move the following amendment to the Resolution which has been placed before the Assembly by my Honourable friend, Mr. Ley. My amendment runs thus:

"At the end of the Resolution add the following, namely:

'and request the Government of India to inquire and report to the Assembly what action regarding these matters is necessary and practicable in the case of organised plantations in India'."

Sir, it is quite obvious from the terms of my Resolution that I am not opposing the main body of the Resolution at all. Although I do not approve of the attitude taken by Government in this Resolution, I do not propose to oppose it also for reasons which are obvious to Members of this Assembly. But Sir, the only thing which I asked the Assembly to do is that after having accepted the Resolution put forward by the Government we should ask the Government to do one little thing, namely, that they should inquire whether it is possible for them to take

some action as regards these matters in the case of organised plantations. What I ask is only an inquiry. I do not anticipate the result of the inquiry at all. Now my reasons for asking for this inquiry are these. In the first place, from the speech of my Honourable friend, the Mover, it was not clear at all whether Government before placing this Resolution before the Assembly had made any inquiries whether any action could be taken or not. I had seen some Resolutions placed by Government about the Conventions and the Recommendations of the International Labour Conference before, and I had seen that in the case of those Resolutions Government had made certain inquiries, the Local Governments had been consulted, and we were placed in a position to know what the views of the Local Governments were and what the result of the inquiries was. I should like to know whether my Honourable friend, the Mover, had made any inquiries as to the practicability of certain action being taken on these Resolutions. From his speech it was clear that no such inquiry was made, and therefore it is quite obvious that this Assembly should insist that out of mere courtesy, if not respect, for the Conventions and Recommendations of the International Labour Conference, the Government of India should make an inquiry into these matters. But, Sir, when I ask for an inquiry you will find that I am not only not unreasonable but am more moderate than I ought to be. Sir, my Resolution does not ask for an inquiry as regards the application of these Conventions and Recommendations to the whole sphere of agricultural work in this country. I ask for an inquiry only into a very limited portion of the agricultural work in India, and that is, the agricultural work on organized plantations. The words "organized plantations" are, I think, well known to Government Members. (A Voice from the Government Benches: "No.") Well, somebody here says "No." Therefore for their benefit I would like to define these words. Organized plantations in my humble opinion are those plantations where a large number of people work under one master and in one place. For example, the tea plantations in Assam, the tea and coffee and rubber plantations in Madras, where 100, 200 or 500 or more people work under one master and in one small locality. Such plantations are called "organized plantations".

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): What do you want to do with that?

Mr. N. M. Joshi: Yes, I am going to explain that. Now I do not ask for an inquiry into the whole sphere of agricultural work. I ask for an inquiry only as regards the organized plantations. Government knows that some of these organized plantations in India are governed by some special laws. So it is not difficult for them at all to find out what those plantations are and I ask for an inquiry only as regards those. Now what is the inquiry going to be about? The inquiry is going to be about the two questions mentioned in this Resolution, namely: whether the Workmen's Compensation Act should be applied to the workers on these plantations. (A Voice: "What is the risk they run?") I will explain it presently. Secondly, whether any action on the lines of social insurance should be taken as regards these organized plantations. Sir, as regards the Workmen's Compensation Act, I am asked 'what is the risk that the workers on these plantations have to undergo? My Honourable friend, Mr. Rangachariar, was, I think, a Member of the Committee that considered the Workmen's Compensation Bill, and as a member of that Committee he ought to know that in this Bill there is a provision

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for what are called 'occupational diseases'. This question of workmen's compensation was considered by a committee which was appointed by Government last year, and when the Committee discussed this question, it was urged that organized plantations should be included in the scope of the Workmen's Compensation Bill. If my Honourable friend, Colonel Gidney, who is an authority on medical matters had been here, he would have told the members of this Committee that Kala Azar, which is a disease from which the workmen on plantations suffer, may be considered as an occupational disease. Sir, this is only one matter.

Rai G. C. Nag Bahadur (Surma Valley *cum* Shillong: Non-Muham-madan): Hookworm also.

Mr. N. M. Joshi: My Honourable friend, Mr. Nag, says that hookworm also is very prevalent and that might also be regarded as an occupational disease. Therefore, it will be quite clear to Honourable Members that there is a sufficient case for an inquiry whether the workers on organized plantations should be brought within the scope of the Workmen's Compensation Bill or not. I need not take more time on this question.

Then, Sir, there is the other question of social insurance. My Honourable friend, Mr. Ley, said that in the first place, we should not discriminate between agricultural and industrial workers if we want to legislate for both of them together . . .

Mr. A. H. Ley: That is exactly the opposite of what I said, Sir.

Mr. N. M. Joshi: He says that he said quite the contrary. I can understand the partiality of my Honourable friend for the industrial workers. I am told that he is the Secretary of the Department of Industries. It is quite natural that he should say that the industrial workers should be first given the benefit of these ameliorating reforms. But, Sir, may I ask my Honourable friend whether as Secretary to the Department of Commerce and Industries he has ever read an Act called the Assam Labour and Emigration Act?

Mr. A. H. Ley: Yes.

Mr. N. M. Joshi: He says 'yes.' Sir, section 135 of that very Act by legislation provides that the employers on plantations should make provision against sickness for the workmen on these plantations. He therefore ought to have known that the Government of India had already legislated in the case of agricultural workers before they had done anything as regards the industrial workers. Therefore, it seems to me that the views which he has propounded at least did not find favour with the Government of India of 20 years ago. Moreover, my Honourable friend Mr. Ley, being in charge of this department, ought to have seen the Report of the Assam Labour Committee which was appointed only last year, and which has reported very recently. I will read only one sentence from that Report. My Honourable friend has already told the Assembly that the social insurance relates to the provision against old age and provision against invalidity. I have told him how the Government of India themselves have made provision against invalidity in the case of these plantations. I wish to tell him from this Report what the planters of

Assam have done for old age, etc. "Some gardens give small pensions in cash to deserving coolies who have earned them by long and faithful service on these estates, but the practice can hardly be described as common, though it is admitted that there is scope for the extension of the system." The Committee itself recommends that this system of giving pensions for old age for the workers on the plantations should be extended, and here is the Government of India saying that no action should be taken as regards social insurance. Sir, it seems to me that my Honourable friend was unnecessarily frightened by these modern words 'social insurance' and such things. As a matter of fact, these ideas are quite well known to the Government of India and the planters in Assam. Therefore, there is nothing wrong if the Government of India makes an inquiry on these questions as regards these plantations. As a matter of fact, on these matters inquiry has been made. My only regret is that the Government of India did not care to consult the Assam Labour Committee whether these Conventions could be brought into practice or not. If the Government of India had been serious as regards these Conventions and recommendations, they could have placed these Conventions before this Committee and this Committee could have expressed its opinion on these matters, as it has already done on some questions, and the expression of view of this Committee is absolutely in my favour. I, therefore, hope that the Members of the Assembly will agree to my amendment for which there is the approval of the Government of India of old itself as well as of the Committee which was appointed by the Assam Government and which has recently reported.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadian Rural): Sir, my friend, Mr. Joshi, claimed this morning that he was extraordinarily and unusually reasonable in his amendment which he has moved. After he elaborated his argument, it seemed to me he was beginning to suffer from some occupational disease himself—his occupation probably being labour legislation. Just as there are political idealists in this country who think Swaraj could be achieved before the 31st of December every year, there are also, I fear, a few labour idealists who think that, even in the matter of agriculture, the millenium could be reached by legislation within a very short time, even the short time assigned to a Member of this Assembly, namely the three years of his term of office. It seems to me, Sir, that, in the first place, the amendment of my friend, Mr. Joshi, is in a sense a direct negation of the original proposition. The original proposition of Mr. Ley said that no action be taken on the Draft Convention. My friend, Mr. Joshi, states on the other hand that some action by Government may be taken. I leave it to the House to reconcile these two things. Then, again, Mr. Joshi wants a limited inquiry and he claimed by reason of the very fact that he wanted a limited inquiry, that he was reasonable. He overlooked the fact, which Mr. Ley pointed out, that, so far as the Draft Conventions of the International Labour Organisation went, you can either take full action with reference to these Conventions or no action at all, and there was no question of a limited application or reservation with reference to the confirmation or ratification of any Convention of the International Labour Organisation. Even supposing the Government concede that there should be a limited inquiry with reference to the organised plantations, what would be the result? They can report the result of their inquiry to this House only but they cannot send a message to the International Organisation of Labour that they are prepared to take any action with reference to organised plantations for the simple reason that, under

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the rules of the International Labour Organisation, there could not be any such thing as a limited ratification at all.

Now, speaking on the merits of this inquiry, Sir, it seems to me my friend, Mr. Joshi, is carried away by a little bit of zeal, as I said in the beginning. Those who were on the Committee of the Workmen's Compensation Bill have realised how difficult it is even in matters of industrial concerns to legislate at the present stage of India for compensations. We have all our sympathy for workers, and I think it should be the duty of this House to extend to them the privileges of compensation, wherever it is possible and feasible, but in the field of agriculture which though it may be the mainstay of this country the field and the scope of enquiry are too large and yet the conditions so very difficult. I believe it would be premature even to begin to give compensation in the organised plantations to which my friend, Mr. Joshi, referred. Eventually, when we have tried industrial compensations and we see the result of the experiment, it may be possible to extend the privilege and the advantages of compensation to agricultural workers. But at the present moment, I believe the question is outside the sphere of practical politics and it would be nothing but a waste of time to go into this question, so far at any rate as the ratification of the Draft Convention of the International Labour Organisation is concerned. I, therefore, think the Members of this House should not support Mr. Joshi's amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I just wish to add a word or two to what has fallen from my Honourable friend, Mr. Kamat, and I may at once say that I stand up to oppose the amendment of my Honourable friend, Mr. Joshi. I do not know, Sir, whether I am suffering from any occupational disease, but, if there is any in me, I suppose it is the disease of the brakesman. I want to put on the brake whenever I find the coach of the social reformer is proceeding at a breakneck speed. My submission to the House is that, in this matter of agriculture, just as in other matters where labour is employed there are already elements present which go to protect the labourer. What I mean to say is: that in affairs relating to employment of labour it is very often the self-interest of the employers themselves which leads them to provide healthy conditions for their labourers and so forth. And Government to some extent, is doing what it can in that respect. In the case of Kala Azar or hook-worm, the Government is not idle. It is looking after these evils and trying to prevent them. But to suppose that an employer of agricultural labour should be made responsible for Kala Azar or hook-worm where the disease is not caused by anything organised by the employer himself, and is due to natural causes alone, it seems to me, Sir, that such a supposition would amount to extending the principles of compensation unduly. We must also bear in mind that it is to the self-interest of the employer himself to induce labour into his organisation by old-age pensions, etc., and in that respect we see that these principles are to some extent in operation already. In the case of Government, it pays pensions to its servants. Other employers also often pay pensions. But the real question is whether these things should be organised on the scale on which Europe is organising them, whether the conditions in India are such as to induce us to import wholesale all these principles which have been adopted in England under conditions altogether different from those existing in India. These are considerations which ought to actuate us. Because some means are adopted

on a certain scale in European countries, owing to the necessities of the situation in those countries, is it any reason that we should adopt those means without waiting to consider what their effect will be in our own country? I submit, Sir, that such a policy will not be a wise policy on the part of ourselves. My Honourable friend, Mr. Joshi, might ask "What is the harm in starting an inquiry?" My submission on that point is that Government should spend money only when there is a *prima facie* case for starting an inquiry, that is, where the conditions are such as to justify the Government in spending money. Every inquiry means money. In the present instance when we know from existing circumstances that a case has not been made out for an inquiry—because conditions here are widely divergent from those existing in Europe, and America, when we know on the face of things that the conditions are such, we should not unnecessarily ask the Government to start an inquiry. I have very little more to say, Sir. In relation to the present question, the principle of compensation already exists in some form or other, in this country, though it may be, in a more or less elementary form. I think, Sir, the ordinary responsibilities of Government should not lead it to take action wherever it thinks action to be unnecessary. The crux of the whole question is, whether in the present case, we should adopt that complicated machinery which exists in the highly organised countries of Europe or America and similar places. I submit, Sir, that the time has not come when India should go in for legislation of a social character like that contemplated by the Honourable Mover of the amendment, and I oppose it.

Rao Bahadur T. Rangachariar: Sir, when I saw this Resolution tabled, I was wondering what had possessed the Government of India in asking the Assembly to affirm the obvious, and when I see there is a friend of the labourer, Mr. Joshi, I now see why the Government of India had felt the necessity for a motion of the kind which has been tabled. One observation, Sir, strikes me, and that is that the Government of India are not doing the right thing nor all they should in sending representatives to the International Labour Conference. I am afraid they are not choosing the right representatives. I think the agricultural interests, the vast interests of this country, are not sufficiently represented at that Conference. I must emphasise this point. Instead of the Legislature being asked to affirm obvious Resolutions of this sort I think this must be driven home to the Members of that Conference that these Conventions should not apply at all to India. Somebody should be there to tell them the real agricultural conditions of India and take note of all these things. I am afraid idealists alone go there without reference to practical politics. (Mr. N. M. Joshi: "Mr. Chatterjee had gone"). Then I am sorry I will have to classify him also as an idealist. Probably he is far remote from practical agriculture because he is in high heights and therefore does not condescend to go to his village and look after his land, if he has any. Sir, I think the time will come when we may not be able to cultivate our wet fields, where the unfortunate labourers have to go with bare feet and work in the mire, and my Honourable friend, Mr. Joshi, may tell us "Give them thire-proof boots." All this counsel of perfection may be given to us, and in the meanwhile, the country which is already a poor country will grow poorer. There will be no food to consume. The landlords are poor and the labourers are poor. As regards the plantations, I do not know why an invidious distinction should be made in the case of the plantations. Not that I am quite satisfied with the lot of the labourer there, but improvement is needed in other directions. You can improve their wages. You can remove the

[Rao Bahadur T. Rangachariar.]

penal clauses which exist in local legislative measures. I am quite willing to assist Mr. Joshi in those directions. I fail to see, Sir, how all these ideas of social insurance in agriculture are going to be inculcated in the minds of even the educated people in this country, not to speak of the labourers. These are ideas which are quite foreign to this country and which will be quite impracticable. I think we will be landing the country in trouble if we allow things to go on like this. I think, Sir, it is time that the Government of India should send along with Mr. Joshi to the International Labour Conference some real corrective, some heads of Agricultural Departments. I am not sure whether my Honourable friend on my left (Mr. T. V. Seshagiri Ayyar) who himself is a big landlord, and others like him should not go to this Conference at least at their own expense in order to see that such ideas are not promulgated there. I therefore oppose the amendment and strongly support the Resolution.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban): Sir, it seems to me that Mr. Joshi in his enthusiasm for the agricultural labourers is undoing the service that he is here to render to the cause of industrial labour. I have not here, a copy of the Draft Convention before me, but so far as I recollect, I think the Draft Convention lays down that no distinction should be made between the measures to be adopted in the case of industrial labour and in the case of agricultural labour. (*The Honourable Mr. A. C. Chatterjee*: "Yes.") That was probably due to the fact that there was a preponderance of agricultural labour representatives at the Conference, who, seeing that all the benefits were going to the industrial labour insisted that the benefits should also be given to them (agricultural labour). Now, we either ratify the Convention or do not ratify the Convention. If we ratify the Convention with regard to agricultural labour also, we are precluded from having a separate legislation for industrial labour. The immediate practical effect of ratifying the Convention or of instituting an inquiry pending the ratification would be that Mr. Joshi and this Legislature will be unable to legislate on the lines of the Workmen's Compensation Bill that is coming before this Assembly in a day or two. I wonder if in his enthusiasm for agricultural labour Mr. Joshi is doing a service to the cause of industrial labour which it is within the sphere of practical politics for this Assembly and for this country to render service to by means of legislation. Conditions in this country do not permit at the present moment of undertaking legislation to benefit agricultural labour, in the same way as you can undertake legislation for industrial labour for this it will be recognized, that this House at the initiative taken by Government has already accomplished much. I therefore think that Mr. Joshi, considering this point, will see his way to withdraw his amendment.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The original question was:

"That this Assembly recommends to the Governor General in Council that no action be taken on the Draft Convention relating to workmen's compensation in agriculture and the recommendation concerning social insurance in agriculture adopted by the Third Session of the International Labour Conference at Geneva in 1921."

Since which an amendment has been moved that :

" At the end of the Resolution the following be added :
' and requests the Government of India to inquire and report to the Assembly what action regarding these matters is necessary and practicable in the case of organized plantations in India . '

The question I have to put is that that amendment be made.

The motion was negatived.

Mr. President: The question is that the following Resolution be adopted :

" The Assembly recommends to the Governor General in Council that no action be taken on the Draft Convention relating to workmen's compensation in agriculture and the recommendations concerning social insurance in agriculture adopted by the Third Session of the International Labour Conference at Geneva in 1921."

The motion was adopted.

RESOLUTION RE PROTECTION OF WOMEN WAGE-EARNERS IN AGRICULTURE.

Mr. A. H. Ley (Industries Secretary) : Sir, the next Resolution I have to put forward before the House is in the following terms :

" This Assembly having considered the recommendations concerning the protection before and after child-birth of women wage-earners in agriculture, the night work of women, children and young persons employed in agriculture and the living-in conditions of agricultural workers adopted by the Third Session of the International Labour Conference at Geneva in 1921, recommends to the Governor General in Council that legislation to secure their enforcement should not be introduced at the present time."

I feel, Sir, a little diffidence in moving this Resolution. I recollect, two or three days ago when we were dealing with the Mines Bill, a certain amount of criticism, good humoured criticism I may say, was expressed on the want of practical acquaintance with mine labour displayed by certain Honourable gentlemen who took part in that debate. My friend, Mr. Joshi, if I remember rightly, anticipated an attack from the Honourable Member in the Industries Department that his knowledge of the subject was more theoretical than practical. Well, Sir, I must say that in regard to the present Resolution my sympathies are entirely with Mr. Joshi. I am in much the same position. I shall rightly be accused of having nothing more than an academic knowledge of this subject. But, Sir, while this is no doubt the case, I claim to yield to no one in my consciousness of the serious importance of the subject. It relates to matters which do merit the serious consideration of this House, as far as certain kinds of work are concerned. But I think it is obvious to everybody, whether he has any practical or any theoretical acquaintance with the subject, that as far as agricultural work is concerned, legislation of this kind is, in present day conditions in India, not only unenforceable and unnecessary but quite beyond the sphere of practical politics. I will just go through these recommendations. I have grouped them together in one Resolution for the sake of brevity. They all relate to more or less kindred subjects. The first one deals with protection before and after child-birth. The recommendation runs as follows :

" The General Conference of the International Labour Organisation recommends that each Member of the International Labour Organisation take measures to ensure

[Mr. A. H. Ley.]

to women wage-earners employed in agricultural undertakings protection before and after child-birth similar to that provided by the Draft Convention adopted by the International Labour Conference at Washington for women employed in industry and commerce, and that such measures should include the right to a period of absence from work before and after child-birth and to a grant of benefit during the said period, provided either out of public funds or by means of a system of insurance."

It will be observed, Sir, that the recommendation refers back to a Draft Convention passed at Washington, I think it was in 1919 (if I am wrong in my dates my friend the Honourable Mr. Chatterjee will no doubt correct me). That Draft Convention sought to impose compulsory absence from work for a period of six weeks before and after child-birth of women labourers in industrial and commercial undertakings and to provide for compulsory maternity benefits. There were other provisions as to the production of medical certificates regarding the condition of women during these periods. That Convention has not, like the Convention I was dealing with in my previous Resolution, been laid before this Legislature for the simple reason that India was never asked to ratify it; presumably because it was realised that it was premature to apply it to this country. India was not asked to ratify it, but was asked to make a study of the question. India was asked by a Resolution passed at the Washington Conference "to make a study of the question of the employment of women wage-earners before and after confinement and of the maternity facilities before the next Conference and to report on these matters to the next Conference." Well, that inquiry was made. It was made of all Local Governments and of everybody interested in the subject and a report was drawn up and was laid before the next Conference at Geneva in 1921. The result of those inquiries was that all Local Governments and everybody consulted were agreed that it was beyond the sphere of practical politics to adopt them at this time in connection with industrial workers. It will be obvious that it would be equally impossible to adopt a measure of this kind in respect of agricultural workers. The conditions of life of course are in their case much healthier and therefore the need is much less urgently felt. I pass now to the other parts of this Resolution. As regards the recommendation regarding the night work of women, children and young persons employed in agriculture, I do not think I need read these recommendations out,—they simply provide for a period of rest at night time—9 hours in the case of women and young persons and 10 hours in the case of children. Everybody knows—even I know,—that women and children in this country do no agricultural labour at night; even during harvest time they do not work at night at all; I believe I am correct in saying that,—and what is more, it is obvious that if you pass legislation of this kind, it will be quite impracticable to enforce it. It is easy enough in the case of industries for which there are factory inspectors; I do not know whether you contemplate having agricultural inspectors in all the villages of the country, groups of villages all over the country, looking to see when women go to bed and when they get up in the morning. It is clearly cut of the question. Finally, Sir, I must refer to the living-in conditions of agricultural workers. I think I must read the recommendation out, though it is somewhat longer. The General Conference of the International Organization recommends:

"That each Member of the International Labour Organisation, which has not already done so, take statutory or other measures to regulate the living-in conditions of agricultural workers with due regard to the special climatic or other conditions affecting agricultural work in its country, and after consultation with the employers' and workers' organisations concerned, if such organisations exist."

Secondly:

"That such measures shall apply to all accommodation provided by employers for housing their workers either individually, or in groups, or with their families, whether the accommodation is provided in the houses of such employers or in buildings placed by them at the workers' disposal."

And thirdly:

"That such measures shall contain the following provisions:

- (a) Unless climatic conditions render heating superfluous, the accommodation intended for workers' families, groups of workers or individual workers, should contain rooms which can be heated;
- (b) Accommodation intended for groups of workers shall provide a separate bed for each worker.. shall afford facilities for ensuring personal cleanliness; and shall provide for the separation of the sexes. In the case of families, adequate provision shall be made for the children;
- (c) Stables, cowhouses and open sheds should not be used for sleeping quarters."

And finally—this is important:

"That each Member of the International Labour Organisation take steps to ensure the observance of such measures."

The International Labour Organization, I may say, did not indicate what kind of steps would be practicable in a vast agricultural country like India; obviously it is not practicable. Indeed, Sir, it is also obvious that this particular recommendation was framed solely with a view to conditions in certain parts of European countries,—it was clearly also framed, I think, more to provide for the moral than the material well-being of agricultural workers in certain circumstances. No one can suggest, I am the last person to suggest, that there is an evil of this sort to be dealt with in India at all, as far as agricultural workers are concerned,—and I say that it is all to the credit and fair name of India that that is so. I can say this with absolute certainty of the full support of the House.

I move the Resolution, Sir

Mr. K. Ahmed (Rajshahi Division; Muhammadan Rural): Sir, I rise 1 P.M. to oppose the Resolution. The Resolution contains the words "at the present." What is the present time? What is the real situation now in the country? My friend, Mr. A. H. Ley, has not described that. And if, Sir, this Convention of the Third Session of the International Labour Conference at Geneva have passed and accepted this recommendation, why does it not suit India? If it suits labouring women in other countries why is it not suitable for our labouring class women here? Are they not persons who deserve the same sympathetic treatment as the agriculturists and labourers across the sea in other countries? These are the people who pay five rupees Chaukiduri tax per year and these are the people whom we represent here in this Assembly. On Mr. Ley's previous Resolution speaker after speaker spoke, and Mr. Joshi tried to move an amendment to the main Resolution on the right direction. But my friend from Poona, who must be sitting in a non-Muhammadan seat, is probably a contractor, and therefore possibly he likes to see the miserable condition of the labourers continuing to the profit of the contractors of this country. From such people, these unfortunate agriculturists and labourers can have no sympathy. He tried to twist the tail of my friend Mr. Joshi, because he had moved the amendment which did not suit his views. As a matter of fact, Sir, Mr. Joshi is a nominated Member representing the labour of India. Mr. Joshi was sent by the Government of India, who picked him up as the representative of Indian labour to go across the Mediterranean

[Mr. K. Ahmed.]

to represent India at that Conference last year, and I supposed the year before as well, 1921-22. My friend, Mr. Joshi, unhappy man, wanted to ameliorate the conditions of these poor people. Government allowed him to represent India at the International Labour Conference held at Geneva, but now when he speaks on behalf of the people, what is the answer of the Government? He is thrown over-board. Mr. Ley says that his own Resolution is the best and therefore it should be carried. I wish the Government of India had sent Mr. Ley as their own representative and not of the people across the Mediterranean. I know the facts, Sir. Government and not the people of this country are represented. I know that my friend the Honourable Mr. Chatterjee was sent to represent India, also his colleague, our intimate friend, Mr. J. N. Gupta, who wanted to take a trip on account of ill-health. These gentlemen were sent instead of the Government selecting persons who are real representatives of the country and are the fittest persons to represent India at the International Labour Conference at Geneva. Yes, Sir; a one-sided statement has been made on behalf of the Government by Mr. Ley that effect should not be given to the recommendations of the Labour Conference at Geneva giving concessions to workmen and labourers. Sir, if it suits the civilised people, the labourers and the agriculturists of the West, it will suit certainly the labourers and agriculturists of this country as well; otherwise it is a shame. Members representing these poor people have come here to ameliorate their condition. We are not here to support the Government, every Member of which is drawing a salary after every 30 days. Here I quote Lord Curzon. Lord Curzon while inquiring into the condition of the agriculturists and the labouring population of India, said that these persons, viz., the agriculturists and the labouring classes, are the backbone and the sinews of the country. Every copper that comes from their pocket is an addition to the revenues of the country, and their case should be considered and condition looked into by the Government. Is this the time, may I ask, is this the proper time, for Mr. Ley to move a Resolution not to give effect to the recommendations of the International Labour Conference at Geneva? It is given effect to in the case of the agriculturists and labourers of those prosperous countries and we protest against effect not being given to the recommendations in the case of the miserable agriculturists and labourers of this poor country. My friend, Mr. Rangachariar, speaking for the landholders of Madras, said in regard to the other Resolution that this sort of concession is not fit for Indian Labour. He represents the Non-Muhammadan labourers and agriculturists. He forgets that the agriculturists and the labourers have been paying Chowkidari tax. He is supposed to represent them and do things which are proper and fit for the country and to try to uplift the condition of these poor agriculturists and labourers. Mr. Mukherjee, who himself is a landholder and who represents the landholders, forgets the poor condition of the millions which form the great majority of the population, especially in the province of Bengal. I suppose, Sir, this Resolution which Mr. Ley has moved is not a properly worded Resolution. My friend says that he has consulted all the provincial Governments and some other persons with regard to the actual situation. I want to know who those other persons were. My friend is putting his case probably in a one-sided way—as we say sometimes in legal language, “the judgment of the learned Judge is one-sided and not properly worded and explained. It is a stereotyped one.” And that is the summary way in which a case has been put in the Assembly for this House to accept. A Resolution of

this description, Sir, is an obstacle in the path of progress of this country, and in the path of progress of the world. Why should India be kept out like this, and why should not these poor people have the same kind of concession given to them as the people of other civilized countries? And why should not India and the people of this vast country be properly represented at the International Labour Conferences? I know, Sir, the secret fact. It is not easy to pick out a man from the West to represent this country, and thereby the poor unhappy people of this country of more than 300 millions most of whom are agriculturists are left without any light. They are totally ignorant because they are kept ignorant. My Honourable friend, Mr. Ley, at the time he was moving the Resolution, said that the Indians are very orthodox and said that these agriculturists have got different religions and different castes (I hope I am not wrong), but how does the question of caste come in with regard to this concession being given to these poor people?

Mr. A. H. Ley: Sir, I never said anything about caste at all.

Mr. K. Ahmed: Different kinds of people having different ideas in this country. If a child is dead, whether the child is an Indian child or a mixture, or whatever that child may be, the concession for that poor unhappy child is the same in this country as the concession for a child of a prosperous country. The International Labour Conference at Geneva has passed this concession and we are here to act according to it, but my friend says no, this is the recommendation of the Governor General in Council that this legislation to secure enforcement should not be introduced at the present time. The time is very bad. Oh! it is a troublous time, any my friend might say that there is a war going on, the Bolsheviks might come. Indian children might become prosperous; they will be properly educated; they will be properly fed, they will be strong enough to ameliorate their own condition, and then there will be the time when from the department of my friend, Mr. Innes, a Resolution of this kind should be moved. And we representing the people of this country, are we here to support that sort of proposal of the Government Member in charge? Sir, I vehemently oppose the Resolution and think it should not be accepted by this House.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I beg to move the following amendment which stands in my name

"At the end of the Resolution the following be added:

"and requests the Government of India to inquire and report to the Assembly what action regarding these matters is necessary and practicable in the case of organised plantations in India."

Sir, at the outset may I make one request to those people who would like to criticise my amendment, that they should first take care to understand the terms of the amendment and then criticise it. Sir, I will again bring to the notice of the Honourable Members of the Assembly that my amendment does not touch the whole agricultural sphere. My amendment only touches agricultural work as confined to the organized plantations. If any Honourable Members here want to criticise my amendments let them show that no action need be taken or can be taken in the case of these organized plantations. If I am going to be held responsible for remarks which I do not make or for terms which I do not put in my amendments, it will be difficult for me to make any reply to such critics.

Sir, the original Resolution deals with 8 or 4 things. It says that no legislative action should be taken as regards the protection of women

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before and after child birth, no action should be taken as regards the prohibition of the employment of children in agriculture nor as regards certain improvements in the living-in conditions of agriculturists and as regards the prohibition of night work of women, children and young persons employed in agriculture.

Now, I wish to take each of these items, one by one. In the case of legislation for the protection of women before and after child birth, may I again draw the attention of the Honourable Mover of this Resolution to the fact that already on organized plantations a good deal is being done by employers in helping women during their pregnancy. I shall only read one or two sentences from the same report from which I quoted a few minutes back:

"The Budla Beta Tea Company gave leave for three months before and three months after birth with full pay for the whole period."

"The Doom Dooma Company allow a similar period of leave with five seers of rice a week, free of cost, and Rs. 1'8 in cash."

Several other companies mentioned in this report make provision for the protection of women before and after child birth. But, Sir, in a case of this kind, it is necessary that there should be legislation, otherwise, those employers who are generous-hearted and who are willing to spend money, cannot do so on account of the fact that our industries are based on the system of competition. The employers, who are generous-hearted, cannot introduce reforms because they feel that they will be beaten in competition by their less generous rivals. For this reason, in order that the condition of the working classes may be improved, there should be legislation. And it should not only be national legislation, but it has been found that, unless all countries join and there is international legislation, there cannot be much improvement in the condition of the working classes.

Sir, my critics will find that, when I ask that there should be legislation for the protection of women before and after child birth, I am not asking for something ideal. My plan is not merely theoretical or the plan of an idealist; it is being put into practice by a large number of generous-hearted people like my Honourable friend, Mr. Jamnadas Dwarkadas: it is not only the plan of an enthusiast who talks without practical experience.

The second question, Sir, is that the employment of children should be prohibited during their childhood. Now, I will also read something about conditions on plantations.

It has been found that when schools are started on these plantations at the suggestion of Government or by the free will of the planters, they do not get sufficient students. Why? Because—I will explain the reason which is given by the Committee—in the first place, children are a valuable asset to the garden—their work is a valuable asset to the garden; they are earning a welcome addition to the family income. Therefore the employers gain and the parents gain by the employment of children. But is it right that children should be so employed?

Mr. A. H. Ley: Sir, I rise to a point of order. There is nothing in this Resolution about the employment of children at all except at night.

Mr. N. M. Joshi: I am sorry and I apologise to the House. There is the question of night work for children and night work for women. Sir,

nightwork has been prohibited by our factory law both for young persons as well as for women. It is not a new thing that we are going to introduce. The legislation for prohibiting night work exists in India. My amendment only seeks that that legislation should be extended to women working on these plantations. Sir, there are real dangers for women if they have to go out and work on these plantations at night. I do not wish to dilate on these dangers here; I may do so on some other occasion. Then, Sir, there is the question of the living-in conditions. I want Government to find out whether they can legislate for improving the living-in conditions of the workers on plantations. As a matter of fact, while speaking on the last amendment, I did tell my Honourable friend that there exists some legislation on the statute-book of the Government which provides for improving the living-in conditions of workers on plantations. If he refers to sections 132, 133 and 134 of the Assam Labour and Emigration Act, 1901, he will find that that Act makes provision for house accommodation, water supply, sanitary arrangements for labourers, supply of foodgrains, provision for rest, for medical attendance, etc. These matters have been dealt with by legislation by the Government of India as regards the very people for whom I want legislation. The only difference is this—this Act was intended for people who entered into contracts for which there was a punishment of imprisonment. Now those contracts in a large number of cases are not now made. But there is a very large number who are free labourers. My one contention is that the benefit of this legislation which already exists for the contract labourers, should be given to free labourers. Sir, is there any Member here who will say that they will give the benefit of such beneficent legislation only to those who enter into what are called penal contracts, but they will not give its benefit to the free labourers. Everyone will see now that there is no difficulty in legislating on such matters. Legislation exists. The only thing is that we give the benefit of such legislation to a workman when he is prepared to sell his liberty and to become a slave. My friend, Mr. Kanat has no objection to the legislation passed on these lines. But if a labourer wants to be free, then, he is not to benefit from such legislation. Sir, this is the democracy which unfortunately I have to see in this Assembly.

Sir, it has been said by my friend, Mr. Rangachariar—"How can we legislate only for planters?" As a matter of fact there is no difficulty. We have been doing that all along. When we legislated in the matter of industries, we legislated only for the organized industry. Our Factory Act defines a factory as a place, a workshop where there are 20 people employed and where there is some mechanical power used. We do not legislate all the industrial workers at all. So, what is the difficulty that he finds when we want to legislate only for the organized factories. We therefore can legislate for organized plantations, and there is no difficulty. There is no discrimination if we legislate for organized plantations, because we have been doing that.

Then, Sir, my Honourable friend, Mr. Jamnadas Dwarkadas, without troubling to understand the terms of my amendment said that I wanted the ratification or non-ratification to be hung up. I do not want that. My amendment does not say that any action need be taken for the present but that an inquiry should be undertaken.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban):
It would be implied.

Mr. N. M. Joshi: I do not see how it can be implied. I have not changed the original words of the Resolution at all. I accept that no action should be taken for the present, I accept that part of the Resolution. I only say that you should begin an inquiry. If you want to write to the International Labour office to-day, write that you cannot take any Legislative action to-day. But there is nothing to prevent your making an inquiry even from to-day. Then, Sir, some capital is made out of the fact that the terms of the Convention cannot be changed and that if we want to accept it the whole of it should be accepted. That is true. But what prevents your taking action here? If you cannot accept the convention to its very letter, it does not prevent your taking action in the spirit of the convention. I cannot understand, Sir, what prevents our taking action in the spirit of the convention. After all if my Honourable friend, Mr. Kamat, or if my Honourable friend, Mr. Jannadas Dwarkadas, consent to vote for some legislation in favour of labour, do they do it for the sake of the International Labour Conference, or do they do it for the sake of their country and for the sake of their countrymen? If they are not doing it for the sake of the International Labour Conference, there is nothing wrong in their not ratifying the convention, and at the same time taking some action. I therefore hope that my amendment will find favour with this House.

Sir, there is only one word more. Some people wonder why I go on moving amendments when there is not much support to my proposals. Sir, I am an optimist both by nature and by training. I do not despair. If only a few people vote with me and none speaks for my proposal, I hope there will be a time and not a very distant time at that when instead of one man speaking for labour there will be several Members speaking for labour in this House. I feel sure also that there will be a time when the labour Members make speeches people like my Honourable friends, Mr. Jannadas and Mr. Kamat, instead of trying to pour ridicule on them will consider themselves fortunate if the labour Members smile upon them or speak to them a word or two. With these words, I put my amendment before the House.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, it has often been my very pleasant duty to be associated with my Honourable friend, Mr. Joshi, in advocating the cause of labour in this House, and it is with the greatest regret especially after his most eloquent peroration that I rise to oppose his amendment. Mr. Joshi, Sir, is an idealist; I have also been described with a certain amount of sarcasm during this morning's debate as an idealist; but I think, Sir, that I am not quite as impatient an idealist as the Honourable Mr. Joshi. That is why, Sir, I feel that I cannot agree with Mr. Joshi's views as propounded in the present amendment. My difficulty is entirely a practical one. Mr. Joshi wants an inquiry made into the possibility of certain reforms being carried out in organised plantations. On the first Resolution which we disposed of a little while ago, Mr. Joshi defined organised plantations as places in agricultural districts where a certain number of persons worked under one master and in one locality. Sir, if that definition is followed, I think we will have probably to include practically every Zemindar, every landholder, practically every large tenant cultivator in the whole of India. Does Mr. Joshi wish us to make an inquiry of this all-embracing character? As a matter of fact, Sir, the Government of India have not been neglectful in this matter. They have made inquiries. Mr. Joshi himself has quoted

copious passages from the Report that has quite recently been made in Assam over the conditions prevailing in plantation labour there. That only indicates, Sir, that the matter is already engaging the attention of the Government of Assam. Similar inquiries on specific subjects have been made in the Dooar tea plantations in Bengal. On the earlier occasion Mr. Joshi said that no inquiries have been made with regard to workmen's compensation being extended to agriculturists all over India. Mr. Joshi knows perfectly well that inquiries had been made. On the original letter that was issued by the Government of India, it had been distinctly stated that the Government of India would like to know whether the provisions regarding workmen's compensation could be applied to agricultural workers or not. Mr. Joshi says that certain provisions are already made in the Assam Labour and Emigration Act, and therefore it is quite in the competence of Government to make further provisions. Earlier during the morning, Sir, Mr. Joshi passed very laudatory remarks with regard to the Government of 20 years ago as compared with the Government of to-day. I do not wish, Sir, to defend the Government of to-day, but I leave it to the House to determine whether the Government of to-day has been behindhand in the matter of social and economic legislation. As a matter of fact, Sir, Mr. Joshi himself has given the answer to his own question. He pointed out that the Assam Labour and Emigration Act applied to persons who entered into certain penal contracts, and it was the duty of the Legislature, it was the duty of the State particularly to protect those persons. When free contracts are made, when an agricultural labourer goes and works for a tenant cultivator or for a landholder, I do not think it is particularly incumbent on the State to make provision for his well-being unless a special case is made out for such provision. Mr. Joshi has not given an iota of fact to prove that conditions amongst agricultural labourers either in the plantations or elsewhere are bad. There is no necessity for any special inquiries beyond those that are being made by Government, and those that have already been made.

Similarly, Sir, Mr. Joshi wanted legislation prohibiting the night work of women and children in agriculture. My Honourable friend, Mr. Ley, has already pointed out that even if legislation is adopted it would be absolutely impossible to enforce such legislation. We, in India, Sir, have always taken care, we have always taken credit to ourselves that when we do pass legislation, we take steps to enforce that legislation; we do not want shop-window legislation.

Then again, Mr. Joshi has talked about living-in conditions. My Honourable friend, Mr. Ley has already read out the passages from the draft recommendation on this point. While we were at Geneva, Sir, we took care to point out to the Conference there that these recommendations were absolutely inapplicable to the conditions prevailing in India. I know my Honourable friend, Mr. Rangachariar, has taken us to task for not having done our duty at the Conference. I think, Sir, if he had only taken the trouble to read the reports of the Conference, he would not have accused us of indifference towards the interests of India. We pointed out there that those conditions were absolutely inapplicable to India. But, Sir, these International Conventions are passed not with reference to the needs of any particular country but with reference to the needs of the whole world. As a matter of fact, we did succeed in carrying a suggestion that these recommendations, these proposals regarding agriculture, instead of being embodied in Draft Conventions which have a very much stricter

[Mr. A. C. Chatterjee.]

authority, should be embodied as Recommendations. We did succeed to that extent, and this House has not got the same responsibility with what are technically called Recommendations as they have with regard to Draft Conventions. I do not think, Sir, that my Honourable friend, Mr. Joshi, has made out a strong case, or for that matter, any case whatever for the acceptance of his amendment by the House, and with all due respect to his love for labour and the work that he has done for the betterment of the conditions of Indian labour, I respectfully beg this House not to accept his amendment.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhamadan Urban): Sir, I had no idea at all of taking part in this discussion, but the remarks made by some of the speakers incline me to the view that I should not let them pass unchallenged. Sir, I am not one of those who invariably express approval either of Government action or of Government choice, but I must say that Government were very wise in sending Mr. Joshi as our representative. (Hear, hear). Remarks have been made, which, when read outside this House might lead to the impression that Mr. Joshi had not our confidence. I wish to say that Mr. Joshi has our confidence, and we wish to pay our tribute or admiration for the work that he has done outside India and for the work that he is doing in this country. It has been said, Sir, that Mr. Joshi has got the vocational disease, but some people have got the ague of sobriety, which leaves them cold, and it is impossible for them to be moved to action or to any generous impulse or generous enthusiasm. If Mr. Joshi under the influence either of vocational disease or under the influence of patriotism is moved to action, it is not open to those who may perhaps be dead to those impulses to cast reflections upon him. Sir, I deprecate those references, and I protest against the remarks that have been made by some of the speakers here in this hall. Whom do they want to send? Some big landholder who engages thousands upon thousands of coolies to represent labour? (A Voice: "Why not?") Well, why not send a wolf to represent the sheep?

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I had not intended to intervene in this debate, but my Honourable friend, Munshi Iswar Saran, as he usually does, tries to please when he says he is not out to please. All that I said was that the Government of India should associate others with him and not that they did wrong in sending Mr. Joshi. It was far from my intention to say so. What I said was that the Government of India should associate other people with the deputation to represent the actual conditions from their point of view.

Mr. N. M. Joshi: You won't like that.

Rao Bahadur T. Rangachariar: Some employers may be represented, and not the landlords.

Mr. N. M. Joshi: If landlords sleep, what can be done?

Rao Bahadur T. Rangachariar: If they sleep, it is the duty of the Government of India to awake them, it is the duty of Mr. Joshi to awake them. But I do not think that they are really sleeping. We in this country do not think that these Labour Conferences really represent India or Indian views. That is the view we take. We do not take them seriously. It may be wrong to do so.

Well, now, to turn to the subject having regard to practical conditions, let us take the case of night work of women, what is night? After 6 P.M. I suppose it is night. (A Voice: "After 10 P.M.") Well, if it is after 10 P.M. I do not think even men work after 10 P.M. It is very very seldom that even men work after 10 P.M. and that too perhaps in the very busy harvest season. There may be some work to be done after 10 P.M., but it is very rare indeed. I have not come across such cases even in our temperate climate in Madras where people like to spend their nights in the open rather than inside a house or a shed; even there their work seldom goes beyond 10 P.M. Well, mention has been made about pregnant women. I think work for pregnant women will do a lot of good before delivery. In fact, women of the working classes have their confinement very easily, whereas for women who are confined to their homes like our girls in their luxurious homes, we have to employ midwives and nurses and sometimes call in doctors; who can deny work outside in the open air does them a lot of good. After all, what is the work that these working class women do? They pluck leaves, remove weeds, they transplant, and they take their hours of work easily. I do not know whether it does them any injury at all. Three months before child-birth and three months after child-birth! Can any country afford to get labour at such a cost? I ask this question in all earnestness. I hope I am not conservative or orthodox in these matters. Orthodox I may be, and very crude perhaps I may be supposed to be, but I am bound to give expression to my views in this matter. Does my Honourable friend, Mr. Joshi, really expect labour women in this country to desist from labour for three months before child-birth and three months after child-birth? My Honourable friend read that some generous planter has made provision like that. If it is true, he must be a very generous man indeed. I do not think I can find the like of him in this world—at any rate not in the provinces of this country. (Mr. K. Ahmed: "What about other countries?") We are not in other countries. We are here for India, and we are here to legislate for Indians in India. We are not in other countries. This is a counsel of perfection. Even in your own homes, do not your women work generally in that period? Do they not draw water from wells, and attend to all other domestic work? These are idealist's theories incapable of being carried into effect. Does my Honourable friend, Mr. Kabeer-ud-Din Ahmed, observe this rule with reference to his own servants? (Mr. K. Ahmed: "I do.") I am glad to hear that. Then, Sir, as regards these various living-in conditions which were mentioned, what is to be done? Take any planter. Take a planter in the Nilgiris. What do you expect him to do? You want so many rooms, you want so much accommodation. You know our gregarious habits. We live in a joint family system. The people would put up with any amount of inconvenience and live in the same house. Even if you provide a separate house, they won't go in there. Therefore, I think these are conditions which are incapable of being applied in this country. I quite sympathise with the object of improving conditions of labour and their wages. By all means remove all the penalties provided by special legislation for the benefit of the planters and enforced labour. But at the same time, where free labour is resorted to why should we interfere? I do not think that all planters after all are so bad as we suppose them to be and as they are painted. After all they have brought wealth to this country. The hills which were wastes have been brought under cultivation and they have got good seasons and bad seasons too. I know many a planter went to ruin in Mysore, in Nilgiris and in Wynad. I do not think it is after all correct to assume that they

[Rao Bahadur T. Rangachariar.]

are making huge fortunes. Therefore, I do not think these are practical propositions. I therefore heartily support the Resolution and I am sorry with all respect to my friend, Mr. Joshi, that I cannot support his amendment. I do not want to cry down his work. In fact, I won't say this. It is not necessary for me to say this but for the fact that Munshi Iswar Saran supposed that I did cry down Mr. Joshi's work. I disclaim any such intention on my part. On the other hand, I have every admiration for his work. But at the same time I consider him an idealist in these matters.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The original question was that :

" This Assembly having considered the recommendations concerning the protection before and after child-birth of women wage-earners in agriculture, the night work of women, children and young persons employed in agriculture and the living-in conditions of agricultural workers adopted by the Third Session of the International Labour Conference at Geneva in 1921, recommends to the Governor General in Council that legislation to secure their enforcement should not be introduced at the present time."

Since which an amendment has been moved that :

" At the end of the Resolution the following be added :

' but so far as the organised plantations are concerned requests the Government of India to consider the advisability of undertaking legislation to introduce these reforms '."

The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that the Resolution be adopted.

The motion was adopted.

The Assembly then adjourned for Lunch till Quarter to Three of the Clock.

The Assembly re-assembled after Lunch at Quarter to Three of the Clock.
Mr. President was in the Chair.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The House will now resume consideration of the Bill further to amend the Code of Criminal Procedure, 1898 and the Court fees Act, 1870.

Mr. K. B. L. Agnihotri (Central Provinces, Hindi Divisions: Non-Muhammadian): Sir, I beg to move :

" That in clause 47 in the proposed sub-section (1) clauses (b) and (c) all words after the words ' is subordinate ' be omitted."

Sir, under section 195 in the existing Code, it was laid down that the Magistrate was not to take cognisance of any of the offences enumerated therein without the sanction of the Court concerned or of the Court to which it was subordinate and under the present Bill and its proviso, we have removed

the provision requiring the sanction and have retained that the cognisance could only be taken on the complaint of that court or the complaint of the court to which it is subordinate. We also go a step further and provide that the court can also take cognisance of the offence on the complaint made by order of or under authority from the Local Government. I beg to object to and move the removal of this additional clause which provides that cognisance may also be taken on the complaint made by order of or under authority from the Local Government. Sir, by the omission of a provision of this kind I am sure the administration of justice will not be hampered in any way. The courts in which the offences specified in this section are committed will be watchful and competent enough to file a complaint as required and in cases in which the courts concerned have not filed a complaint, the Local Government could if thought desirable, request those subordinate courts to take such action. It is not necessary to provide herein that the complaint be filed by order of the Local Government or under their authority. It will not only encumber the provisions of this Code but will also be undesirable in the ends of justice. For instance, where a Local Government orders the filing of a complaint before a subordinate Magistrate of the district, the subordinate Court will naturally think that that complaint has been filed by the Local Government, after good and thorough consideration of the facts concerned, and that the Local Government's opinion formed after consideration of these facts must be very sound and, on that basis the Magistrate will have no alternative in his own mind but to convict such person. Therefore Sir, I suggest that this provision authorising the filing of the complaint on orders of the Local Government be deleted. Moreover, Sir, the provisions that have been provided in these two sub-clauses (b) and (c) relate to the offences that have been committed in the Courts during the trial of cases before them and they relate to such offences, for instance, perjury, making false statements or using them as true or filing false or fraudulent suits, removing property from being taken possession of under processes of the Court or for contempt of Court or filing or using as genuine forged documents. For these offences committed in courts it is unnecessary that the Local Government should order the filing of a complaint. The Magistrate in whose courts these offences have been committed or their superior courts will be the best persons to decide whether or not such complaints be filed; therefore, I suggest, Sir, that this provision be deleted.

Mr. President: Amendment moved:

"In clause 47 in the proposed sub-section (1), clauses (b) and (c), omit all words after the words 'is subordinate'."

The Honourable Sir Malcolm Hailey (Home Member): It is true, that this is an addition to the existing Code. The reason for making it is given in the Report of the Lowndes Committee,—which I would again remind the House was not a Government Committee in any sense of the term. Section 195, they thought, caused constant difficulty:

"We have no doubt that it will not be possible to remedy the evils which are connected with this section so long as private individuals are allowed to prosecute for offences connected with the administration of justice. In our opinion, the only effective way of dealing with this section is to allow a prosecution to be launched only by the Court or, in exceptional cases, by the Local Government—who no doubt before long will be represented in such matters in their own provinces by a Director of Public Prosecutions."

It was intended therefore to provide only for exceptional cases in which the Local Government might find good reason for launching a prosecution. Mr. Agnihotri says this is dangerous—because if the sanction or complaint

[Sir Malcolm Hailey.]

is made by the Local Government, the Magistrate will no doubt consider that such complaint could only have been made after due and proper consideration. In that, of course, my Honourable friend is quite right; such a complaint would only be made after due and proper consideration, but I see no reason why Mr. Agnihotri should use this as an argument against allowing a complaint to be made by the Local Government.

Mr. K. B. L. Agnihotri: It will be prejudicial to the accused.

The Honourable Sir Malcolm Hailey: Why it should be prejudicial to the accused that the complaint is made only after due and proper consideration is a mystery which I will not attempt to solve. He has forgotten, I think, equally that we have the sanction of the Local Government in such a case under section 196. Is that, again, prejudicial to the accused? If so, I think that it is worthy of note that no body has so far ever attempted to amend section 196—indeed in the whole course of our exceptional legislation, if I may say so, there has been one continual demand on the part of critics, namely, that prosecutions should not be launched without the sanction of the Local Government; and there is, of course, very little difference in so far as it affects the accused between the Local Government lodging a complaint through the proper agency and the Local Government giving sanction to the complaint. But I have given the sole reason, why this addition has been made in this section of the Bill.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, after hearing the Honourable the Home Member I feel convinced that the amendment is right and the explanation given by the Honourable Home Member is both unconvincing and wrong. Honourable Members will find that the offences categorised in clause (b) of section 195 are offences described in the Indian Penal Code as offences committed in the course of judicial proceedings, except in very exceptional cases to which I need not advert. The Honourable the Home Member has referred to the difficulty which both judges and practitioners felt in the working of section 195 coupled with section 476 of the Code of Criminal Procedure. I shall briefly advert to that difficulty. Under the existing law the courts were empowered either to complain on the motion of the party aggrieved or *quo motu* in respect of any offence committed in the course of proceedings before them. If they complained the matter was not open to revision and the accused had no redress except in a trial held in pursuance of that complaint. If, on the other hand, the court merely recorded a sanction for the prosecution of the accused, the accused had the right of appeal and revision, and the order of the court concerned was revisable both by the court of appeal and the ultimate court of revision. The difficulty to which Sir George Lowndes and his Committee advert is a difficulty of a different character upon which the High Courts in India have been at variance. The difficulty was not so much with reference to the complaint or sanction under section 195, but with reference to the inquiry possible under section 476. So far as the question of complaint is concerned, no difficulty arose, but when the question of granting a sanction to the party aggrieved was concerned, it sometimes happened that the person obtaining sanction did not prosecute the case within six months and he came to terms with the would-be accused; and there were other difficulties. These are the difficulties which confronted Sir George Lowndes' Committee and it was suggested by that Committee that it should do away with the distinction between complaint and

sanction. I welcome that change. So far as the artificial distinction between complaint and sanction was concerned the present Bill is an improvement. But when it goes further and arms a Local Government with the power of ordering a prosecution or complaining, as required by section 195, clauses (b) and (c), there is occasion to pause and consider. The Honourable the Home Member has told the Honourable Members here what differences there are between a complaint made by a court and a complaint made by the Local Government. Surely, Sir, the Honourable the Home Member could not be unaware of the fact that a complaint made by a court is made by a judicial authority after hearing all parties concerned, while a complaint by a Local Government is made by an executive authority without giving the party aggrieved any chance of complaint or redress in the lawfully constituted courts of the country.

That is a vital difference between a complaint of a judicial officer and a complaint by an executive authority. I, therefore, submit that

3 P.M. the distinction between the two must be borne in mind by Honourable Members before they record their votes. Then, it has been said by the Honourable the Home Member, what difference would it make if the Local Governments are empowered to complain under section 195, when, as a matter of fact, they had possessed the power of complaining under section 196? Honourable Members have merely to advert to section 196 to see the difference between the two sections and the power of the Local Government in the one case should not be extended in the case of the other. Let me read to Honourable Members section 196 to which reference has been made from the Government Benches. That section, Sir, reads as follows:

"No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code (except section 127), or punishable under section 106A, or section 153 or section 294A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council the Local Government, or some officer empowered by the Governor General in Council in this behalf."

These, Honourable Members will observe, are disabling provisions which prevent any complaint being lodged except upon the motion of the Local Government, while section 195 (b) and (c) are intended to extend the powers of the Local Governments by placing within their jurisdiction cases which would not otherwise be within their jurisdiction. That is a difference, and, I submit, a very important difference. The analogy of section 196 is rather against the contention raised by the Honourable the Home Member and not in favour of it. It simply places an embargo upon all complaints against certain persons and in respect of certain offences except on the complaint of the Local Government. It is intended to protect certain persons from vexatious and frivolous prosecutions. That is not the object of the amendment which is inserted in clauses (b) and (c) of section 195. These clauses are intended to give the Local Government, as chief executive authority, power to initiate prosecutions on their own authority and it is that which is the gravamen of my friend, Mr. Agnihotri's contention. Mr. Agnihotri, Sir, has rightly observed, that, constituted as the Courts are in this country, it is very difficult for the poor accused to defend himself against a prosecution launched under the aegis of the Local Government. The Courts will assume: 'Here is a prosecution launched by no less a person or body than the Local Government. This man who stands here to defend himself has not a ghost of a chance.' The prosecution, I submit, play with loaded dice, the defence on the other has a forlorn hope. That, I submit, is the danger of arming the executive

[Dr. H. S. Gour.]

Government with a further power of complaining and ordering prosecutions. Sir George Lowndes' Committee contemplated, Sir, the institution of the office of a Director of Public Prosecutions, and if I understood the report of the Committee aright, they wanted to do away with section 195 as such and to substitute therefor an independent machinery for the purpose of dealing with cases referred to in section 195. That is entirely a different matter. If the Government had introduced in the present Code an amendment to the effect that all prosecutions against public justice for perjury, making false charges and the rest, are hereafter to be investigated and initiated by a special judicial officer, call him either the Director of Public Prosecution or the Prosecutor General as the case may be, and that officer will give the party aggrieved a chance of defending himself and showing cause why the order against him should not be recorded, I do not think this House would have any ground for complaint. It would be the creation of an independent tribunal to examine and judge of the *prima facie* culpability of the persons against whom such prosecutions are initiated; but to give this power of a purely judicial character to an Executive Government who will not hear the accused, who will act *in camera*, and order prosecutions, is, I submit, a reactionary piece of legislation, against which this House should vote.

Munshi Mahadeo Prasad (Benares and Gorakhpur Divisions: Non-Muhammadan Rural): I beg to associate myself with what has fallen from the Mover of the amendment. When we look at the Criminal Procedure Code we find that the offences dealt with by section 195 are offences connected with contempts of lawful authority of public servants, and also offences relating to false evidence and offences against public justice; and when we refer to section 196 we find the offences referred to in that section are offences against the State. So the analogy between sections 195 and 196 is not sound. Further when the Court tries a case and goes into its *pro* and *cons*, both parties have a right to be represented by counsel. But Sir, when the matter goes to the Local Government, everything is done *in camera*, and I submit, Sir, the arguments put forward by Dr. Gour have very great weight and I support the amendment moved by Mr. Agnihotri.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I rise to offer just a few remarks with reference to those which fell from my Honourable and learned friend, Dr. Gour. I wish, Sir, to explain the type of cases in view of which this provision has been inserted. It will be seen, Sir, that this section, read with section 476, abolishes sanction in these cases and substitutes complaint. The idea was, Sir, that in cases of complaints by the High Courts it might be difficult to get them to move and that it was therefore desirable in these exceptional cases—and the provision will only be used in very exceptional cases—to take this power for the Local Government to institute a prosecution by means of a complaint in these particular cases. My Honourable friend also stated that in cases instituted on the complaint of the Local Government the counsel for the defence were working against loaded dice. I would suggest that some 50 per cent. or more of the important prosecutions in this country are made under the orders of the Local Government. This, Sir, is also, I would submit, a provision very similar to provisions in the English law. If we take the Vexatious Indictments Act of 1859, perjury is one of the offences included there, and the indictment may be made by His Majesty's Attorney General or His Majesty's Solicitor General.

Dr. H. S. Gour: Is that the Local Government?

Mr. H. Tonkinson: His Majesty's Attorney General and His Majesty's Solicitor General are part of the Government.

Dr. H. S. Gour: They are Law Officers of the Crown.

Mr. H. Tonkinson: They absolutely make indictments on behalf of the Crown in exactly the same way as the Local Government moves here: there is no difference whatsoever.

Then, as regards the Director of Public Prosecutions, I was surprised, Sir, to learn that this officer was to be a judicial officer, an officer who was to make judicial inquiries. When we have been considering the appointments of Directors of Public Prosecutions in the past, we have always assumed that they were to be officers of the same character as the Director of Public Prosecutions who was constituted in England in 1879. That officer exercises no judicial functions at all, and I would submit that my Honourable friend is quite mistaken in what he assumes to have been the intention of Sir George Lowndes' Committee in their reference to a Director of Public Prosecutions.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): I rise, Sir, to support my friend, Mr. Agnhotri, and, in addition to the reasons advanced by my Honourable friend, Dr. Gour, I shall only advance one more reason in support of the amendment. Suppose, Sir, I am an aggrieved party and I apply to the Court that it do lodge a complaint against the person at whose hands I am aggrieved, and the Court refuses to lodge that complaint. I then approach the Government, and Government, without reference to the Court, lodges a complaint on its own initiative. What happens? The Court is discredited by the Government, and the Government on its own initiative lodges a complaint against the considered opinion of a Court of law established by itself. If the Government wish to have a complaint lodged in cases of this kind, there is nothing to prevent it from moving the Court to lodge the complaint. That would be the proper procedure to adopt and not direct action on their own initiative. I therefore support the amendment.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, I rise to oppose the amendment. Here is the amendment. It runs:

"In clause 47 in the proposed sub-section (1), clauses (b) and (c), omit the words 'is subordinate'."

Now, Sir, I do not understand why when the subordinate court has power to sanction a prosecution, the prosecution should not be started at the instance of a court higher than that or by the Local Government. It cannot be supposed for a minute that the Government would be so foolish as to act against the interests of its subordinate officers.

Mr. P. P. Ginwala (Burmah Non-European): May I know, Sir, whom the Honourable Member is addressing. We cannot hear him.

Mr. President: He is addressing the Chair.

Khan Bahadur Sarfaraz Hussain Khan: So I do not see any necessity whatsoever for this amendment, which would stop a court to which that

[Khan Bahadur Sarfaraz Hussain Khan.]

court is subordinate from starting a prosecution or stopping the Local Government from doing so. This procedure will not help the administration of justice and I therefore oppose the amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I beg to invite the attention of the House to one point to which no reference has been made so far, and it is this. According to the amendment of section 195, which has been proposed in the Bill, the right of appeal, if I may so describe it, which now exists under clause (6) of the section, has been taken away. Clause 6 of the present section says that any sanction given or refused under section 195, Criminal Procedure Code, may be revoked or granted by any authority to which the authority giving or refusing it, is subordinate. "No sanction shall remain in force" and so forth.

Mr. President: I do not quite see the relevance of that to the amendment. I am not a lawyer like the Honourable Member, but it is a matter of common sense.

Mr. J. N. Mukherjee: Therefore Sir, the question arises whether by vesting the Local Government with power to complain or order the prosecution of a person an important right which was reserved to the party who has been put upon his trial has been taken away. So that the position is this. The Local Government does not hear the case, the Local Government has no direct knowledge of the facts. Somebody represents to the Local Government that somebody ought to be prosecuted, and the conclusion that is formed by the Local Government or the representative of the Local Government is come to behind the back of the person who is going to be put upon his trial. Now, Sir, as I have pointed out, there is an important provision as to appeal under section 486 of the Criminal Procedure Code where certain offences of the nature of contempt have been committed. That section provides that if an offence is committed in the presence of a Court, the Court can put him on his trial under certain sections of the Indian Penal Code.

Dr. H. S. Gour: Those are not the sections here.

Mr. J. N. Mukherjee: Those are not all the sections of the Penal Code mentioned in section 195 of the Code of Criminal Procedure. I say those sections of the Penal Code, in respect of which an accused has been deprived of his right of appeal by clause 17 of the Bill, are different from the sections mentioned in section 186 of the Criminal Procedure Code. A complaint has been made by a person who has no direct knowledge of the facts. It is otherwise in the case of contempt proceedings. Therefore, Sir, the question arises whether the Local Government should be vested with powers of setting the criminal law in motion under these circumstances. I submit, Sir, when the right of appeal has been taken away, there can be no control of the orders of the Local Government. A complaint has to be tested when it is made before a Magistrate. The complainant has to be examined in all cases, and if a Magistrate has reason to distrust the complainant, a police inquiry is ordered, or something of that kind takes place. The inquiry that takes place at that stage is an open inquiry, a judicial inquiry, and the Magistrate has the right to dismiss a complaint under section 203, Criminal Procedure Code, for an adequate

cause. Whereas in the case in point, the Local Government formulates its order behind the back of the person who is going to be put on his trial. It comes to a conclusion in his absence, and he is deprived of all the safeguards which exist in the Code in the case of all complaints before a Magistrate. Surely, Sir, there is some value in the principle of testing a complaint, which principle the Criminal Procedure Code recognises to the full, and here is a provision which is going to be introduced by clause 47 of the Bill which will deprive the person who is going to be put on his trial, of a very important right, I have, therefore, great pleasure in supporting the amendment of my Honourable friend.

Mr. President: The question is:

"That in clause 47 in the proposed sub-section (1), clause (b), omit all the words after the words 'is subordinate'."

The Assembly then divided as follows:

AYES—38.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Akram Hussain, Prince A. M. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Fayaz Khan, Mr. M.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jannadas, Dwarkadas, Mr.
Jatkar, Mr. B. H. R.

Joshi, Mr. N. M.
Kamat, Mr. B. S.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Shahab-ud-Din, Chaudhri.
Simha, Babu Adit Prasad.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—31.

Abdul Rahman, Munshi.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bray, Mr. Denys.
Gordon, Mr. E.
Cubell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.

Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Toukinson, Mr. H.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"In clause 47 in the proposed sub-section (1), clause (c), omit all the words after the words 'is subordinate'."

Sir, this is the same amendment which I moved in respect of clause (b) and I need not say anything further. It is consequential.

The motion was adopted.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, my amendment is a very modest one and I believe that the Government are rather inclined to favour me this time. Sir, my amendment is this. In the proviso in the third clause of section 195 which reads thus:

"For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or, in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court of ordinary civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate."

I move, as agreed to by the Government, to omit the word "of" and substitute the words "having ordinary". That carries out the idea which I have in view.

I move, therefore:

"In clause 47 (4) in proposed sub-section (3) after the words 'principal Court' omit the word 'of' in order to insert the words 'having ordinary'."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, the Government supports the amendment moved by my Honourable friend. The motion was adopted.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, I will move my amendment in separate parts:

"In clause 47 after sub-clause (4) insert the following sub-clause:

'(5) After sub-section (4) of the same section as renumbered the following sub-sections shall be inserted, namely:

'(5) The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the same'."

Honourable Members will notice that under section 195 there are three classes of cases in which proceedings are intended to be taken. The first portion, clause (a), deals with an offence that is committed in relation to contempt of the lawful authority of public servants (172 to 188). Then clauses (b) and (c) are offences committed in relation to matters which come before the courts. Now, the public servant concerned or some other public servant to whom he subordinates may complain under clause (a). Under clauses (b) and (c) as now amended the court or any court to which such Court is subordinate will have to make the complaint. It is not clear to me—I raise this question now—whether the complaint referred to in clauses (b) and (c) of section 195, whether in making that complaint that court has to adopt the procedure which is laid down for it in 476. Apparently it is the intention to do so, in which case I should like the word "complaint" to be followed by the words as provided in section 476 or some such thing introduced. If it is the intention of the Government that in making the complaint under clauses (b) and (c), that court has to adopt the procedure under section 476, it is not made clear. Even so 476 contemplates only "after such preliminary inquiry if any, as it thinks necessary". But that is not enough. I want to make it obligatory upon the court also that it will give notice to the accused of the charge against him and make him show cause against the proceedings. That is so far as the courts are concerned. The courts, the public servant or the superior authority, I think it is better that all of them should give an opportunity to the person against whom they intend to take proceedings to show cause against the same. Ordinarily in practice they do it but I want to make it a statutory obligation; in this way public money will be

saved and vexation avoided. Much annoyance will be avoided and no harm will be done by giving an opportunity to the person against whom proceedings are intended to be taken to show cause against the same.

Mr. H. Tonkinson: Sir, with reference to this amendment, I think it is desirable to take the different classes of cases dealt with under clauses (a), (b) and (c) of sub-section (1) of section 195 separately. That has been done, I admit to some extent by my Honourable and learned friend, Mr. Rangachariar. Take the case, first, Sir, of prosecutions for a contempt of the lawful authority of public servants which are dealt with under clause (a). Those sections, Sir, are the offences punishable under sections 172 to 188 of the Indian Penal Code. Honourable Members will observe what class of offences they relate to: Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information; Knowingly furnishing false information to a public servant; Giving false information to a public servant in order to cause him to use his lawful power to the injury of another person and so on. Now, Sir, these are offences against the authority of a public servant. It is true that we ought as we do in section 195 to prevent prosecutions in such cases being made on the complaint of a common informer, but why should not the public servant be able to complain himself in those cases just in the same manner as an ordinary private person can complain when he is the aggrieved person? Imagine, Sir, a Sub-Inspector of Police having to complain under clause (a). Suppose a Sub-Inspector of Police has received false information. He has gone to great trouble to inquire into the offence, and then he decides that the evidence is absolutely false and that he will proceed under section 182 of the Indian Penal Code. Why should he not be able to make a complaint? The person who gave information to him had sufficient opportunity to show cause during the inquiry into the offence. Why should he not then be able to go and make a complaint at once? Why should he have to ask the man to show cause before he makes a complaint? What is the procedure going to be in such cases? I presume, Sir, you will have to include all these papers among the police papers, and they shall not be produced in court. The Honourable Member is unable to trust this Sub-Inspector of Police. As regards the offences under clauses (b) and (c), as suggested by my Honourable friend, the intention is that the Courts should proceed under sections 476A and 476B in such cases. I should think, Sir, that this is quite clear; there is in fact a definite reference to section 195, sub-section (1), clauses (b) and (c) in section 476 as it is proposed to be revised by this Bill. What will happen if a Court decides to complain under these clauses? It can take action under section 476 after such preliminary enquiry as it thinks necessary. Now, Sir, we have similar words to this in section 476 of the Code at present and everybody knows what the meaning of those words is. Of course, Sir, the Courts will at once apply the old rulings to the interpretation of this provision. But we have gone beyond this in the proposed section 476. There is full power of appeal and so on in section 476B, and I submit it is entirely unnecessary, as regards the Courts, to make such a provision as has been proposed by my Honourable friend. It is worse than unnecessary in the case of offences dealt with under clause (a).

Dr. H. S. Gour: Sir, the short answer to my Honourable friend Mr. Tonkinson is this. He has only referred to certain sections enumerated in

[Dr. H. S. Gour.]

clause (a) but he has omitted to mention the rest, and I shall do so. Section 172—Absconding to avoid service of summons or other proceeding from a public servant. Section 173—Preventing the service or the affixing of any summons or notice, or the removal of it when it has been fixed. Section 174—Not obeying a legal order to attend a certain place in person or by agent. 175—Intentionally omitting to produce a document. 176—Intentionally omitting to give notice or information. 177—Knowingly furnishing false information to a public servant. 178—Refusing oath when duly required to take oath. 179—Being legally bound to state the truth and refusing to answer questions. 180—Refusing to sign a document. 181—Knowingly stating to a public servant on oath that which is false. 182—Giving false information to a public servant. 183—Resistance to the taking of property by the lawful authority of a public servant. 184—Obstructing the sale of property offered for sale by the authority of the public servant. 185—Bidding for a person under legal incapacity to purchase that property at a lawfully authorised sale. 186—Obstructing a public servant in the discharge of his public functions. 187—Omission to assist public servant when bound by law to give such assistance. 188—Disobedience to an order lawfully promulgated by a public servant. These are the various offences categorised in clause (a) of section 195, sub-clause (1). These offences may be committed before any public servant. They may be before a Collector. They may be before a public servant other than a sub-inspector of police instanced by my friend the Honourable Mr. Tonkinson. There is a conglomeration of these various sections in one particular clause and if these sections have been collected under clause (a) it is perfectly obvious that there are numerous cases in which the party aggrieved may have a very good defence and which he would be deprived of if he is not called upon to show cause. I therefore submit that it is idle to contend that these are cases in which nothing is gained and much would be lost by giving notice to the accused. I think, Sir, Mr. Rangachariar's amendment is a necessary amendment and the House should vote for it.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the Honourable Mr. Tonkinson put this question to us. If a private person has got the right of complaining, why a public servant may not exercise the same right? That is the main question which has been put. The answer is obvious. If a private person lodges a complaint and eventually it is established or determined by the court which tries that case that the complaint was unfounded then that private person, who was the complainant, wasted his time and money and then he is defeated. There are a number of private persons. They lodge complaints. Their complaints are dismissed and they do not mind and the public has not got notice of that, I mean the public at large. But if a public servant goes to the court without examining fully what explanation the accused has got to give and he lodges the complaint and if the complaint is dismissed, in the first place, public money is wasted. In the second place, who is defeated? The public servant, and that defeat will give a bad name to the executive department, because that defeat will minimise the prestige and it will go to indicate and may be talked over that the public servants do not do things with that amount of carefulness which they should observe. That is the answer which I can give to that question. Now, Sir, if a man who is going to be prosecuted is given the chance of explaining his con-

duct and the explanation which he gives is satisfactory, then there will be no necessity for lodging the complaint, and if the same explanation is not taken before the complaint is lodged and subsequent to that that explanation is given in court and considered sufficient, then the whole procedure in connection with that prosecution will be considered futile, and therefore, it is very desirable that before a public servant comes to the Court, he should try to see whether there is some force in his complaint, whether there is not sufficient rebuttal which could be given by the other side subsequently, and consequently this amendment in regard to this clause (a) is a very commendable one. As to clauses (b) and (c), the Government benches

(Honourable Members: "We are not concerned with them.")

Dr. Nand Lal: All right. Therefore I, Sir, strongly support this amendment, which commends itself.

Sir Henry Moncrieff Smith: Sir, my friend, Dr. Nand Lal, has said that public servants may make complaints on their own initiative without giving the accused persons an opportunity to show cause, that some of these complaints may be false, that a horrible disaster will happen, and that public time and public money will be wasted. The Government is to be blamed for that. Hundreds of complaints are lodged every day in the Courts of this country by private individuals which lead to nothing—they are dismissed, perhaps dismissed under section 203; hundreds of complaints lead to nothing and public time and public money is wasted. Who is to blame for this I should not like to say,—but it is not the Government. Why a distinction should be drawn in this matter between the private complainant and the public servant who wants to complain I entirely fail to understand.

Dr. H. S. Gour: Is it not that a private complainant is fined for a frivolous prosecution?

Sir Henry Moncrieff Smith: He can be fined for a frivolous prosecution, yes, but we are not talking about frivolous prosecutions. Public servants do not waste their time by making frivolous prosecutions at all. They are all too busy. Dr. Gour, Sir, read long extracts from the Second Schedule to the Criminal Procedure Code, and I thought he was going to build up some argument. He apparently decided not to do so after he had read out a description of the offences that are included in section 195 (1) (a). Let me take one of these, Sir. He read out to the House section 188: disobedience to an order promulgated by a public servant, that is, an order issued under one of the preventive sections of the Code. The man to whom it is issued takes no steps to comply with the order,—takes no steps to show cause why he should not comply with the order; the public servant thereupon calls upon him to come and show cause why he should not be prosecuted for not having complied with the order. Sir, there will be no finality in this matter. Surely the public servant can be trusted in this case to exercise his discretion wisely and well. Mr. Rangachariar, Sir, suggested that it was the practice at the present moment for public servants to call upon persons whom they intended to prosecute to show cause. That is not my experience at all. I have never heard of such a suggestion, that it is the practice, nor, until this moment, have I ever heard it suggested that it should be the practice.

[Sir Henry Moncrieff Smith.]

Dr. Gour's main argument, which came out in his well known peroration, was to the effect that the man might have a very good answer to the charge indeed, and that if you don't enable him to come and show cause, you are depriving him of a very valuable defence. Sir, I hope the House will not be deceived by that argument. The trial has not begun yet. The complaint is going to be lodged. If the man has got a very good defence, he will have ample opportunity to raise it. Take the case, Sir, of a process server who wants to lodge a complaint. He goes to his superior officer and says to him, "I desire to lodge a complaint against this man who has refused to obey my orders." Is the process server going to issue notice to the man to come and show cause before him? If the man does appear to show cause how is the process server to hold a judicial inquiry and decide whether the complaint should be lodged or not?

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Sir, under the existing law, when the offences enumerated in clauses (a), (b) and (c) could be taken cognizance of by courts on the complaints of private individuals with the previous sanction of courts or the public servants there was at least this satisfaction that the public servant or the presiding Judge of a court, when he decided upon the application of a private individual as to whether sanction to prosecute should be accorded or not acted as a judge or arbitrator, that is, as a third party. But under the proposed law, he himself is to be the complainant. In all cases in which he can complain under the proposed section, offences will not be committed in his presence and very often he will have to form his opinion upon the report of one of his subordinates or menials, say, a process server. Therefore it is not only fair but I think quite consonant with judicial principles that before initiating proceedings he should call upon the person concerned to show cause; and if, after examining and hearing him, he is satisfied that there is really a good case against him, he should start the prosecution. But if, on the other hand, simply on the report of a menial, he is entitled to start a prosecution or initiate a complaint, that in my humble opinion will be an injustice to the person proceeded against. Therefore, no complaint should be lodged by any public servant or presiding Judge in regard to offences enumerated in clauses (a), (b) and (c) without giving an opportunity to the person concerned to appear before him to show that the complaint which is proposed to be lodged against him is not warranted.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, how halting Sir Henry Moncrieff Smith's opposition to the proposed amendment is was shown by the way in which owing to his enforced halt in his speech more than one Member of the House was deceived and rose in his place to address the House before he had as it proved quite finished. I am surprised, Sir, that this very necessary, important and valuable safeguard should be resisted by the Government as they have done. We have not heard anything from the Government Benches yet which is likely to convince this House of the necessity for rejecting this amendment. The state of things has partially changed. Complaint has been substituted for sanction. Whether that is good, bad or indifferent is quite another matter. In the changed order of things it would be more than a safeguard to have this preliminary inquiry. Sir Henry Moncrieff Smith asked whether a man who refused to attend was to be called upon to show cause why he should not be prosecuted for not attending under certain circumstances. Does

he not remember the story of the Irishman who came in his father's stead to show cause why his father had not appeared as a juror. He had thirty-nine reasons, Sir, and the first was that his father was dead. Well, Sir, in many of these cases, as Chaudhuri Shahab-ud-din has pointed out, on the report of a process server or a menial—sometimes a very coloured and exaggerated report—proceedings have been ordered to be taken and then it has turned out that there was absolutely no substratum of truth underlying the whole of the proceedings. Before all that elaborate and expensive procedure has been gone through, what do we ask? We simply ask that the man should have an opportunity of explaining his conduct if he has any explanation to offer, and then if that is not satisfactory, you can go forward. I think enough has been said, Sir, by more than one Member to support the amendment. There is just one matter that I should like to suggest to Mr. Rangachariar to consider, *viz.*, if he is pressing his amendment—as I hope he will—whether he would not like to consider the phraseology. The amendment ends with these words: "Shall be given an opportunity to show cause against the same." Against what? Is it against the proceedings? I take it that Mr. Rangachariar's intention is that the person should have an opportunity of showing cause against the proposal to lodge complaint. (*Dr. H. S. Gour*: "We all see it.") I am glad *Dr. Gour* sees it. It is sometimes impossible for him to see things for the time being. I hope he will consider that and with your leave suggest such verbal alteration as is necessary and press the amendment.

Mr. P. E. Percival (Bombay: Nominated Official): I only wish to point out to my Honourable friend that the word "complaint" existed in section 195 (a) under the old law. There has been no change in section 195 (a) in regard to any substitution of "complaint" for "sanction"; so that the proposal now made is an addition to the existing law in section 195 (a), against which no objection has been raised hitherto. My Honourable friend *Dr. Gour* quoted different sections—section 172 and other sections. I would like to point out that these offences are of a very mild character—section 172 "absconding to avoid service"—punishment, simple imprisonment for one month. And similarly with regard to the other sections, the offences are of a very mild character. We have to remember that at this stage the man is not being tried for any offence. In respect of other offences a man may be put on his trial without any complaint or anything of the kind. Merely the Police send up the case. But in the cases now under consideration the officer in question has to give his approval to the prosecution before it is started. Now, it is proposed to go still further. Suppose that the public servant gives an order and that the man does not obey his order. First of all the public servant has to call upon him to show cause why a complaint should not be made and then he has to make a complaint; all this for the matter of a sentence of one month's imprisonment. After all these things are done, then the trial begins. (*Dr. H. S. Gour*: "Section 177—punishment 2 years.") That may be so in some cases. We cannot take an extreme case. As observed by my Honourable friend *Mr. Tonkinson*, in respect of clauses (b) and (c) the amendment will not make much difference. But the important clause is clause (a); and there is no ground whatever, I submit, for making any change in respect of section 195 (a).

Mr. K. B. L. Agnihotri: Sir, if we look to clause (a) of section 195, we find that it has been inserted with the object of protecting the public against the prosecutions or complaints, filed by a public servant vexatiously

[Mr. K. B. L. Agnihotri.]

or lightly, and with this view, the old clause provided that except with the previous sanction, or on the complaint, of the public servant concerned or of some public servant to whom he was subordinate any cognisance of the offence was not to be taken. Here, you have removed the words "with the sanction of the public servant." We do not object to that, but by removing "sanction" you have also removed the clause (6) which existed in the old Code. Under clause (6) if a sanction to prosecute was given by a public servant, that sanction could be revoked by a higher authority. We have taken away that provision from this new section; and, therefore, now we leave the matter absolutely in the hands of the public servant aggrieved to file a complaint if he so pleases and no authority has been given to revise or revoke it. It therefore becomes necessary that the amendment which has been proposed by my Honourable friend, Mr. Rangachariar, be seriously considered and inserted in this section.

The Honourable Sir Malcolm Hailey: I wish to point out to the House

4 P.M. how very far it proposes to go in this respect. Our Criminal Procedure Code lays down certain rules for Courts. Incidentally it also lays down certain rules as regulating those proceedings of the police which are preliminary to action being taken by the Courts. Here you propose to go much further; you propose to lay down proceedings for revenue servants, executive servants of all kinds. If a revenue officer has to file a complaint you first of all demand that because he is a revenue officer, he should undertake semi-judicial proceedings in advance . . .

Rao Bahadur T. Rangachariar: They do it. The Evidence Act applies to them also in certain matters.

The Honourable Sir Malcolm Hailey: Whether any arrangement can be made for bringing the proceedings taken by that public servant before the review of any Courts to see if they were adequate or appropriate or not I am not sure. I will only remark that the amendment refers to complaints made by all public servants, and the definition of public servant occupies over a page in the Code. They therefore apply to a very numerous class of persons for whom the Code usually lays down no rules of procedure whatever; and you are proposing that this extensive class of public servants should be placed under an embargo on making complaints which any man in the street can undertake. We are told that the time of the Court should not be wasted on infructuous prosecutions. Then why do you not, in justice and logic, lay down that any person, before he files a complaint before a Magistrate, should give the person against whom the complaint is to be filed an opportunity to show cause why the complaint should not be made? Every argument you have urged against the right of the public servant applies equally to the rights of the private individual.

Mr. President: The amendment moved is:

"That in clause 47 after sub-clause (4) insert the following sub-clause:

'(5) After sub-section (4) of the same section as renumbered the following subsection shall be inserted, namely:

'(5) The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the same'."

Sir Henry Moncrieff Smith: I should like to know whether we are asked to vote on this amendment with reference only to clause (a) or to all the clauses?

Rao Bahadur T. Rangachariar: I have no objection to putting it clause by clause.

Mr. President: There can be no misunderstanding about it. The question I have put means that the new sub-section proposed by Mr. Rangachariar affects the section, that is, the whole section (a), (b) and (c).

Does the Honourable Member wish to make any verbal alteration?

Rao Bahadur T. Rangachariar: I am prepared to make a verbal alteration so that the last part of sub-clause (5) will read "shall be given an opportunity to show cause against the proceedings."

Sir Henry Moncrieff Smith: Against the making of the complaint I suppose the Honourable Member means.

Rao Bahadur T. Rangachariar: I accept Sir Henry Moncrieff Smith's amendment.

Sir Henry Moncrieff Smith: It is not my amendment.

Mr. President: The amendment will read :

"The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the making of the complaint."

Mr. K. Ahmed: Wouldn't the words "proceeded against" be more appropriate, Sir?

Mr. President: I did not catch the words of wisdom which fell from the Honourable Member from Bengal.

Mr. K. Ahmed: I repeat, Sir, I think the words "proceeded against" would be better and more appropriate.

Mr. President: Amendment moved :

"In clause 47 after sub-clause (4) insert the following sub-clause :

"(5) After sub-section (4) of the same section as renumbered the following sub-section shall be inserted, namely :

"(5) The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the making of the complaint."

The question is that that amendment be made.

The Assembly then divided as follows :

AYES—36.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Akram Hussain, Prince A. M. M.
Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.

Joshi, Mr. N. M.
Kamat, Mr. B. S.
Mahadeo Prasad, Munshi.
Misra, Mr. B. N.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Shahab-ud-Din, Chaudhri.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—33.

Abdul Quadir, Maulvi.
 Abdul Rahman, Munshi.
 Allen, Mr. B. C.
 Blackett, Sir Basil.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Davies, Mr. R. W.
 Faridoonji, Mr. R.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.
 Hullah, Mr. J.
 Iunes, the Honourable Mr. C. A.

Ley, Mr. A. H.
 Lindsay, Mr. Darcy.
 Mitter, Mr. K. N.
 Moir, Mr. T. E.
 Moncrieff Smith, Sir Henry.
 Percival, Mr. P. E.
 Ramayya Pantulu, Mr. J.
 Sarfaraz Hussain Khan, Mr.
 Sassoon, Capt. E. V.
 Singh, Mr. S. N.
 Spence, Mr. R. A.
 Tonkinson, Mr. H.
 Townsend, Mr. C. A. H.
 Webb, Sir Montagu.
 Willson, Mr. W. S. J.
 Zahiruddin Ahmed, Mr.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, I move the following; I do so with some diffidence:

"In clause 47, after sub-clause (4) insert the following sub-clause:

'(7) In Provinces where a Provincial Director of Public Prosecutions has been appointed, any complaint by him in respect of offences mentioned in this section shall be deemed to be a complaint under this section.'

Then the *Explanation*:

"The Local Government may appoint from among persons qualified to be Judges of the High Court a Director of Public Prosecutions for the Province."

Sir, as has been pointed out just a few minutes ago, the Lowndes Committee on which so much reliance is placed by the Government Benches have recommended this and therefore I have the highest authority, that authority of the Lowndes Committee, for recommending this procedure in the case of prosecutions in this country. Sir, it will be a very welcome addition to our criminal procedure if prosecutions, not only in cases in which the Government are interested such as offences against the State but ordinary prosecutions for murder and other serious offences, the initiation of proceedings and their conduct can be placed in charge of a Director of Public Prosecutions as is the case in England. It will be a very good departure indeed. Much of the complaint against the administration of criminal justice in this country will disappear if we can place prosecutions in the hands of a responsible officer, a legal gentleman who can bring a judicial mind to bear upon the conduct of prosecutions—not hold judicial proceedings as Mr. Tonkinson misunderstood. As it is now, in each province you have got only public prosecutors in the districts who are seldom consulted in the case of prosecutions before Magistrates. Before Magistrates you have got the police as prosecutor in the shape of prosecuting inspectors of police. I am speaking of the system which is prevailing in my province—I do not know if a similar system prevails elsewhere. Again there is a very responsible function to be performed by the Local Government in these matters. There are offences against the State; there are offences which we have just been dealing with—contempt of lawful authority of public servants—and there are offences of a serious nature such as big conspiracies and other things and in which before undertaking a prosecution if the Government have the assistance

of a person like this it will be very helpful indeed. The system of Director of Public Prosecutions has been tried in England from the year 1879, and, Sir, he occupies a very important position indeed. All the serious prosecutions are in his hands; the police are bound to give him such information as he wants; he takes charge of prosecutions at any stage he thinks fit; he can appoint assistants; he can appoint counsel to conduct the prosecutions in various cases and, Sir, I think it will be a very right departure to make. Sir, we have advanced very far in this country. We are not in those ancient days when the country had not got the advantages of that education and other amenities that we have now. Therefore the time has come for each province to appoint a Director of Public Prosecutions who will be very useful not only in conducting prosecutions and in advising prosecutions and in initiating criminal proceedings against subjects of the Crown, but also useful to the Crown in cases where appeals against acquittals have to be preferred. Sir, what happens now? Under our present Criminal Procedure Code, the Government has got the power to appeal against acquittals. How is that power exercised? Some investigating officer is dissatisfied with the verdict of acquittal given in a Sessions case and he moves his District Superintendent of Police who moves the District Magistrate who moves the Secretary in the Home Department of every Local Government. Sir, how can you expect the Government to bring a judicial mind to bear in respect of these matters? What machinery have they at their disposal? No doubt some times they consult the Public Prosecutor in the High Court whether an appeal should be filed or not. Sometimes they are consulted, sometimes not. Public Prosecutors in the High Court have their hands very full indeed with their ordinary criminal work, appeal work and revisional work which they have to look after. In England you have got not only an Attorney-General, but a Solicitor-General and a Director of Public Prosecutions, and this Director of Public Prosecutions performs a very important function. There are three pages in this book where the duties of such Director of Public Prosecutions are described. The procedure adopted there is conducive to the sound administration of criminal justice:

"Before 1879 there was no provision for the systematic prosecution of offences in England such as there was in Scotland and in most countries on the Continent. Except in those cases in which the Attorney-General intervened on the ground that they were of special public importance, the initiation of prosecutions was left to the injured parties, encouraged by the provision made for defraying the costs of the prosecution out of the public funds. By the Prosecution of Offences Acts, 1879 and 1884, more adequate provisions were made for a national and public system of prosecutions.

"By the Act of 1879 a new department of 'Director of Public Prosecutions' was created, to be distinct from the previously existing legal departments of the Crown. By the Act of 1884, this department was merged in that of the Solicitor to the Treasury. But this arrangement was found not to work well, and accordingly, by the Prosecution of Offences Act, 1908, the two departments were again separated and power was given to the Secretary of State to appoint a Director of Public Prosecutions, and such number of Assistant Directors as the Treasury may sanction."

Then :

'He is subject in all matters including the selection and instruction of counsel, to the directions of the Attorney General.' He is 'to institute, undertake or carry on criminal proceedings'

Mr. President: Order, order. I observe that the amendment turns upon the existence of an office known as the Director of Public Prosecutions. Now the Honourable Member apparently proposes to create that office by an unusual procedure, namely, by an Explanation. On looking at

[Mr. President.]

the Code I find that there is a Chapter, Chapter II dealing with the constitution of Criminal Courts and Offices. It seems to me that it is a very unusual procedure to attempt to create a new and important office under the criminal law of the country by a sub-section which deals with a comparatively small matter, and unless the Honourable Member can satisfy me that such office already exists, I don't think that his amendment is in order.

Rao Bahadur T. Rangachariar: I am sorry, Sir, no such office exists, and my object is to educate the Government on the necessity of such an office

Mr. President: I have given the Honourable Member a fair opportunity of educating Government, and I must now rule his amendment out of order.

Clause 47, as amended, was added to the Bill.

Mr. B. N. Misra (Orissa Division: Non-Muhammadian): Sir, I propose that clause 48 be omitted. Clause 48 is section 196B, which is entirely a new section in this Code. Section 196B says "In the case of any offence in respect of which the provisions of section 196 or section 196A apply, a District Magistrate or Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in section 155, sub-section (3)." Sir, the offences contemplated in sections 196A and 196B are very serious offences. They are practically offences relating to Chapter VI, namely of committing depredation on the territories of any Power in alliance with Her Majesty or receiving property taken in war or committing the depredations mentioned in sections 125 and 126. They are really very serious offences. Section 196A provides that "No court shall take cognisance of such offences except on the complaint of the Governor General in Council or the Local Government." I submit really that when such a thing as a depredation on a foreign territory takes place or if anybody receives property or commits the depredations mentioned in section 125—when such serious offences take place—it will be known throughout the country, and the Governor General in Council and the Local Government will certainly not remain idle or fail to inquire, and will accord sanction to such offences being tried. But when both the Local Government and the Governor General in Council do not take the matter into their consideration, it must be that either no such offence was committed or it must have been really a false case that might have been represented to the District Magistrate. If really the state of affairs is such that the offence is not very serious, then to allow the District Magistrate to make an inquiry through an Inspector of Police would be unnecessarily troubling the people. Of course, Sir, we have already in this Code provided for several actions to be taken by the police in the security proceedings and so on and I do not think really an inquiry should be made by the District Magistrate where the Local Government or the Governor General in Council do not take any steps. The inevitable result will be to put the people in a state of commotion when they are at peace, if you have this inquiry by the District Magistrate or through the Inspector of Police. Sir, there is a saying in our country that if you have no business, or if you have nothing to read, you go on coughing, and disturbing people. If an inquiry is made by the Inspector of Police it will

simply make the people believe that they are being unnecessarily harassed. An inquiry in such cases will cause needless annoyance to the people. I submit that if steps are to be taken they must be taken under 196A, and 196B should be omitted from the Code. With these words I propose this amendment.

The motion was negatived.

Clause 48 was added to the Bill.

Mr. K. B. L. Agnihotri: I have been authorised by Bhai Man Singh to move the next amendment, No. 164, which stands against his name. It runs as follows:

"In clause 49, sub-clause (i), for the words 'the authority having power to order or, as the case may be, to sanction the removal from his office of such Judge, Magistrate or public servant' substitute the words 'the Local Government'."

Sir, under the old clause 197 of the existing Code the Judge or the public servant could not be removed from his office without the sanction of the Government of India or the Local Government and if he were accused as such Judge or public servant, the cognizance of the offence could not be taken without the previous sanction of the Local Government.

The Honourable Sir Malcom Halley: May I be excused for interrupting the Honourable Member? I do not know if anybody else wishes to oppose his amendment: I do not desire to do so.

The motion was adopted.

The Honourable Sir Malcolm Halley (Home Member): I move, Sir:

"That in clause 49, sub-clause (ii), after the word 'substituted' the following words be inserted, namely:

'and after the word 'Judge' the word 'Magistrate' shall be inserted'."

The reason for this, Sir, is sufficiently obvious. The word "Magistrate" has dropped out in drafting this clause.

Mr. President: The question I have to put is that that amendment be made.

The motion was adopted.

Mr. President: The question is that clause 49, as amended, stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I move that:

"In clause 50, in the proviso:

(a) For the words 'some other person' substitute the words 'a guardian or a close relative having care of such person.'

(b) omit the words 'with the leave of the Court'."

Sir, I beg to move both amendments (a) and (b) together. Under this clause 50, any person with the leave of the court could file a complaint on behalf of a minor or a person of unsound mind or a female or an idiot or any person who owing to sickness or infirmity cannot make a complaint himself. By my amendment, Sir, I provide that instead of 'some other person,' the 'guardian or a close relative care of such person' should file such a complaint, and that in the case of such a person, no leave of the Court should be necessary. I move my amendment.

Mr. President: Amendment moved:

"In clause 50, in the proviso:

'(a) For the words 'some other person' substitute the words 'a guardian or a close relative having care of such person, or an agent'."

Rao Bahadur T. Rangachariar: I do not think he moved the words "or agent".

Mr. K. B. L. Agnihotri: Yes, Sir, I did not move the word "agent".

Rao Bahadur T. Rangachariar: I do not think he moved it, Sir.

Mr. President: Amendment moved:

"In clause 50, in the proviso:

(a) For the words 'some other person' substitute the words 'a guardian or a close relative having care of such person'."

Mr. H. Tonkinson: Sir, I do not know whether it is really necessary to oppose this amendment. Let us consider for a short time what it really means. A guardian. What does my Honourable friend mean by a guardian, Sir? When we use the expression two or three sections later (in the proposed section 199A) we have indicated clearly what it means. Here we have the word "guardian" used without any qualifying word to indicate the meaning which is to be attached to it. Then, Sir, he goes on to say "a close relative". Who, Sir, is a close relative? Does the Honourable Member include a second cousin or step children? What does he mean by "close relative"? Really it seems almost useless arguing against an amendment of this character. He objects also to the provision in the Bill which enables the Court to give leave to the person who shall make the complaint. Why should he not do like my Honourable friend Mr. Rangachariar and trust our Magistrates? I would suggest, Sir, that there is no doubt that an amendment of this character should not be accepted.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clause 50 stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 51 after the words 'said Code' all words from 'after the' to the words 'same section' be omitted, and that after the word 'absence' in the original section the words 'may with the leave of the court' shall be inserted and to the same section the following proviso shall be added, that is, that the leave of the court should not be made necessary in the case of persons except on a complaint under section 199 of the Code."

I therefore move this amendment.

Mr. R. A. Spence (Bombay: European): How will the section read as amended by this amendment? The Honourable Member has not read out the section as it would appear after amendment.

Mr. President: The section will read thus:

"In section 199 of the said Code, the following proviso shall be added, namely:

"Provided that where, etc."

Sir Henry Moncrieff Smith: The reason why the Joint Committee made an amendment here in this respect was that the Lowndes Committee undoubtedly by an oversight provided twice over for the absence of the husband. In section 199 of the Code as it stands (and they left it unaltered), there was a provision that in the absence of the husband complaint may be made by some person who had the care of such woman on his behalf at the time when such offence was committed. The Lowndes Committee then provided also for the absence of the husband in the proviso, and for that reason the Joint Committee cut 'absence' out of the proviso and left it in the main section. The Joint Committee thought that we should have the leave of the court for making of a complaint by some person in the absence of the husband. The reason is very simple. The person having the care of the woman at the time the offence was committed may have interests which are entirely inimical to those of the husband. The Court will have to satisfy itself that there was an identity of interest between the person who desired to make the complaint and the absent husband. If no leave of the court is required in this case, there is, I think, a very grave danger of false charges being brought up by a person who desired to score off an enemy during the absence of the husband using the unprotected woman as his tool in the matter.

Mr. President: The question is that that amendment be made.
The motion was negatived.

Mr. President: The other two parts of Amendment No. 172 fall out.

The question is that clause 51 do stand part of the Bill.
The motion was adopted.

Mr. President: The question is that clause 52 do stand part of the Bill.
The motion was adopted.

Mr. President: The question is that clause 53 do stand part of the Bill.
The motion was adopted.

Dr. H. S. Gour: Sir, in moving the amendment which stands in my name, I am quite prepared to adopt the draft prepared by the Government. Namely,

"That in clause 54, for the proviso to the proposed new sub-section (1) of section 202, the following be substituted, namely,—'provided that no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200, or (b) where the complaint has been made by a Court under the provisions of this Code'."

Mr. President: Do I understand that the Honourable Member is not moving the first part of Amendment No. 179?

Dr. H. S. Gour: I shall very briefly explain, Sir, what my amendment amounts to. I accept the alteration suggested by Government to clauses (a) and (b), and I simply suggest to the Government the advisability of adopting improvements which I submit I have made in the first clause, that is to say, in clause 54 (1), for the words 'thinks for reasons to be recorded in writing', substitute the words, 'for reasons to be recorded in writing, considers that there are grounds for thinking that the complaint is not true'. It is merely a drafting change, and I hope the Government will accept it also.

Mr. President: Amendment moved:

"In clause 54, sub-section (1), for the words 'thinks for reasons to be recorded in writing' substitute the words 'for reasons to be recorded in writing, considers that there are grounds for thinking that the complaint is not true'."

Sir Henry Moncrieff Smith: I regard this amendment of Dr. Gour's as slightly more than a matter of drafting; I think there is some substance in it, and in so far as there is substance in it, I think the House ought not to agree to the amendment being made. If Dr. Gour's amendment is embodied in the Code, it will prevent a Magistrate ordering an inquiry unless he can record in writing the reasons which lead him to consider that there are grounds for thinking that the complaint is not true. Sir, there are many cases in which the Magistrate really, on the complainant's statement, cannot make up his mind, cannot form an opinion even, whether the complaint is true or false. The complainant appears and makes a statement, but in some cases he cannot tell you much about the case—he says, 'the facts I have mentioned have been told me by my servants; they saw it during my absence'—and in that case, Sir, I think it would be rather hard to lay down that the Magistrate . . .

Dr. H. S. Gour: I am quite prepared, Sir, to accept the Government amendment in substitution of the whole of my amendment.

Mr. President: The question is that leave be given to the Honourable Member to withdraw the amendment which I have just put.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in clause 54, for the proviso to the proposed new sub-section (1) of section 202, the following be substituted, namely,—'provided that no such direction shall be made (a) unless the complainant has been examined on oath under the provisions of section 200 or (b) where the complaint has been made by a Court under the provisions of this Code'."

The question I have to put is that that amendment be made.

The motion was adopted.

Mr. K. Ahmed: I beg to move that in clause 54, sub-clause (1) . . .

Mr. President: The Honourable Member's amendment is covered by the amendment which Dr. Gour has just moved and which has been accepted by Government.

Mr. J. Ramayya Pantulu (Godavari cum Kistna: Non-Muhammadian Rural): Not exactly, Sir.

Sir Henry Moncrieff Smith: The Honourable Member has not heard the revised amendment which Dr. Gour has read.

Mr. President: The amendment which the House has carried is a different amendment to the one standing on the printed paper. It has just been unanimously carried by the House in view of the fact that Dr. Gour and the Government had come to an agreement.

Mr. K. Ahmed: Sir, I beg to move that:

"In clause 54 (i) after the proviso to proposed sub-section (1) insert the following further proviso:

'Provided further that no complaint against any police officer shall be referred to any other police officer for inquiry'."

Honourable Members will find that under section 200 of the Criminal Procedure Code as soon as a complaint is made, the Magistrate has to take down the substance of the evidence and if he thinks it is a good case, he at once issues warrant or summons as the case may be. But if he finds any difficulty in coming to a decision, he has, after recording the substance of the evidence, to pass an order to the effect that a police officer or some Magistrate other than the Magistrate passing the order, shall make an inquiry. But I ask, Sir, in the event of the complaint being made against a police officer, is it in the ordinary course of business likely that an inquiry by another police officer into a brother officer's delinquency will be made in a fair and just way and the true inquiry report placed before a Magistrate? I therefore say, Sir, that when a complaint is made against a police officer it should not be inquired into by another police officer. And my view, Sir, is supported by a recent ruling of the Patna High Court, Volume No. 9 or 10. In that case, Sir, it has been decided very recently that a complaint of this kind made against a police officer ought not to be inquired into by another police officer, and it was held that a Magistrate was not justified in passing such an order of inquiry held by the police. In this particular case the complaint was found to be a true one; and the Patna High Court held that the learned Magistrate ought to have sent the case for inquiry to some other judicial officer. That being so, Sir, I suppose my friends will support me.

Mr. W. M. Hussanally: May I ask the Honourable gentleman to read the ruling?

Mr. K. Ahmed: I am sorry the Government of India has not got it, and I am sorry at the same time that I could not carry it from my own library all the way.

Mr. President: Amendment moved:

"In clause 54 (1) after the proviso to proposed sub-section (1) insert the following further proviso:

'Provided further that no complaint against any police officer shall be referred to any other police officer for inquiry.'

The question is that that amendment be made.

Mr. President: I think the 'Noes' have it

Chandhri Shahab-ud-Din: Sir, may I take it that this amendment has been put to the vote without any Member being given an opportunity to speak and without the Government opposing it? I want to speak in favour of it. I think this is a scandal in the country and the Government should remove it. I can point out cases

Mr. President: Order, order. The Honourable Member must have observed that I looked round the Chamber and nobody gave any indication of getting up.

Chandhri Shahab-ud-Din: The usual practice is that after an amendment is moved the Government Member stands up to oppose or accept it. We are bound therefore to await and see whether the Government Member stands up or not and then we stand up. If Government does not want to oppose the amendment, I think we may take it that it is accepted ('Voices: 'No'); otherwise we stand up and support or oppose the amendment.

The Honourable Sir Malcolm Halley: Our action in these cases is intended to avoid wasting the time of the House. If I think an amendment is not going to gain support, I do not take the trouble of arguing it. I did not possibly assume that an amendment of this nature was likely to be supported by anybody.

Chaudhri Shahab-ud-Din: Sir, I seek the leave of the Chair to support the amendment for reasons which are within my knowledge. There are District Magistrates in certain districts of the Punjab who have issued orders that all complaints against police officers should be sent to the District Superintendent of Police. I know of a district where a number of complaints were made against certain Police officers and all those complaints were made over to the Superintendent of Police. He sat over them and he never reported on them. When the police came to know who the complainant is either he does not appear or compromises the case. Justice requires that this should not be allowed to go on. I do not depreciate the services of the police. The Police Department is a very useful Department, but there are black sheep in that department as in all others, and I think the Government should not hesitate to protect the law-abiding and poor citizens from the machinations of certain police officers. Corruption is rampant in several districts in the Punjab and I think police officers are robbing right and left; and the civil authorities are helpless. In certain districts there is police rule and not civil rule. The civilians are very honest and upright. There is not that relation between the subordinate Magistrates and the civilian District Magistrates which exists between the District police officers and their subordinates. Therefore, the District police officers protect their subordinates, and consequently whenever there are complaints against the latter, the former do not pay much heed. Consequently it is only fair that whenever there is a complaint against a subordinate police officer it should be inquired into by a Magistrate or by some other authority, and not by the superior officer of the subordinate against whom the complaint is lodged. The proposed amendment is a very wholesome one and I request the House in the interests of justice to support it and thus protect innocent people from the police. Government should welcome such an amendment. If there are any complaints against the police, no one can maintain that they should not be inquired into. Then why should not, I ask, those complaints be inquired into by a Magistrate and why should those complaints be referred to the Superintendent of Police? He may sit over a complaint and may not submit his report, and the subordinate Magistrates have not the courage even to call for the reports. Sometimes they send reminders but they are not heeded. If the Government wants any information, I shall confidentially give some particulars. I request the House to support the proposed amendment very strongly.

Mr. R. A. Spence: Sir, may I, in the interests of justice, also ask that the floor of this House be not made the place for attacking the police when they are given no opportunity of refuting such attacks? The Honourable Member who just sat down has stated that he is able to produce definite cases. I say, if so, why does he not go to the competent authorities instead of coming to the Legislative Assembly and making this Assembly a place for absolutely unjustifiable and unwarranted attacks upon the people who exist for the protection of the interests of law-abiding citizens. I protest against this Assembly being made the place where attacks, such as we have just heard here, are made.

Mr. K. B. L. Agnihotri: Sir, I rise to support the amendment moved by my Honourable friend Mr. K. Ahmed. It is very surprising that even such a modest amendment should not be allowed or accepted by the Government. On the contrary opposition is offered if we make any suggestions for improvement in the procedure. My Honourable friend, Mr. Spence, has given us a lecture on the point whether we should make suggestions and insinuations based on our own experiences of the working of the police in our Provinces. Sir, we make those remarks here and if the official Members who represent the Local Governments think those insinuations are not based on good grounds, it is certainly open to them to request the Member who makes them to give definite information on the point. But it is not clear to me that if a matter has been referred to a Court of Law and from the Court of Law that matter has been sent to the District Superintendent of Police for a report and if the report is not sent to the Court of Law, how can those complaints be made to the Government officers outside the Court of Law? The only proper procedure in these cases is to proceed to the Appellate Courts. We cannot approach the superior executive officers. Our suggestions are based on personal experience and surely a Member is allowed to put his experience before the House for the consideration of the other Honourable Members so that they may judge from their own experience whether or not the remarks of a particular Member are correct. As far as the question before the House is concerned, it goes without saying that, if a complaint is made against a police officer in 90 per cent. of cases the police officer to whom such complaint is made for inquiry will be inclined to believe a person of his own department rather than some one outside. We have seen here champions of the Services who champion their cause even in this House, so it is possible and probable that the officers of a particular department may be inclined to be partial to their own departments. Probably it will be a surprise to my Honourable friend, Mr. Spence, if I were to tell him of one case within my own experience which happened in my own district. A complaint was filed by a pleader of the district against a police head constable. The Magistrate issued a summons to that head constable for appearance in his Court and the District Superintendent of Police, through whom the summons on the head constable was to be served, refused to serve it, and wrote back on the summons: "I decline to serve the summons as no sanction has been taken from me under section 42 of the Police Act." When police officers can go to such a length to shield their officers . . .

Mr. E. A. Spence: Was he justified?

Mr. K. B. L. Agnihotri: I think he was not, and that order of the Superintendent of Police was criticised by the Sessions Judge and he was taken to task for it. Sir, when the Police Superintendents can go to such lengths to shield their officers, is there not a probability that these police officers may shield their subordinate officers in the inquiries also? Moreover, Sir, the inquiries that are made by the police officers are not made under oath. A man may go and say what he likes before a police officer and there is nothing to show that the report of the police officer is a proper and good one. Therefore I suggest that in 90 cases out of a hundred there is a possibility of justice not being done if the complaints against these officers are submitted for inquiry to the police officers. I submit that the amendment is quite an appropriate one and should be supported by everyone in this House.

The Honourable Sir Malcolm Hailey: I am sorry that we should have been led into a discussion on a very old theme. As 5 P.M. I said before, it is our custom, when we think that an amendment is not likely to be debated in the House, to avoid troubling the House with discussion; and it is for that reason that we did not proceed to argue the amendment of Mr. Kabeer-ud-din Ahmed. It has given an opportunity, however, to Mr. Shahab-ud-Din, speaking, I think, with added warmth, because he thought that he had been excluded from the discussion, to make a general attack on the police. He used language such as the machinations of the police; and the difficulties under which the ordinary man labours of securing justice owing to those machinations. He used in short language which on calmer reflection he would probably desire to modify. After all, I am sure that he, as much as other Members of this House, recognise the great difficulties under which the police work, the sterling good work which that force does, and the magnificent loyalty to Government which has characterised the police in spite of many unjust attacks and provocations during the last few years. It would have been welcome if at this late stage of our discussions on the Criminal Procedure Code we could have avoided these depreciatory references to the work of the police which some Members found themselves obliged to make when we were dealing more specifically with the police sections. General accusations of that kind prejudice the debate and add very little to the wisdom of our deliberations, nay, they tend to confuse the issues. I am not at the moment intending to pose as a champion of the police or of any other Service; I think it is unnecessary to say more than this, that the police work in this country, taking it generally and discounting all that you sometimes have to discount, is such that it entitles them to the gratitude instead of the condemnation of the general public. I shall say no more on the subject.

Chaudhri Shahab-ud-Din: May I interrupt with a word of explanation? I am one of those who admire and have always admired the working of the police. I think they are to be admired for keeping peace and order in the country, and I believe that in the police force there are excellent officers, some of them very sympathetic, and they are indeed very useful both for the country and for Government. I referred only to those who were actually black sheep, and I do not think that Government or anybody else can maintain that there are not both good and bad people in the Police Force. We have got very good officers in the Punjab and most of them very upright and honest. I admire them and their work. Perhaps when addressing the House, I was excited or was a little misunderstood.

The Honourable Sir Malcolm Hailey: I was quite sure that Chaudhri Shahab-ud-Din did not really wish by hasty expressions to prejudice the views of the House on the subject of this particular amendment; for after all it is only this particular amendment, and not the general attitude of the police that we are discussing. As he says, the police force, like every other force, contains its black sheep. It is unavoidable. The very large numbers of men that we have to employ, the somewhat poor pay that until recently we were able to give them, made that inevitable. I do not think that you can say with justice that the police contains more black sheep than the revenue or any other department. But, ought we to legislate in every case on the basis of the existence of some few black sheep in the department? Ought we so to frame our legislation that it takes account only of extreme possibilities, instead of providing a fair working rule for ordinary action under ordinary circumstances?

This amendment makes it impossible for any Magistrate to investigate through the police a complaint in which any police officer is concerned. Examine the implications of this. We will take it that a police officer has been charged with theft of Government property. The Magistrate desires to know more about the case; he is not able to let another police officer investigate even a case of this kind. Then again, we will take such cases as an assault by a constable. It may not be a grave offence. The Magistrate wishes to know more about it; but he cannot send it for investigation by a police inspector, and why? Because Mr. Agnihotri says that the police inspector will be inevitably so prejudiced in favour of the constable that he would not be prepared to make a fair investigation. Honestly, I think we ought to waive that kind of thing aside. We know that there are in the Police Force, as Chaudhri Shahab-ud-Din has said, black sheep, but we also know that in the upper ranks at all events there are men whose lives and character would disprove at once such an insinuation as that put forward by Mr. Agnihotri.

Mr. K. B. L. Agnihotri: I said there was a possibility. I never said that all police officers are like that.

The Honourable Sir Malcolm Hailey: But, as a result, you rule out entirely investigations which may be very helpful to justice. I could understand that a Magistrate, where a case comes up which gravely concerns the local reputation of the Police Force, which has aroused a good deal of public attention, and which, if given against the police, might seriously affect their local prestige should hesitate to send the case for investigation by another police officer. That is obvious. And if he is a sensible Magistrate, he will not do so. But do not place on the Statute Book an amendment which would have the effect of ruling out the possibility of investigations which may give you correct and proper results merely because you are afraid that in one or two cases that system of investigation may be wrongly utilized by Magistrates. Let me again suppose—I will proceed with my illustrations—that a somewhat complicated case arises which a Magistrate desires to send to the police for further investigation. Is it realised that by an amendment of this nature you would prevent an officer of justice from utilising the services of the one trained detective agency which they have for the purpose? On a question like this, I think the House might very well leave the matter to executive instruction, and not place an absolute embargo, as the Honourable Member proposes to do, on investigation by the police in cases in which police officers are concerned. It might be left to the discretion of Magistrates not to send to the Police for investigation cases in which they know that the interests of the police are so much concerned that the investigation will not be a fair one. That ought to be sufficient.

Mr. Darcy Lindsay: I move that the question be now put.

Dr. H. S. Gour: Sir, I think there is a good deal more in my friend Mr. Kabeer-ud-Din Ahmed's amendment than meets the eye. The Honourable the Home Member has adverted to one aspect of the question, but he has not adverted to all aspects of the question. Let me present them to him. A Sub-Inspector of Police is accused of extortion and corruption before a Magistrate. The Magistrate refers the complaint for investigation to his superior officer, the Circle Inspector.

The Honourable Sir Malcolm Hailey (and other Honourable Members):
Not necessarily.

Dr. H. S. Gour: Ordinarily: the Circle Inspector will order the villagers to appear before him and substantiate the complaint. The villagers meet and say "These are all birds of the same feather. He has taken a bribe to-day; that fellow will take it to-morrow. How are we going to appear before him and make a complaint at all?" It is not that the sub-inspector is corrupt; it is not that the circle inspector is unfair; but it is the widespread and popular apprehension in the minds of the public to go before a police officer to accuse his comrade. Surely, Sir, the Home Member could not be unaware of such a term as *esprit de corps*, and surely the police officers who discharge their duties in this country so efficiently on the whole do so because they possess that *esprit de corps*, and it may be, consciously or unconsciously there is a bias in favour of a member of their own service, and consequently, without going to the length to which some of the previous speakers have gone of saying that the police officers in investigating a case are consciously and perversely biased in favour of a brother officer, I make bold to say that there is an unconscious leaning towards a member of their own service, firstly, because they are members of their service and secondly because if the offence is brought home it would bring discredit upon the whole police force. Consequently, I submit it is in the interests of public justice that when an inquiry of this character is to be made it should be made by persons free from such prejudice or bias, or at any rate free from the suspicion of such prejudice or bias which witnesses must necessarily feel in a case of this character. Now it has been said by my Honourable friend the Home Member—he took a very apt illustration which certainly suited his arguments. Suppose, he said, a police officer is charged with the theft of Government property. But how many cases are there against the police for bribery and corruption, and how few cases there are of theft by police of Government property? We are dealing here with normal cases, not with a certain few individual stray abnormal cases. Now, Sir, there is no aspersion cast upon the police force; if such an aspersion is cast, it has been cast by the Statute law of this country. Is my friend, the Honourable the Home Member and his colleagues who adorn the Treasury Benches unaware of the provisions of the Indian Evidence Act which prohibit the making of a confession to a police officer, and any confession made to a police officer as inadmissible in evidence? Sir, some protagonists of the police may rise and say that it is an obnoxious provision, that it casts an unmerited slur upon the police force and that the Indian Evidence Act is an anachronism enacted as it was in 1872. But it is not against individuals that the provisions of that Act are directed; it is not against individuals that this amendment is directed; it is against a system and against a human weakness which surely members of the police force cannot be said to be innocent of. Surely, *esprit de corps camaraderie* and a friendly feeling does exist amongst the rank and file of the police and that makes for the solidarity of the force and for strength of character; and all that the Honourable the Home Member has said I echo as regards the services that the police force in this country is doing. But that is entirely wide of the mark. We are here concerned with a short and narrow issue, that if a police officer is accused before a Magistrate of an offence and the Magistrate thinks it necessary that it should be inquired into, whether it should go before another police officer for inquiry or before an independent tribunal. It is with this short question we are concerned, and I have no doubt, Sir, that the House will support this amendment.

Rai Bahadur G. O. Nag (Surma Valley cum Shillong: Non-Muham-madan): I move, Sir, that the question be put.

The motion was adopted.

Mr. President: Amendment moved:

"That in clause 54 (i) after the proviso to proposed sub-section (1) insert the following proviso:

'Provided further that no complaint against any police officer shall be referred to any other police officer for inquiry'."

Mr. President: I think the 'Noes' have it.

Mr. K. Ahmed: 'Ayes' have it.

Dr. H. S. Gour: We don't want a division.

The Honourable Sir Malcolm Hailey: Did you order a division, Sir?

Mr President: Honourable Members must make up their minds before I put the question a second time. The division must now proceed.

The Assembly then divided as follows:

AYES—23.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Akram Hussain, Prince A. M. M.
Ayyar, Mr. T. V. Sebhagiri
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Jatkar, Mr. B. H. R.

Kamat, Mr. B. S.
Lalthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Shahab-ud-Din, Chaudhri.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.

NOES—36.

Abdul Quadir, Maulvi.
Abdul Rahman, Munshi.
Aiyar, Mr. A. V. V.
Allen, Mr. B. C.
Blackett, Sir Basil.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.

Jones, the Honourable Mr. C. A.
Joshi, Mr. N. M.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Misra, Mr. B. N.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Samarth, Mr. N. M.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Rao Bahadur T. Rangachariar: We are not concerned now with the police, we are concerned with Magistrates in my amendment.

My amendment reads as follows:

"In clause 54 (ii) after the word 'oath' insert the words 'and, may, if he thinks fit, allow the person complained against to attend his inquiry'."

Now Honourable Members will notice that clause 54 (2A) provides that "Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath". I propose that he may also, if he thinks fit, allow the person complained against to attend that inquiry.

[Rao Bahadur T. Rangachariar.]

Sir, I know there is a practice in the Presidency Magistrate's Courts in Madras—I don't know how far it prevails elsewhere, that when a Magistrate does not issue process for compelling the appearance of the accused whom he wants to inquire into the truth of the case beforehand, the Presidency Magistrate always allows the accused person to be present in the inquiry which he makes under section 202. After all, it is the Magistrate who is examining and he is examining the persons on oath. I give it only as a discretionary power to the Magistrate, I don't say it should be done in all cases. If the accused asks for it, and if the Magistrate has no objection, he may allow him to be present. The object of his presence is this, because at this stage you are committing persons to certain statements on oath, and it is always the case that when a person against whom you give evidence is present, witnesses hesitate to speak lies, but when the person against whom you give evidence is not present, witnesses are prepared to tell any amount of lies, so that you will be safeguarding the interests of the persons against whom you will be giving evidence by allowing him to be present. If the Government do not agree to this, we are sure to lose the amendment, but if the Government accept it, I will be thankful to them.

Mr. H. Tonkinson: Sir, I think it is only necessary in opposition to this amendment to read the sub-section as it will stand if the amendment is made. The sub-section will run as follows:

"Any Magistrate inquiring into a case under this section may, if he thinks fit, take the evidence of witnesses and may, if he thinks fit, allow the person complained against to attend his inquiry."

What, Sir, is the use of these words that my Honourable friend proposes to add to the sub-section? It is no use for his purpose at all. He himself has informed us that in Madras at present it is the practice for the person complained against to appear at the inquiry. As he says himself, Sir, it only gives a permissive power. Why, then, put it in? There is nothing whatever in the Code to prevent a Magistrate doing it without any words of this kind being added to the sub-section.

Mr. W. M. Hussanally: Sir, I rise to support the amendment. I have got magisterial experience and I know several Magistrates are in the habit of allowing accused persons to appear, and notices are issued to the accused if they wish to appear. But in some cases I know Magistrates have actually refused to allow the accused to take part in the proceedings even if they appeared in the courts of their own accord, and that, I think, is not right.

Mr. President: I cannot regard Honourable Member's argument as relevant. The amendment gives the discretion to the Magistrate.

Mr. W. M. Hussanally: Yes, Sir, if the discretionary power is given to the Magistrate, it will follow that as a rule they will have to allow accused to appear and that will safeguard their interests. I don't think that anything is lost by allowing the accused to appear when the witnesses are being examined in a preliminary inquiry.

The motion was negatived.

Clause 54 was added to the Bill.

Mr. K. B. L. Agnihotri Sir, I beg to move:

"To clause 55, add the following:

'And to the same section the following proviso shall be added, namely: provided that when the investigation or inquiry was made by police under section 202 the Magistrate shall before dismissing the complaint give an opportunity to the complainant to prove the complaint.'"

Sir, I need not say that the clause which I wish to insert becomes much more important owing to the defeat of the amendment of Mr. Kabeer-ud-Din Ahmed. In its acceptance we will have one safeguard that in case a complaint against a police officer has been adversely reported on by another police officer, the complainant shall have an opportunity of adducing the evidence before the Magistrate and the Magistrate could then dismiss it if he found that there was no case against the police officer or he could continue if he found that there was a case against him. Apart from this, Sir, it often happens that, in cognizable cases where the police officer does not take cognizance of the offence, the complainant runs to the Magistrate and files a complaint against the accused and if in such cases the complaint is sent back to the police for inquiry, it will happen as it generally happens—that the police, in order to keep up their own opinion will try to substantiate their own previous report submitted to their officer for declining to interfere in that case, and will submit to the Court a report similar to the former. And, Sir, this will be avoided if this clause be inserted. Further as I pointed out before, that before the police officer the statement may not be given on oath or the complainant may not like to appear before the particular police officer or the witnesses may not state the truth, in which case it will be a very hard case for the complainant if his complaint were to be dismissed on the adverse report of the police officer. Therefore, I submit, Sir, that in such cases the complainant may be given an opportunity to prove or substantiate his case if he so likes. It might be argued, Sir, from the Government Benches that the very object for which this section has been inserted, will be defeated by allowing insertion of this clause. My reply to that will be, Sir, that the object was to do justice in all cases. And, if in certain cases the complainant finds that he has a grievance against the police officer, that his case was not properly inquired into by the police officer, why should he not be permitted to put in and adduce his evidence. If the complaint has been sent to a Magistrate for inquiry it would be reasonable not to allow and I also do not provide that the complainant should be given such opportunity. Because the subordinate Magistrate who, on being required by another Magistrate, inquires into such cases will examine the witnesses on oath and will have nothing to do with the cognizable or uncognizable nature of the case. Therefore, I submit that my amendment will be more desirable especially after the defeat of the amendment moved by Mr. Kabeer-ud-Din Ahmed.

Sir Henry Moncrieff Smith: Sir, there are, I think, two simple answers to my Honourable friend's amendment. The first is this. The Magistrate has decided that he will have an inquiry made into the case. It means that he has doubts in his mind as to whether he ought really to proceed, because if he has no doubt in his mind, under section 204 he issues a summons at once for the attendance of the accused. He sends the case to be investigated. In this particular case we are dealing with, he has it investigated by the police. It is quite possible that in a case where the Magistrate already has doubts and sends the case to the police, the police will confirm those doubts and the Magistrate then proceeds to dismiss the complaint. Now, if we are going to lay down in our law that in every case where a Magistrate dismisses a complaint after reading the police report the complainant is to be allowed to come up and say: "we ought to have another inquiry by the Magistrate," what will be the result? The Magistrate will not send cases to be investigated by the police at all. He will say, "I am wasting time. I expect that the police report in this case will be hostile to the complainant. Therefore, why should I waste time by sending

[Sir Henry Monierieff Smith.]

to the police when I shall have to do it over again myself? I will do it myself now." The other answer, Sir, is simply this. Honourable Members have, I think, in the debates on sections 202 and 203 overlooked the fact that the dismissal of a complaint is not necessarily the end of the matter. They have probably overlooked section 437 of the Code in which a High Court or the Sessions Judge can direct a further inquiry by the District Magistrate into the dismissal of a complaint under section 202. I think that in itself is a safeguard which is an answer to my friend's amendment.

Dr. Nand Lal: Sir, no doubt the amendment does not seem to be very happily worded, because it is of a general character. But there may be two cases in regard to which this amendment may deserve sympathy. Those two cases are as follows:—Firstly, suppose a police officer, say a constable, has assaulted a private individual and the latter has lodged a complaint. That complaint has been forwarded to the police department. The officer who may investigate into the truth of that complaint may be an honest man. He may hold an inquiry in the right method. But yet there will be room for criticism that this complaint was against a constable or a police officer, that it has been forwarded to the Police Department, and that therefore justice has not been done to him. In order to meet that criticism it seems to me desirable that this amendment may be countenanced. The other case is this. Supposing there is a cognizable case, the complainant, who may be taken as an informant, goes to the police thana. He makes a report purporting to say that he has been robbed of his property or that a theft has been committed in his house or that his house was broken into. All these offences are cognizable offences. The police officer in charge of the thana or any other police officer competent to record that report does not hear him. He says 'Go to the Court.' The report is not recorded and he is forced to lodge his complaint. That very complaint has been forwarded to the police officer, perhaps the same officer who was in charge of the same thana where he went and he attempted to make a report and his attempt was not given a very favourable response. In that case that police officer, barring a few noble exceptions, will be the last person to hold that the complaint of the complainant is correct. If he arrives at that conclusion so far as the report goes then it will go against him to a certain extent. Therefore, in order to meet such sort of cases also, it seems very desirable that the Government Benches may very kindly give favourable consideration to this amendment, though it is of a very general character. On these two grounds I very seriously support this amendment with reference to those cases, which I have enumerated above before the House.

Chaudhri Shahab-ud-Din: Though the amendment proposed by Mr. Kabeer-ud-Din has been lost, yet I fail to see any force in the amendment proposed by my Honourable friend Mr. Agnihotri. There is absolutely no force in his amendment. The words of section 203, as amended, do not make it obligatory for a Magistrate to dismiss a complaint after the receipt of the report but it is discretionary with him to do so. If after considering the statement made by the complainant and the report made by the inquiring police officer, the Magistrate thinks that in his opinion there is a good case for further investigation or inquiry, he is not precluded from ordering or holding it under the section. Therefore I oppose the amendment as unnecessary.

Mr. J. Ramayya Pantulu: The amendment as worded now is no doubt untenable but, I would, with the permission of the Mover of the amendment, make a slight alteration at the end of it: "give an opportunity to the complainant to show cause why the order of dismissal should not be made." The effect of this amendment will be this. If a complaint is made to the magistrate and forwarded to the police for inquiry and the police make a report to the magistrate, the magistrate dismisses it without the party knowing anything as to what was done by the police, that is, behind his back. What I suggest is that before passing an order, he should give notice to the party saying that the police have reported that the complaint has not been proved and asking the party to show cause why the complaint should not be dismissed. I think that is a salutary provision. The party will have knowledge of what has been done in the case. It may be that he will be able to convince the magistrate that the police inquiry has been perfunctory and there are reasons why the magistrate should try the case. I do not think he should be given an opportunity of proving the complaint. That would mean trying the case, but he should be given an opportunity to show that the police investigation has been perfunctory and that there are grounds why the magistrate should not act upon the police report. That would, I think, be the effect of my amendment.

Mr. President: Further amendment moved to the original amendment:

"Omit the words 'to the complainant' at the end and insert the words 'an opportunity to the complainant to show cause why the order of dismissal should not be made.'"

The question I have to put is that that amendment be made.

The motion was negatived.

Mr. President: The question is that the original amendment be made. The motion was negatived.

Clause 55 was added to the Bill.

Clause 56 was added to the Bill.

Mr. President: Clause 57.

Mr. H. Tonkinson: I rise to a point of order, Sir. In connection with this amendment No. 184 and the four amendments following,* my Honourable friend proposes an entire revolution of the procedure for inquiries before

* 184. In the beginning of clause 57 before the words 'In sub-section (2)', insert the following:

"To sub-section (1) of section 210 the following shall be added at the end, namely:

'and shall, at the same time, make an order committing the accused for trial by the High Court, or the Court of Session (as the case may be) and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.'"

185. After clause 57 a new clause be inserted to omit sections 212 and 213 of the Code.

186. In clause 57-A after 'Code' insert the following:

"the figures '210' shall be substituted for the figures '213' and."

187. After clause 57-A a new clause be inserted to provide that in section 216 of the Code the words 'and has been committed for trial' and also the words 'as have not appeared before himself' be omitted.

188. (a) To clause 58, sub-clause (1), add the following:

"and the words 'and examine' shall be omitted."

(b) For sub-clause (2) of clause 58 substitute the following:

"(2) Sub-section (2) of section 219 shall be omitted."

[Mr. H. Tonkinson.]

commitment. In order to bring that procedure into force, Sir, he proposes the deletion of two sections which are not touched by the Bill. The Bill, Sir, only touches very minor points in this Chapter, and I would submit, Sir, that these amendments are outside the scope of the Bill.

Mr. President: I ask the Honourable Member whether what Mr. Tonkinson has said in substance is actually his intention.

Mr. J. Ramayya Pantulu: Yes.

Mr. President: Then I must uphold the objection raised by Mr. Tonkinson.

Mr. J. Ramayya Pantulu: I think, Sir, I am right in proposing this amendment, because the Bill itself deals in clause 57 with section 210, and I have got a right, I think, to propose an amendment to section 210—and the other four amendments are consequential on the amendment which I propose in section 210. Section 210 is amended by the Bill, I think, therefore, Sir, I have got a right to propose further amendments in section 210

Mr. President: The amendment which the Honourable Member proposes to section 210 seems to me to be entirely outside the scope of the section to which he refers. But in any case the Honourable Member has admitted that his purpose is as defined by Mr. Tonkinson, and I am afraid I must uphold the objection put to me by Mr. Tonkinson.

Clause 57 was added to the Bill.

Clause 57A was added to the Bill.

Clause 58 was added to the Bill.

Mr. President: Clause 59. Dr. Gour.

Dr. H. S. Gour: Sir, my amendment is intended to direct that in a charge the particulars of the charge should be set out. Honourable Members will see that clause (1) of section 221 of the Code of Criminal Procedure as at present enacted requires that every charge under this Code shall state the offence with which the accused is charged. Now there are a very large number of sections of the Indian Penal Code in which the general offence of rioting, unlawful assembly or hurt, grievous hurt and the rest are specifically designated as such offences. But there are numerous sub-clauses under those sections under which, as in the case of unlawful assembly and rioting the nature and object of the unlawful assembly and the nature and object of the riots may be different. In several reported cases of the High Courts,—I will only instance one, 83 Calcutta page 295—it was pointed out that in all cases of rioting and unlawful assembly particulars must be given in the charge of the nature and object of the members of the unlawful assembly or of the riot; and without such charge how is the accused to defend himself. In that case what happened was that the charge was framed that five or more persons have committed the offence of rioting. Now, what was the object of that unlawful assembly which committed the rioting? If you refer to section 141 and the following sections of the Penal Code you will find that a member may be a member of an unlawful assembly for various reasons

and those reasons are as divergent as different sections of the Penal Code. Consequently, it happens in several cases which have been reported—I have only given one but I could give many more—it is found that the accused is tried upon one set of facts; he is charged generally for rioting or for being a member of an unlawful assembly. Subsequently there is a fresh development and he is convicted upon a very different set of facts to which he never adverted and upon which he never defended himself. The case goes in appeal and one of his grounds is that the whole case of the prosecution was based upon a certain set of facts upon which he never defended himself. He says, I now find that the prosecution have sprung a surprise upon me; in the charge nothing was said as to what was the unlawful purpose for which this assembly met and what was the unlawful object of this gang who committed the offence of rioting. It happens that the appellate courts set aside the conviction on the ground that the offence tried was different to the offence for which the accused has been convicted. That is unfair to the prosecution. They assumed all along that everybody knew what the accused was being tried for. It is unfair to the accused because he was under an apprehension that the prosecution had led evidence to prove a certain set of facts and that those were the facts upon which he has to defend himself. I therefore submit that it is in the interests of justice, in the interests of the prosecution and in the interests of the accused that the particulars of the charge should be set out in the charge sheet. It might be said on behalf of the Government that there is a provision in the existing law to set out the particulars of the charge and reference would conceivably be made to sections 222 and 223. I therefore refer to these sections. Section 222 says:

“The charge shall contain such particulars as to the time and place of the alleged offence and the person (if any) against whom, or the thing, (if any), in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.”

Now, this certainly does not meet the case. I will now read section 223. It runs as follows:

“When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for the purpose.”

Half a dozen people enforce a right of way. Half a dozen people on the other side also claim a right of way. There is a collision between these two opposing gangs and there is a fight. The object of one is the assertion of a right of way—a public right; the object of the opposing gang is defence of private property on the ground that the way is private and it is their exclusive property. All that section 222 enjoins is that the charge shall contain particulars as to the time, place and the persons committing the offence, and section 223 says that the charge shall contain the manner in which the alleged offence was committed. If these two sets of people used *lathis* the charge shall say that the rioting was committed by means of *lathis*. If they exchanged blows, the charge shall state that the rioting was committed by the exchange of blows. If there were any section which demanded that the particulars of the charge, the specific statement of facts which constitutes the offence should be shown in the charge, there would be no cases. The reported cases are far too voluminous for me to read before this House at this late hour. But I assure the House that if such a thing

[Dr. H. S. Gour.]

did exist in the existing law, there would not be so many cases as there are on the subject, and I, therefore, Sir, move the following amendment:

"In clause 59 before the words and figures 'In sub-section (7)' insert the following:—

'In sub-section (1) of section 221 of the said Code for the word 'state' the words 'specify particulars of' shall be substituted and '."

I consider it to be an improvement on the existing law, and I hope it will be passed.

Sir Henry Moncrieff Smith: Sir, all that Dr. Gour has explained to the House is, I think, that Magistrates make mistakes and not that the Code is wrong. The provisions of the Code in sections 221, 222 and 223 are ample. I think there is no question about that at all. But, Magistrates following section 221 only frame incomplete charges. They do not regard the other sections and section 223 in particular which requires them to state such further particulars as may give reasonable notice to the accused of the offence with which he is charged. If my Honourable friend's amendment is carried, we shall have in section 221 a provision to the effect that every charge under this Code shall specify particulars of the offence with which the accused is charged, somewhat inconsistent with the next provision which lays down:

"If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only."

to which you have to add particulars as to the time and place, and the person, etc.

All the things that Dr. Gour would have put into the charge are already provided for in the Act by either section 222 or 223. All that the High Courts have to say is that the Magistrates framed charges wrongly, not that the law did not enable them to frame charges aright. I would suggest that the amendment be negatived.

The motion was negatived.

Clause 59 was added to the Bill.

Clause 60 was added to the Bill.

Clause 61 was added to the Bill.

Dr. H. S. Gour: Sir, I move the adjournment of the House. It is 6 o'clock and the remarks which I have to make on clause 62 will take some time.

Mr. President: It is not in the power of the Honourable Member to move the adjournment of the House. He may offer reasons why the House should adjourn. If the Honourable Member assures me that he is going to make a long speech, I will adjourn the House.

Dr. H. S. Gour: Yes, I intend to make a long speech.

The Assembly then adjourned till Eleven of the Clock on Saturday, the 3rd February, 1923.

LEGISLATIVE ASSEMBLY.

Saturday, 3rd February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

MEMBER SWORN:

Mr. Andrew Gourlay Clow, M.L.A. (Industries Department: Nominated Official).

RAILWAY CAPITAL EXPENDITURE.

Mr. C. D. M. Hindley: I lay on the table the information promised in reply to a question by Mr. P. L. Misra on the 17th January, 1923, regarding Railway Capital Expenditure.

As the Finance and Revenue accounts of the Government of India so far as Railways are concerned have been recast from 1920-21, references are given to the volume for that year. The details of the total capital expenditure to end of 1920-21 from different sources are given below:

	Rs. (Lakhs.)
Direct Government outlay	308,22
Capital contributed by Company's and Indian States	75,74
Grants from Famine Relief and Insurance	7,37
Grants from Imperial and Provincial Revenues	6,42
Liabilities involved in the purchase of Railways undischarged at end of 1920-21	124,90
Total	523,19

The Honourable Member's attention is invited to Account No. 74 (pages 280 and 281) of the Finance and Revenue Accounts of the Government of India for 1920-21.

The difference between the above and the figure of Rs. 558,32 appearing in Appendix 4 of Volume II of the Administration Report is largely due to the fact that while the figures in the Finance and Revenue Accounts represent the standing liability of Government on railway account, the figures in the Administration Report represent the capital cost of the Railways. Capital liability to the extent of Rs. 24,51 as shown in Column 12 of Account No. 74, on page 281 of the Finance and Revenue Accounts, has been redeemed through the operation of annuity and sinking funds.

QUESTIONS AND ANSWERS.

GRANT TO THE IMPERIAL INSTITUTE.

306. ***Mr. W. S. J. Willson:** 1. Is it a fact that the Government of India decided to discontinue the annual Indian grant to the Imperial Institute with effect from the end of the present financial year?

2. Is it a fact that at the time when the Government decided to discontinue this grant the British Government and the Governments of the Dominions and other overseas countries of the Empire had decided largely to enhance their grants to the Imperial Institute?

3. Did the question of severing the connection of the Government of India with the Imperial Institute arise on the report of the Indian Industrial Commission, and is it a fact that no representative of the Institute was invited to give evidence oral or written to this Commission?

4. Did the Government receive a statement prepared by the Committee for India of the Imperial Institute, controverting the conclusions in respect of the Institute arrived at in the Report of the Indian Industrial Commission?

5. Did the Government, after the receipt of this statement, call for a report from Sir William Meyer, the High Commissioner for India, as to the advisability of continuing to subscribe to the maintenance of the Imperial Institute?

6. Are the Government aware that Sir William Meyer framed his Report without communicating with the Committee for India of the Imperial Institute, or the Director of the Institute, and without giving the representatives of the Institute any opportunity of being heard?

7. Are the Government aware that neither Sir William Meyer's Report nor any statement of the grounds on which the Government decided to discontinue the grant has been communicated to the Imperial Institute?

8. Have the Government received from the Association of British Chambers of Commerce in England a Resolution passed unanimously by that body in July 1922 regretting the decision of the Government of India to discontinue the annual grant to the Imperial Institute, and expressing an earnest hope that in view of the valuable work which the Imperial Institute has done for India, with which the British Chambers of Commerce have in recent years been closely associated, the Government of India will reconsider its decision?

9. Has the Government of India's attention been called to a similar Resolution passed by a majority of the Associated Chambers of Commerce of India and Ceylon at their annual meeting held in Calcutta on the 8th and 9th January, 1923?

10. Will the Government be pleased to lay on the table all the papers connected with the discontinuance of the grant, including the despatch of the Government of India to the Secretary of State for India dated 20th November, 1918; the reply to this despatch made by the Committee for India of the Imperial Institute on 24th November, 1919, and also Sir William Meyer's Report?

11. Do the Government, having regard to the requests of the Chambers of Commerce of the United Kingdom and of India propose to reconsider the decision to discontinue the annual Indian grant to the Imperial

Institute, in the light of the testimony that has been furnished as to the value of the work of the Institute to India?

Mr. J. Hullah: (1) Yes.

(2) Yes with the exception of Australia and South Africa which were unable to grant any subsidy.

(3) No representative of the Imperial Institute was invited to give evidence to the Industrial Commission, but it was not as a result of that Commission's report that the Government of India decided to sever the connection with the Institute. In fact they had come to that conclusion 3 or 4 years before the publication of the Industrial Commission's Report.

(4) Yes.

(5) Yes.

(6) Yes.

(7) It is a fact that Sir William Meyer's report has not been communicated to the Imperial Institute. It is not a fact that no statement of the grounds of the Government of India's decision has been communicated to the Institute. The grounds of this decision were fully set forth in this Government's despatch to the Secretary of State for India, No. 9, dated the 29th November 1918, a copy of which has been seen by the Committee for India of the Imperial Institute.

(8) The Government of India have received the Association's Resolution, not from the Association itself, but from the President of the Associated Chamber of Commerce of India and Ceylon, and also from the President of the Indian Merchants' Chamber and Bureau, Bombay.

(9) Yes.

(10) The Government of India are not at present prepared to lay on the table the papers mentioned. They will however consider further whether these papers should be made public.

(11) The Government of India see no good reason to reconsider their decision.

INDIAN ARMY EXPENDITURE ON STORES.

307. ***Munshi Iswar Saran:** (a) Is it a fact that the total value of stores such as provisions, forage, medical, ordnance, clothing, mechanical transport, animals, petrol, lubricants and miscellaneous stores required and consumed by the Indian Army during 1921-22 was about 10 crores and a half? If this figure be wrong, will Government give the correct figure?

(b) Is it a fact that the cost of maintenance of the Departments for storing and distributing these stores during 1921-22 was about 5 crores and 30 lacs i.e., about 50 per cent. of the value of the stores? If this figure be wrong, will Government give the correct figure?

Mr. E. Burdon: (a) No. On the assumption that by the "Indian Army" the Honourable Member means the Army in India, the correct figure is Rs. 18 crores.

(b) No. The correct figure is Rs. 5 crores.

INDIAN ARMY STORES MANUFACTURING DEPÔTS.

308. ***Munshi Iswar Saran:** (a) Is it a fact that the cost of the maintenance of manufacturing depôts, inspection and testing of stores during

1921-22, was over 3 crores of rupees? If this figure be wrong will Government give the correct figure?

(b) Is it a fact that the value of the output of the Military Manufacturing Departments during 1921-22, was under 3 crores of rupees? If this figure be wrong, will Government give the correct figure?

Mr. E. Burdon: (a) No. Rs. 38 lakhs, approximately.

(b) Yes. Rupees two crores ~~2~~31 lakhs. This figure represents the value of articles turned out for the Army only.

The above answers are based on the assumption that the Honourable Member is referring to Ordnance and Clothing Factories only.

CONDEMNED MILITARY STORES.

309. ***Munshi Iswar Saran:** Will Government state the total value of stores and equipment which were condemned or lost and the cost of which was written off and borne by the State during 1921-22?

Mr. E. Burdon: The total value of medical stores written off during the period in question is Rs. 1,17,339.

With regard to Supply and Transport Stores and equipment, the total value of stores written off by the Government of India during the year 1921 was Rs. 18,97,936. This figure does not include losses written off by General Officer Commanding, etc., under their financial powers, information regarding which is not at present available.

The value of marine stores (including coal) written off during 1921-22 was Rs. 67,179.

Particulars of ordnance equipment written off are being collected and will be communicated to the Honourable Member as soon as possible.

BRITISH ELEMENT IN INDIAN ARMY.

310. ***Munshi Iswar Saran:** Will Government state if the direct and indirect cost of the maintenance of the British element in the Army in India of about 70,000 British officers and other ranks is over 42 crores while the cost of the maintenance of the Indian element of about 2½ lacs is about 23 crores? If these figures are wrong, will Government give the correct figures?

Mr. E. Burdon: The direct cost of the British Army in India is shown separately in the Budget, to which I would refer the Honourable Member. In that part of the Budget which relates to the Indian Army will be found figures of the direct cost of British officers and British other ranks; the figures for British officers include the cost of Indian officers holding King's Commissions. In order to ascertain separately the total cost of the British element and the Indian element in the Indian Army, it would be necessary to undertake a laborious compilation which could not be justified, and actually it would be impracticable to apportion correctly under these two heads miscellaneous charges such as contingencies, travelling allowances, staff charges and so on.

INDIAN MEDICAL OFFICERS IN REGIMENTS.

311. ***Munshi Iswar Saran:** Will Government state the number of Indian Medical Service officers required for a regiment of 1,000 strong before and after the War?

Mr. E. Burdon: Before the war one Indian Medical Service officer was attached to each Indian regiment. Since the war the station hospital system has been introduced for Indian troops and medical officers are no longer attached to regiments. The strength of an Indian regiment both before the war and now is less than 1,000 men.

INDIAN ARMY SICK BEDS.

312. ***Munshi Iswar Saran:** Is it a fact that sick bed accommodation at 5 to 12 per cent. of the strength making an average of over 7 per cent. for the whole Indian Army is maintained as against 5 per cent. of the pre-war days?

Mr. E. Burdon: No. Sick bed accommodation at 5 per cent. of the strength is maintained everywhere, except at Lahore, where 7 per cent. of the strength is maintained.

BED ACCOMMODATION IN MILITARY HOSPITALS.

313. ***Munshi Iswar Saran:** Is it a fact that an average of about 50 per cent. bed accommodation in the hospitals in the Indian Army remains unoccupied? If this percentage be wrong, will Government give the correct percentage?

Mr. E. Burdon: 50 per cent. is an approximate average for the whole year, but during certain periods of the year, when the rate of sickness is high, the whole of the bed accommodation is occasionally required.

DUTIES OF I. M. S. OFFICERS

314. ***Munshi Iswar Saran:** 1. Will Government state the average number of sick in the Indian Army which an Indian Medical Service officer does actually look after?

2. (a) Is it a fact that in a number of military hospitals—British and Indian—there are not more than 4 patients of minor ailments in charge of a medical officer?

(b) Are such medical officers given some other work by the Military Department and if so, what is the nature of the work so given?

Mr. E. Burdon: 1. The number varies widely according to the circumstances of different stations and different times of the year. It is impracticable to calculate the average with any degree of accuracy.

2. (a) No.

2. (b) Medical officers have much work other than the actual care of the sick in hospital, which is only a part of their duties. The work of a medical officer comprises the general medical supervision of troops, pathological investigation, and hygienic measures necessary to the maintenance of the health and the physical development of troops.

RETIRED INDIAN MEDICAL SERVICE OFFICERS RE-EMPLOYED.

315. ***Munshi Iswar Saran:** (a) Will Government state the number of (i) European and (ii) Indian retired Indian Medical Service officers who are still re-employed?

(b) Are such officers in receipt of their full pension as well as the pay of the rank or the post which they hold?

(c) Will Government state the special reasons for the retention of such officers?

Mr. E. Burdon: (a) to (c) No retired officers of the Indian Medical Service, European or Indian, are employed by the Government of India. It is understood that a retired European officer of the Indian Medical Service is employed by the Government of Bihar and Orissa in an appointment which is outside the cadre of Indian Medical Service appointments. The terms of his engagement are not known to the Government of India.

CHINA MURDER CASE.

316. ***Lala Girdharilal Agarwala:** What are the correct facts of the case known in Delhi as the China murder case and what was the result?

BANIA MURDER CASE.

317. ***Lala Girdharilal Agarwala:** What are the correct facts of the case known in Delhi as Bania murder case or uncle-nephew murder case and what was the result?

The Honourable Sir Malcolm Hailey: In reply to Lala Girdharilal Agarwala, I propose to answer questions 316 and 317 together. Both the cases referred to in the question were very fully reported in the Press at the time. The brief facts and the result of the trials are as follows:

CHINAMAN MURDER CASE.

In this case a Chinaman, silk seller, was decoyed to the Public Works Department store godown at Chandrawal, by certain tonga drivers and there robbed and murdered with a kirpan. The clerk in charge of the stores was granted a pardon and turned approver. One Inayatullah and another man were convicted and sentenced to death while a third was acquitted by the Sessions Judge, Delhi. The High Court of Judicature at Lahore accepted the appeals and acquitted both the appellants on the ground that there was not sufficient corroboration of the approver's statement.

BANIA MURDER CASE.

In June, 1922, a Bania youth, named Ram Krishan, who was a cloth broker, disappeared. In July his body was unearthed by the Police in circumstances which led to the trial of his uncle, his cousin, and four other men (of whom two became approvers) on a charge of murder. The Sessions Judge, Delhi, convicted one of the four, and acquitted the remaining accused. The appeal is still pending in the High Court.

UNSTARRED QUESTIONS AND ANSWERS.

CANTONMENT COMMITTEES.

134. Lala Girdharilal Agarwala: What is the proportionate representation of owners of property (or their agents) on the personnel of Cantonment Committees framed under the Cantonment Act?

Mr. E. Burdon: The constitution of Cantonment Committees is determined by sections 3 and 4 of the Cantonment Code, 1912. No special provision is made for the representation of owners of property or their agents on those Committees.

CHAKRATA CANTONMENT COMMITTEE.

135. Lala Girdharilal Agarwala: What is the total number of members of the Chakrata Cantonment Committee and how many of them are owners of property within the said Cantonment?

Mr. E. Burdon: The total number is six. None of them owns property within the cantonment.

RENT IN CHAKRATA.

136. Lala Girdharilal Agarwala: (a) Is it a fact that the cost of labour and materials of building has increased in Chakrata Cantonment?

(b) Has there been any corresponding increase of rents of houses?

(c) Have rents decreased in any case?

Mr. E. Burdon: (a) Yes.

(b) No; not as a general rule.

(c) No.

INDIANISATION OF THE ARMY

137. Rai Sahib Lakshmi Narayan Lal: (a) Have the Government got any programme of Indianisation of the army?

(b) If so, will the Government be pleased to give a definite idea as to the period in which that programme is to be fulfilled?

(c) If not, do the Government propose to consider the desirability of settling a programme for the Indianisation of the army at their earliest convenience?

Mr. E. Burdon: (a) to (c) The attention of the Honourable Member is invited to the speech made by His Excellency the Commander-in-Chief on the 24th January, in this Assembly on the Resolution moved by Mr. Muhammad Yamin Khan, regarding the grant of King's Commissions to Indians.

TRAINING OF INDIAN OFFICERS.

138. Rai Sahib Lakshmi Narayan Lal: (a) Have the Government got any scheme for a proper machinery for the training of the Indian Officers for the army in this country?

(b) If so, what is the estimate for the scheme and when is the scheme likely to be given effect to?

(c) If not, do the Government propose to consider the desirability of having such a scheme and estimate prepared at their earliest convenience?

Mr. E. Burdon: (a) to (c) The Honourable Member's question is answered almost entirely by the speech which His Excellency the Commander-in-Chief made in this Assembly on the 24th January, on the Resolution moved by Mr. Mohammad Yamin Khan, in regard to the Indianisation of the Indian Army. The total cost of the measures which have been adopted and are in contemplation for the training of Indians for a military career has not yet been fully estimated.

BRITISH ELEMENT IN IMPERIAL SERVICES.

139. **Rai Sahib Lakshmi Narayan Lal:** (a) Will the Government be pleased to state what is the minimum and maximum of the British element which they require in the Imperial services of the country?

(b) Have the Government got the minimum fixed as yet?

(c) If not, do the Government propose to consider the desirability of fixing such a minimum at its earliest convenience?

The Honourable Sir Malcolm Halley: The issues raised by the Honourable Member will doubtless be considered by the Royal Commission, the decision to appoint which I announced in the House on the 25th January.

CURTAILMENTS IN BUDGET GRANTS.

140. **Rai Sahib Lakshmi Narayan Lal:** (a) Will the Government be pleased to lay on the table a full statement of the amounts curtailed under each head on account of the curtailment of the amount of 9 crores of rupees by the Assembly in the last Budget?

(b) Could the Government keep their expenditure within the limits fixed by the said curtailment?

(c) If not, will the Government be pleased to lay on the table a full statement of the amounts spent in excess of the said limits under each head?

(d) Will the Government be pleased to state as to how the Government have been able to manage for the amount spent in excess of the said limits?

(e) If the said excess, if any, has been managed by loans, will the Government be pleased to lay on the table a full statement regarding the loans giving the dates, the amounts, the rates of interest and the creditors of the said loans?

The Honourable Sir Basil Blackett: (a) The aggregate reduction made by the Assembly in the demands for grants presented in March last amounted to Rs. 95,72,000 and not 9 crores.

(b), (c) and (d) As the Honourable Member is aware, the Assembly voted in September last, a supplementary grant of Rs. 13,09,000 to which extent it was then estimated that the aggregate grant voted in March, 1922, would prove insufficient. It was expected, however, that the bulk of this excess would be set off by savings under non-voted expenditure.

(e) The revenue deficit in the current year has been met out of the borrowings of Government, but no portion of the latter has been specifically earmarked for this purpose. More recent figures of probable expenditure and information on the other points referred to by the Honourable Member will be available to the House when the Budget is presented next month.

SECRET SERVICE GRANTS.

The Honourable Sir Malcolm Hailey (Home Member): I ask your leave to make a statement to the House in regard to an answer I gave a few days ago to a supplementary question in regard to certain Secret Service grants. At the moment I forgot that there are two sources of expenditure namely, the Director of the Central Bureau of Information, and the Director of the Intelligence Bureau.

I stated that the Secret Service funds under discussion were part of the votable expenditure that was audited. I was thinking at the time of the regular expenditure of the Director of the Central Bureau of Information; this is voted and is audited. The Secret Service funds, which are controlled by the Director of the Intelligence Bureau, are not audited and are not part of votable expenditure. I am sorry that in answering the question, I did not keep these two cases separate in my mind; and I have thought it proper to give the House the correct information on the subject at the earliest opportunity.

HIGH COMMISSIONER IN ENGLAND.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, before asking the question of which I have given private notice, may I with your permission, Sir, convey to the Government of India through the Honourable the Commerce Member our thanks for having appointed an Indian to the high office of High Commissioner in England, and for having made an excellent choice. Sir, the question of which I have given notice is this: What is to be the pay of the new High Commissioner in England?

The Honourable Mr. C. A. Innes (Commerce and Industries Member): With your permission, Sir, I will thank Mr. Seshagiri Ayyar for the remarks he has made. I need only say that we are quite satisfied that we could not have made a better selection for this high office.

As regards Mr. Seshagiri Ayyar's question, the answer is that the salary of the post has been fixed at £3,000 per annum.

Mr. T. V. Seshagiri Ayyar: What was the pay of the late High Commissioner, and had he a pension in addition to the pay?

The Honourable Mr. C. A. Innes: His pay, Sir, was £3,000 per annum and he did not draw his pension in addition.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban): Sir, as my Honourable friend, Mr. Seshagiri Ayyar, has made a reference to the appointment of an Indian as High Commissioner, may I, on behalf of the National Party, also express our gratitude to the Government for the appointment of an eminent Indian to the post of High Commissioner. And I may also add that in the opinion of the National Party there is hardly an Indian more fitted for the post in the whole of India than Mr. Dalal.

THE WORKMEN'S COMPENSATION BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member):
Sir, I beg to move:

"That the Report of the Joint Committee on the Bill to define the liability of employers in certain cases of suits for damages brought against them by workmen, and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident, be taken into consideration."

Perhaps, Sir, I may remind the House of certain points which I brought to their notice when I introduced this Bill in September last. The first point I desire to make—or rather, to re-affirm, is that this is no piece of hasty ill-considered legislation. The Government of India indeed have had this legislation under continuous consideration for the last 3 years. In 1921 we put to Local Governments and to the public certain provisional conclusions. We received a very large number of replies to that circular and those replies disclosed the fact that all over India there was complete acceptance of the principle of legislation of this kind and almost complete unanimity of opinion that the time had come to introduce this legislation. It is easy enough, Sir, to agree to the principle of legislation of this kind. It is only when we get to the details that the real difficulties begin, and that is why in July last we assembled a preliminary Committee. I think I may say that it was a strong Committee, a Committee upon which employers and workmen were adequately represented. We placed before the Legislature a Bill based upon the recommendations of that Committee and that Bill has again been circulated to all Local Governments and to the commercial public. I think I may claim again that the Bill has had on the whole a very favourable reception, but I do not wish to be misunderstood. I do not claim that the Bill is in any way a perfect measure. On the contrary, I realise that many clauses of the Bill are open to criticism. But what I do claim is that the Bill is an honest carefully thought-out attempt to adapt to Indian conditions a very difficult piece of legislation; and I think also that I can claim that the Bill is an earnest of the Government of India's desire to undertake progressive legislation of this kind when we are satisfied that it is right to do so. There are one or two points now that I will ask the House to remember.

In the first place, the Bill in many of its clauses represents a compromise between interests which, in a matter of this kind, must conflict. I refer to the interests of the employer, on the one hand, and the workpeople on the other hand. Our policy in that matter has been to endeavour to hold the balance between these two conflicting interests to the very best of our ability; and I think I may claim that as a result of that policy we have been able to carry employers with us in a very remarkable way. In fact, nothing has surprised me more, and nothing has pleased me more than the extraordinarily generous reception that this piece of legislation has met from employers all over India. And I will make the further point that in social legislation of this kind it is a matter of the greatest importance to carry your employers with you instead of trying to impose legislation upon unwilling employers.

The next point I desire to emphasise is the serious responsibility that the Government and the Legislature incur in this legislation. The experience of workmen's compensation legislation in all countries has been that it has led to a very great amount of litigation. We have always to keep that danger before us—we have had it before us throughout in drafting the Bill. We have so attempted to draw the Bill that an employer and a workman, merely on reading the Bill, may know where they stand.

The employer will know his obligations; the workman will know his rights. It is that consideration which accounts for many of the features of the Bill which have no doubt attracted notice. I refer to such facts as that we have relied upon the principle of relationship rather than dependence and the proof of dependence. It is also seen in the machinery we have provided for the settlement of disputes. The policy of the Bill is that all cases arising out of the Bill must first be settled if possible by agreement between the parties. It is only if the parties themselves cannot arrive at an agreement that we provide machinery for the settlement of those disputes. We have tried to make that machinery as simple and as inexpensive as possible. There is yet a third point which I wish to impress upon the House. I think we have got to be careful in legislation of this kind that we do not impose too heavy a burden upon industry. We have got to remember that the provisions of this Bill will apply not merely to large employers of labour but also to small industries; and I think that at the present time when industries have not advanced very far in India and when we hope that they will now begin to advance we ought to refrain from imposing upon these industries a burden which may have the effect of stunting and retarding their growth and development. I move, Sir, that the Bill be taken into consideration.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadden Rural): Sir, I feel my first duty is to congratulate the Government of India and my friend, the Honourable Mr. Innes upon producing a measure of such a beneficent character. The Honourable Mr. Innes told the House that this is not a hasty piece of legislation; that is perfectly correct. The Government of India have taken a great deal of pains over this measure for over two years. The close investigation which they have applied to this subject, which is no doubt of a very technical character, has been thorough and comprehensive; I also believe they have consulted public opinion both from Local Governments and from the industries concerned to a degree which is noteworthy in this piece of legislation. Then again, Sir, as the Honourable Mr. Innes told us, we are glad to hear that this measure is an earnest of similar beneficent legislation for the welfare of the labouring classes. Indeed with the advent of machinery into India the chances of accidents to workmen grew a good deal, and it is but natural that in the wake of machinery there should come legislation which safeguards the interests of workmen from such accidents. Sir, I think I must make it clear to the House that this Bill affects not only employers in private industries, but, I believe, it affects even the State as employers in certain concerns, for instance, in Telegraphs, and Railways, Port Trusts and similar concerns; also it affects municipalities. It is, therefore, a sign of good spirit and a sense of fairness on the part of Government that along with other employers they are also coming forward to share their liability and the responsibility in the application of this Bill. The Honourable Mr. Innes told the House that the employers consulted by Government have been able to go a great length in meeting the interests of workmen. I am very glad to hear it. It only proves that in matters which concern the real welfare of the working classes, the employers, whether private or State, take up a very fair attitude in these matters. Then again it will be seen that those industries have been roped in which are organised and in which the hazard to the workmen is particularly peculiar and of a dangerous character; further, I believe the Bill takes another precaution, namely, to see that points in dispute between the workmen and the employer will be as few as possible. Indeed every section, every sub-clause has been

[Mr. B. S. Kamat.]

thoroughly threshed out and so far as the workman is concerned every facility is thrown in his way, so that the procedure will not be complicated for the workman to get his right and obtain the relief for which this Bill is intended.

Although, Sir, on the whole the general provisions of the Bill are good, there are some points which, I recognise, may be found wanting in this from the point of view of certain people. I do think one or two points which really speaking should have been included in the scope of this Bill have not been included. I may instance one or two of such points. One was the case of Indian seamen. Under the present Bill probably Indian lascars will not be able to get a relief easily if an accident happens to them on the high seas or if the lascars happen to be employed by shipping companies under the British Shipping Registration Acts. That is a difficulty which we all felt in the Joint Committee. The Indian seaman, if he is to get relief not under the Indian Workmen's Compensation Act, but under the English Act, will find it extremely difficult to lodge his claim in British Courts and to obtain the relief, say, in London. I believe that in this matter this present Bill does not go as far as it should go. It is extremely difficult for an Indian lascar, for instance, to seek relief and get compensation by putting in a claim in a court in London; the question of jurisdiction and the alternatives for relief which he has under the Indian Act and the English Act were points so technical, I believe, that those who framed this Bill had to give a wide berth to them and to leave the difficulty unsolved. If some of my lawyer friends can suggest a solution for this difficulty I think the House would be grateful.

There is one more point to which I wish to refer, and that is that along with the Workmen's Compensation Bill there will come to India I hope a new social order, a new era for the workmen; I daresay they will try to be more organised than they are now. It would be a very good thing indeed from the workmen's point of view if this new social era is opened up to him; along with this there will also come I am sure another feature, namely, Insurance Companies will have to frame schedules and a sort of system of insurance to cover the liability of employers. The point which I wish to bring to the notice of the Government in this connection is this: in all other countries where Workmen's Compensation Acts have been in force, I believe insurance in some form or another has been an invariable accompaniment. The question here will be when insurance companies frame their schedules whether Government will exercise some sort of supervision over their rates of premia. Speaking from the point of view of employers and those who will have to cover the risk, I do think the State will have to exercise some sort of supervision over the insurance companies' rates. After all the compensation which will be paid on behalf of the industry to the injured workman will fall on the industry and just as in other countries there is a sort of supervision over the insurance companies, I believe even here the State ought to exercise some sort of supervision. Indeed in other countries the methods of insurance are different from what they probably will be here. In America, for instance, there is a State fund for insurance. In Italy, Switzerland and other countries there is a compulsory sort of insurance; not so in England, I know. But there, there is definite supervision on the part of the State to see that the Insurance Companies do not charge extraordinary rates of premium for the industry. In fact, definite percentages have been laid down, so that out of the total premium received so much shall be for the management of

the Insurance Companies and no more, and the rest shall go towards the benefit of the insured. That sort of thing, I believe, will have to be done by the State even here.

There is one point, Sir, to which I wish to refer, namely, the machinery that has been set up for the carrying out of the provisions of this Bill. In order that there should be cheap and expeditious justice and settlement of claims, this Bill sets up a Commissioner for dealing with the Workmen's Compensation Act provisions. Now it is indeed a great convenience, that all disputes should be referred and all points should be settled by this Commissioner. So far as the expedition in the settlement of disputes is concerned, it is a great convenience. On the other hand, it must be recognised that a great deal will depend on the *personnel* of these Commissioners and the spirit in which they work the provisions of this Bill. Well, if they work the provisions in a good spirit and hold the balance even between the employers and the employes, I believe the justice which they will deal out will be very good. But, on the other hand, I do feel that the provisions of this Bill give the Commissioner a very large amount of power, and it depends upon him to work those provisions in a proper, just and equitable manner. However, we are making this as an experiment, namely, centring of this power into the hands of the Commissioner alone. That will be an experiment which shall be tried in the first instance. Just as in England the workmen's compensation has gone through a process of evolution and it has been amended on various occasions, probably here also in the light of experience gained we shall have to amend our own provisions. But I bring it to the notice of Government that in appointing the Commissioners and leaving to them the sole duty of settling disputes between the employers and the employees they should see that, after all, the spirit in which the Commissioners work this Bill should be a spirit of absolute even-handed justice between the two conflicting interests. Otherwise, I must say that the powers which we have entrusted in the hands of these officers will have to be greatly curtailed in the light of the experience which we may gain. I do hope the House will give its warmest support to this Bill both in the interests of workmen as well as the industry. This is, I say again, a very beneficent measure and I accord my warmest support to it, and once more thank the Government for having brought out a Bill of such a character for the first time in India.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, may I also, with your permission, congratulate the Honourable Mover of this Bill on the beneficent measure which he has placed before this Assembly. I do not wish to speak on those provisions of the Bill which will be discussed here in detail. I shall refer only to a few sections which have been omitted by the Joint Select Committee and upon which I shall have no opportunity hereafter to speak. The sections to which I refer are sections 3, 4 and 5 of the original Bill defining the liability of the employers in the case of certain accidents. Sir, I feel that these sections in the Bill ought not to have been omitted by the Joint Select Committee. In the first place, the Committee which was originally appointed by the Government and which my Honourable friend, Mr. Innes, said was a very strong Committee, had approved of those sections. Sir, I am also of opinion that the Committee which considered originally this Bill, excepting one of its members, was indeed a Committee of experts. I am therefore surprised very much that the Joint Committee should have omitted those sections altogether, and this omission, in my opinion, is a great defect.

[Mr. N. M. Joshi.]

Sir, I need not remind the Members of this House that the principle underlying the Workmen's Compensation Bill and the principle which underlies what is called the Employer's liability are quite different. In the case of workmen's compensation the principle is that when a man introduces certain industries which involve risks to others he should be held civilly liable for those risks. In the case of workmen's compensation, therefore, there is no question of the negligence or fault of either the employers or the employes. The workman receives compensation because it is in the interests of the industry that he should receive compensation and because the risks which cause the accidents are incidental to the industry. The principle of the employer's liability sections which were originally included was that where an employer was negligent under certain circumstances and had failed to make proper provision to safeguard safety of the workmen, he should be held civilly liable for damages. Sir, this principle of employer's liability has been accepted in England since the year 1880. It is now more than 40 years, therefore, that this legislation defining the employer's liability has been in existence in England. I am, therefore, surprised that the representatives of the Government of India on the Joint Committee should have yielded to the majority of the Joint Committee in this matter. This omission will be particularly felt by those employes who are somewhat educated and better paid. In the case of an ordinary workman, I do not think he would ever think of going to the Civil Court for damages, even though the negligence of the employer may be very clear, because action in a Civil Court is more costly and there are several other difficulties if he takes up that course. But in the case of better paid employes, who are also educated, if it is clearly shown that the employer has been negligent, those employes should have the right to go to the Civil Court. Sir, I therefore feel that the Bill in this respect is clearly defective, even the sections in the original Bill were not quite satisfactory. If I had my way, I should have extended the employer's liability to all workmen, but in the original Bill it was applicable only to those classes of workmen who are governed by the Workmen's Compensation Bill. But even though those sections were deficient, the Joint Committee thought it fit to omit them. With these remarks, Sir, I offer my congratulations to the Honourable Member on having introduced this measure.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): Sir, when the Bill which is now before this House was brought to the attention of those members of the Millowners' Association, including myself, to whom the matter had been referred, with one exception we declared that the Bill was a bad Bill. We considered that it had sacrificed principle for expediency and that the Legislature and its Committees had shown a complete lack of vision in their attempt to deal with this most important development in the industrial progress of this great country. We felt that, rather than that such an emasculated measure should take its place on the Statute Book, we would prefer the subject to be studied afresh to enable a Bill to be put forward which would more nearly approach the problem from a modern western standpoint. The exception to whom I have referred, Sir, was my predecessor in this House, Mr. Saklatvala. Mr. Saklatvala, suggested that, before the Committee gave a definite opinion, it might allow him to impart to me as his successor to this House the information on this subject which he had been able to gather through his work on the Select Committee. This he proceeded to do by sending round those weighty packets of files which Members

of this House are so intimate with. Sir, by dint of burning much midnight oil, I succeeded in acquiring some faint glimmerings of the difficulties of the subject and the attempts that the Select Committee had made to deal with it; with the result that, when we met again, I found it necessary to inform my Committee that my views had altered and, so far from this Bill being a bad Bill, hastily thrown together with no regard to the problem and its needs, I considered that this Bill though there was hardly a clause which could not be amended or debated on and justifiably so was still an extraordinarily carefully thought-out piece of work in its main lines and designed to act as a solid foundation on which future developments could be built as experience dictated. My Committee was good enough to approve our views and I stand here to-day on behalf of the millowners of Bombay to welcome this Bill as a first step and an experiment, appreciating the fact that in passing this measure the labours of the Government and of this House will have only begun with their desire to deal with a subject which I confidently say all classes, whether ruling, employing or employed, wish to see handled sympathetically, adequately and practically.

Sir, the view that I take of the problem is that there are certain basic aims which should be always before us, even though they may not be immediately practicable: Firstly, that those who fall by the wayside in the industrial fight for existence, through no fault of their own, should be adequately cared for; secondly, those truly dependent on them should not be asked to bear the full brunt of the blow due to the incapacitation of the breadwinner, but at the same time should be encouraged to help themselves so as not to become pauperised; thirdly, that a generous scale of benefits should be provided at the lowest possible cost. And this, Sir, leads one to certain practical considerations that are of vital importance. Every workman who takes compensation by a fraudulent claim or by malingering, every workman who does not take advantage of offers to be cured speedily and delays or aggravates an injury, often turning a slight temporary disability into a serious permanent one, every workman who is allowed, or in any way encouraged, to exaggerate his disability, thus bringing into play those vast and little-known forces of auto-suggestion and so prolonging or intensifying his injury, everyone of these, Sir, by receiving compensation which should not be necessary is adding to the total cost of compensation, and thus either reducing the benefits to the genuine cases or adding unnecessarily and unjustifiably to the general cost of living; for I need hardly tell this House that the payment of compensation, as one of the costs of production, has eventually, in part at any rate, to be borne by the consumer. There is also another important consequence to be considered. If the workman be encouraged to dwell on any slight ailment in the hope that it may develop into something that may justify compensation, his character will be affected, his moral fibre undermined and his value as a man and citizen depreciated. I am afraid that a study of the effects of the Workmen's Compensation Act in England leads one to wonder whether a hysterical unbalanced trait has not been developed in the national character which was not so prominent in the past.

Now, Sir, as regards the Bill before us, I would suggest that it be strengthened in every way to reduce the possibility of fraud, malingering and lastly litigation, even at the risk of appearing unsympathetic. The passing of this Bill will make one thing certain and that is, it will greatly increase the demand for doctors. If this Bill results in encouraging the young

[Captain E. V. Sassoon.]

Indian to take up a medical career in preference to a legal, I for one should consider this as an additional point in its favour. Honourable Members will consider that I am unduly prejudiced against lawyers but I cannot forget the remark that was once made by Voltaire, who said that he only regretted going to law twice, once when he lost his suit and once when he won it. Sir, it is a great deal more valuable to the country that an injured workman should recover his health than that he should win a suit and get good compensation for his injuries, and I commend this point of view to the Honourable and learned Members of this House when they are about to decide on a suitable career for their sons.

In conclusion, Sir, any legislation which succeeds in satisfying the general aims I have so roughly sketched would prove, I think, immeasurably superior to similar legislation existing in other countries, no doubt partly owing to the fact that there was so little practical experience in existence when those measures were instituted and partly because they started by legislating on too ambitious a scale. Let us profit, therefore, by their mistakes and develop our programme by steady evolution. I venture to assert that by following that road the eventual results of our efforts will make them worthy of being copied by those western nations who admittedly lead to-day the cry of the injured workers.

With these words, Sir, I welcome the Bill before us.

Sir Deva Prasad Sanyachikary (Calcutta: Non-Muhammadan Urban). Sir, I welcome Captain Sassoon's suggestion that we should have more doctors and better doctors, if necessary, at the sacrifice and expense of the lawyers. I have a double-barrelled personal consideration: less lawyers will give us existing lawyers a better chance and more doctors will be welcome to me because I am trying to nurse a race of doctors. I wonder, Sir, why, having said all that Captain Sassoon has said, I do not see any amendment tabled by him on lines brought out by him that I should have welcomed, viz., that the Commissioner to be appointed by the Act should have a medical referee associated with him in some effective way. Much of the difficulties, even if you otherwise succeed in keeping down litigation, much of the difficulties that will be experienced in the working of this Act will disappear if there be independent and reliable medical opinion to balance that on behalf of the employer and of the workman, if the latter can afford it. Doctors are notorious for difference of opinion and, when diversity of interest is at stake, that difference is likely to be accentuated. Therefore, I should have welcomed some provision by which the Commissioner who is invested with large and salutary powers, had a capable Medical Referee to fall back upon so that the workman and the employers would be better protected. The Commissioner would also be better able to do his work by falling back on those who can give him independent medical advice. I appreciate, Sir, there are difficulties in the way of this being done everywhere. Industries are expanding in this country and it may not be possible everywhere in the outlying tracts of the country to have suitable medical referees. But a first beginning might have been made. This is a first step, a very important and very good first step, towards healthy labour legislation. I believe in treating labour well both from the humanitarian and State point

of view as well as from the point of view of expediency. Labour better treated is always good from the investor's point of view and the Government are realising and the people who are supporting them are realising that labour should be better treated before labour organisers for the purpose of extorting protection as in other countries. I am unable, however, to share Mr. Joshi's regret that the employers' liability question has not been mixed up with the question of workmen's compensation for slow development is healthy in these matters. Well, we have had, to borrow Mr. Rangachariar's classical phrase, homilies preached in many quarters that when a Committee of this House goes into a question thoroughly, it is not up to this House to bring up questions in detail again and have them thrashed out as if the whole House was again going into Committee. Paragraph 3 of the Joint Committee report fully deals with the point which Mr. Joshi has raised. The position taken up there is I believe technically doubtful, it is doubtful whether a Select Committee can pick and choose like this. I should like however to wait and see how this Act works and what developments may be necessary. If, Sir, in 1886 or later on we had taken up the question of codification of the law of torts which has been waiting since then, some of our difficulties might have been at an end. It is no use regretting that now. But in the absence of that, these first piecemeal steps are becoming necessary and they will have to expand as we grow. With these words, Sir, I should like to give a very warm welcome to this measure and express the hope that the machinery for insurance will develop under Government care. Without it an Act like this cannot properly work if the employer and the employed are to be protected.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, there can be no two opinions about it that the Bill is of a very useful character and I share the view that the Government may be thanked for the introduction of this measure. My study of the Bill leads me to believe that some of the provisions, no doubt, in some cases, will offer temptations to labourers to abuse the provisions of this Bill. But at the same time I feel that there are some sections which will give a great amount of encouragement to labourers to flock to our factories, and consequently, eventually, there will be a great aid to the industrial development of the country. The most important characteristic of this Bill, as it seems to me, is that it is a measure which has got the sympathy both of the employers and the employees. I can hardly come across any measure, in regard to which either the one party or the other party has not got a serious complaint. But, as I have said before, this is a Bill which has got, more or less, the approbation of both sides, and therefore the Government and the Honourable Mover must be thanked for it. There have been some remarks in regard to the introduction of work for Doctors and it has been said that there will be some sort of reduction, so far as the work of the legal practitioners goes. In reply to that I may say that in the first place we do not grudge it. We have got ample work. But I may tell you, for your information, that there is a provision in this Bill—section 80—which allows a great loophole. There is a provision for appeals in this section and lawyers will have a sufficient share in that direction. I must say in the end that I appreciate all the remarks which have been made in favour of this Bill as a complete Bill, but I have got to differ from the Honourable Mr. Joshi, when he says that it is not comprehensive in its character. This is a tentative measure and when we see that our workmen have proved themselves fit and up to it, then we may extend the provisions of this Bill to some other class of labourers. But for the present, circumstanced as we

[Dr. Nand Lal.]

are, this is a complete answer to the requirements of the country. With these remarks, Sir, I support the motion very heartily.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I do not rise to speak on the Bill, but I ask your ruling upon a very important matter which the Bill as put before this House raises. It is this. When the question was discussed before the Bill went to the Joint Committee, the Bill contained provisions relating to employers' liability as well as to the compensation to be paid by employers. This House then approved of the principle of both those objects, namely, employers' liability due to negligence and compensation due to accident. After the Bill has been considered by the Joint Committee, it comes to us in a denuded form. The portion relating to the liability of employers due to negligence has been cut out; and the result is that this House is not in a position to discuss a matter for the principle of which it had given its sanction before committing the Bill to the Joint Committee. My question to you is this. Is it open to a Joint Committee to which a Bill containing two principles has been submitted, to cut out one of the principles and thereby make it impossible for the House to give its opinion upon that principle? That is the point which I submit for your consideration.

Mr. President: Having no notice of the point of order which the Honourable Member wishes to raise I have not yet had time to give mature consideration to it. I have not the original Bill before me. The Honourable Member will see that the last clause in the report of the Joint Committee says:

"We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended."

But I must assume, until I am able to give it further consideration, that the Joint Committee would not have inserted the last clause unless they had been satisfied that the Bill was not altered in the manner the Honourable Member suggests. I notice that there were several prominent lawyers on the Committee, one of whom is sitting beside him; and I should imagine that if the Bill had been so altered, the eagle eye of his Honourable colleague from Madras (Mr. Rangachariar) would not have allowed the point to escape him.

Mr. T. V. Seshagiri Ayyar: I had the consent of my Honourable friend from Madras to make this motion. I consulted him about this. The title of the Bill also has been altered. The point which I raise for your consideration, Sir, is this. Is it open to a Joint Committee to give up a principle without that principle being submitted for the consideration of the House? The original title of the Bill was "Employers' Liability and Compensation." That has been altered into "Workmen's compensation." They have cut out a particular portion of the title itself, and they have cut out the provisions of the Bill which related to employers' liability thereby making it impossible for this House to give its decision upon those provisions. It is a difficult point and I think it is a point which must

12 Noon. be decided because on future occasions a similar question may arise; and it is desirable that the House should have your guidance in a matter of such importance, namely, where the House has approved of certain principles can the Joint Committee omit one of those principles making it impossible thereby for the House to express its opinion thereon. That is a very serious problem, and if it is submitted to it may lead to grave

complications. Therefore, Sir, it is desirable that there should be a definite and decisive ruling upon the point. Paragraph 3 of the Joint Committee's report says:

"Perhaps the most important alteration which we have made in the Bill is the elimination of the provisions relating to employer's liability. The majority of us are not satisfied that it is either necessary or wise to retain these provisions in the Bill. It has not been demonstrated"

and so on. So, by a majority the Joint Committee have come to the conclusion that this portion should be omitted from consideration. It may be that the minority there may find support in this House; but the result of this deletion is that this House is debarred from going into those provisions. That is a great and serious matter upon which I ask your ruling.

Mr. President: What is the practical point that the Honourable Member raises? Do I understand that the practical point which the Honourable Member raises is this:—Whether it is open to the Assembly to discuss clauses which the Joint Committee have excised? The Bill as sent up by this House to the Joint Committee contained these clauses and therefore it is perfectly open to the Assembly to restore them. If that is the essence of the point of order raised by the Honourable Member then I uphold his contention.

Sir Montagu Webb (Bombay: European): I think it is competent for the House to restore the provision which has been excised.

Mr. President: It is perfectly competent for the House to restore the provision which was in the Bill and which has been excised by the Joint Committee.

Mr. T. V. Seshagiri Ayyar: Having regard to your ruling, Sir, I hope this House would allow amendments to be sent in before the matter is again taken up for consideration, because on the Bill as it stood we were not in a position to send in any amendments on this question and we were not sure what the ruling of the Chair would be upon a matter of this importance. Having regard now to your ruling, I hope you will give permission to send in amendments so that the matter may be taken up for discussion before the Bill is finally disposed of.

Mr. President: In the meantime we may proceed with the Bill.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhamadan Rural): We may proceed with the Bill and before it is finally disposed of, any Member who likes may move that these sections which have been omitted by the Joint Committee may be re-inserted in their appropriate places.

The Honourable Mr. C. A. Innes: I have no objection to any Member who wishes to restore the provisions in the original Bill moving now an amendment to that effect or giving me notice now of the amendment to that effect. I take it, Sir, that we shall not probably come to that question till Monday. I suggest that any Member who wishes to put in an amendment to the effect that the clauses of the Bill omitted by the Joint Committee should be restored may give notice of that amendment to-day.

Mr. N. M. Joshi: May I ask, Sir, why amendments should be restricted to the original sections? We may like to improve the original sections.

Mr. President: The Honourable Member is perfectly aware that any sections before the House are open to improvement. That is why they are before them.

It is impossible for any one to say at the moment how long the consideration of this Bill will last; but, without actually committing myself, I am prepared to meet the Honourable Commerce Member and the House generally on the point of waiving the period of notice required. But I think it would not merely be a courtesy to the promoter of the Bill but would conduce to the efficient despatch of legislation if Honourable Members who wish to insert any amendments of that character would draw them up at the earliest possible moment and give the Government the longest possible notice. Otherwise, we may encounter undue difficulties due to hasty drafting.

On the raising of points of order of this kind, I should like to appeal to Honourable Members to give the Chair the maximum possible notice of their intention to do so. Least of all qualities which I wish to claim is omniscience, and therefore I should like to have full opportunity of consulting both the officers of the Department at my disposal and the documents at my disposal in order to arrive at considered conclusions. On a matter of this importance, on which it so happens that I was able to give a decision without previous consideration, I should like to appeal to Honourable Members to give the utmost possible notice, because, as Honourable Members are aware, rulings given from the Chair are apt to create precedents.

The motion, that the Report of the Joint Committee on the Bill to define the liability of employers in certain cases of suits for damages brought against them by workmen, and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident, be taken into consideration, was adopted.

Mr. President: The question is that clause 1 do stand part of the Bill.

Mr. T. V. Seshagiri Ayyar: If you are going to allow amendments to be sent in which would include employer's liability, this clause will have to be altered. May I suggest that the consideration of this clause be postponed?

Mr. President: As a matter of fact, it may have escaped the Honourable Member's notice that clause 1 in the original Bill reads exactly in the same terms as clause 1 in the amended Bill. If Honourable Members, however, think that it is desirable to amend the short title, I am prepared to accept a motion for discussion that the consideration of clause 1 be postponed.

Mr. T. V. Seshagiri Ayyar: I move that the consideration of clause 1 of the Bill be postponed.

Mr. President: The question is that the consideration of clause 1 of the Bill be postponed.

The motion was adopted.

Mr. President: Clause 2.

Mr. N. C. Sircar (Bengal: National Chamber of Commerce): I sent in notice of my amendment before I read the whole Bill. Clause 2 is at

the very start, but before I read the whole Bill I was under a misapprehension that the compensation increased and decreased according to the number of dependants. But as it is not so, I do not move the first two amendments.*

Captain E. V. Sassoon: When I placed my amendment on the paper I quite realised that in treating of the question of dependants it was very difficult to know where to stop in placing on record those who were to be allowed to divide up the compensation as laid down in this Bill. But at the time it appeared to me that a widowed sister would have been more or less in the same position as an unmarried sister. I consider that the workman brother would have had to look after her as he would his unmarried sister. But Members who know more than I do, ignorant as I am of the customs in India, tell me that the widowed sister is generally looked after by her husband's relatives. If that is the case, my whole argument for putting forward the widowed sister falls to the ground and I therefore will not press my amendment.†

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadian Rural): Though the custom prevails that the widowed sister is supported by the family of her husband, it may often happen that she was supported by and was dependent on the earnings of her deceased brother. In such a case it will be very hard if we do not allow the widowed sister also some advantage under this Bill. Therefore I propose that the words "or widowed" should be inserted after the word "unmarried" and before the word "sister".

Mr. President: Amendment moved:

"In clause 2 (1) in sub-clause (d), before the word 'sister' insert the words 'or widowed'."

The Honourable Mr. C. A. Innes: The reason why we do not include the widowed sister is the very reason which has been given to the House by Captain Sassoon. We understood that ordinarily a widowed sister lives in the family to which she is married. That is certainly the case over the greater part of Madras. There may be exceptional cases where a widowed sister does depend for maintenance on her deceased brother, but, Sir, I do not think that in a Bill of this kind we should try to provide for every exceptional case. It seems to me to be a much sounder principle to keep the list of relatives as small as possible, and in the whole Bill we have tried to make the list of dependents as small as ever we possibly could in order that the real dependents may get the benefits of the Bill.

Mr. J. Chaudhuri: Sir, I support the amendment and for this reason. The criterion should be whether the widowed sister lives in the husband's family or in a brother's family. We know that in Bengal and some other places a widowed sister may live in a brother's and not in a husband's family. It all depends upon the circumstances. In many cases the husband's family is not of sufficient means to maintain the widow; then the widow comes back to her parents' house and lives in her parents' family.

* "That in sub-clause (d), of clause 2 (1):

(a) the word 'husband' be omitted;

(b) after the word 'mother' the words 'if he or she is infirm or disabled or has no other son or daughter to provide for him or her' be inserted."

† "That in sub-clause (d), of clause 2 (1) after the word 'unmarried' the words 'or widowed' be inserted."

[Mr. J. Chaudhuri.]

In such cases I submit it will be hardship to her not to have the advantages provided in this Bill for her benefit as well.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): Sir, my friend has referred to the widowed sister. He is a lawyer, but he seems to have forgotten the elementary principle of Hindu law that a widowed sister has no claim, no legal claim upon her parents for her maintenance: and when under the general law she has no claim I fail to see why under the provisions of this Bill she would be given an exceptional treatment. I oppose the amendment.

Rai D. O. Barua Bahadur (Assam Valley: Non-Muhammadian): Sir, I beg to oppose this amendment also. It is too much to expect from the employer anything in the shape of compensation or maintenance for the sister. Sir, under the Hindu law a sister is not an heir to a brother, but in this case of payment of compensation the employer is going to be compelled to make good the deficit, and to pay compensation to the deceased's sister when her brother is dead. Sir, it will be extending the principles of humanity to a very great extent. The institutions of public utility will suffer to a great extent if we go on extending such benefits to such relations as a widowed sister. And there is another aspect of the matter, Sir. When a brother dies of accident or injuries, then the sister will be brought from her husband's family into the family of her deceased brother, and she will be put forth to claim compensation on account of the decease of her brother. So there will be many difficulties in giving compensation or ascertaining whether the compensation should be given to the sister or not. So, Sir, in these circumstances at least I beg to oppose the amendment.

(An Honourable Member: "I move that the question be put.")

The motion was adopted.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. N. M. Joshi: Sir, I beg to move the following amendment:

"In sub-clause (d) of clause 2 (1):

'After the word 'sister' insert the words 'grand-father, grand-mother, minor grand-son and unmarried grand-daughter'."

Sir, I generally accept the principle enunciated by the Honourable Mover of this Bill that we should not have a very large number of relatives in addition to the list already given. But even after having accepted that, I propose that these four relatives mentioned by me should be added. The cases which I have suggested are not exceptional cases. You will always find some cases where a grand-father or a grand-mother is dependent upon a grand-son or grand-daughter, and *vice versa*, and it is therefore necessary that we should include them in this list. I may add for the information of my Honourable friend, Mr. Barua, that by adding to the number of relatives here the amount of compensation is not increased at all. The simple effect of my amendment will be that in those cases where a man leaves only a grand-father or a grand-mother or a grand-son or a grand-daughter, these relatives, namely, the grand-father, grand-mother, grand-son or grand-daughter will not be without compensation if they are found to be dependent upon a deceased workman. Sir, my amendment will, I hope, be acceptable to the House.

The President: Further amendment moved :

"In sub-clause (d) of clause 2 (1), after the word 'sister' insert the words 'grand-father, grand-mother, minor grand-son and unmarried grand-daughter'."

Mr. B. N. Misra (Orissa Division: Non-Muhammadian): May I rise to a point of order. My amendment runs 'or such others as being closely related absolutely depend on, or are entitled to maintenance by law and custom'. This will cover the persons that have been proposed by Mr. Joshi. So, practically, if his amendment is voted against, my amendment will be rather weakened. I think, my amendment being of a more general character, it ought to precede his amendment.

The President: As regards that, Honourable Members may in this case simply vote against Mr. Joshi and then move their own.

The Honourable Mr. C. A. Innes: Sir, Mr. Joshi, I am glad to see, has agreed to the general principle of this clause as at present drafted, namely, that we should keep the list of relatives confined to a comparatively small number. The only point, the only difficulty, is, exactly where we should draw the line, and I should like briefly to explain why we put it as in the Bill, why we have kept the list as small as ever we could. In the first place, as I explained when I made my speech this morning, we are out for simplicity and ease of working in the Bill. That is the reason why we have tried to keep the list of dependants confined as far as possible to people ordinarily living in the same house as the deceased workman. We also felt that if we included in the list, as proposed in the amendment, a long line of distant relatives who might not be at all dependent on the workman, we might add to the work of the Commissioner, since under clause 8 (4) the Commissioner would probably feel bound to issue notices to all those relatives. That might result in delay in distributing the compensation to the people, to the closer relatives who really ought to get the benefit of it. And another obvious disadvantage in a long list which rather weighed with me was that the Commissioner under clause 8 (4) might not be able to give these remote relatives any compensation at all. We feared that if we had an unduly long list, we might excite hopes which, in practice, in the result, would not be fulfilled, and we might create a good deal of heart-burning. These dependants might go to the Commissioner, claim compensation, and find that the Commissioner had decided to give the whole compensation to the widow, the sons, and so on, and would refuse them any compensation at all. On the whole therefore we decided that the wiser course was to keep this list of relatives just as small as ever we could, and that is the reason why we excluded the grand-father and the other people mentioned by Mr. Joshi.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban): Sir, I wish to say only a few words on this amendment of Mr. Joshi's. I agree with Mr. Joshi and also with my Honourable friend, Mr. Innes, that the list of relatives or dependants should be as small as possible. But I think the suggestion that Mr. Joshi has made has a good deal of force in it. Our experience is that we do find a grand-father and grand-mother dependent upon the grand-son, and if the grand-son suddenly passes away it would be difficult for the old grand-father and the old grand-mother to maintain themselves in their old age. So, as far as that part of Mr. Joshi's amendment is concerned, in which he wishes to extend the benefit to the grand-father and grand-mother, I am entirely in agreement with him. Unless

[Mr. Jamnadas Dwarkadas.]

this benefit is extended to them, I feel, Sir, that it would be a great hardship to the grand-father and grand-mother to have to maintain themselves in their old age.

With regard to the minor grand-son and unmarried grand-daughter, I am not sure that the amendment is necessary. We find, Sir, from statistics that there is scarcely a workman above the age of 40; therefore you are not likely to find a workman leaving a minor grand-son or an unmarried grand-daughter. This part of the amendment, I think, is not necessary, but so far as the first part of the amendment is concerned, I give my strong support to it.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): Sir, I rise to oppose this amendment as I think it should not be accepted. Sir, I think the definition of the term "dependant" is already wide enough and I am sure any undue further extension would not be allowed by the House. The obvious result will be the whittling down of the amount payable to each such relation and an increase in litigation in some cases.

I am aware that some representative public bodies consulted in this connection have pointed out that the term "dependant" covers a much wider range under the corresponding English Act than is proposed to be assigned to it in the Bill under consideration. But I am also aware that some of them have made it clear that this term should cover only such close and near relations as are actually dependent upon the deceased or his earnings at the time of his death. The remarkable point in this connection is, however, that the Honourable Mover of the amendment is not true to his own original idea, as expressed in his Note of Dissent, where he stated that under "dependant" he would include 'grand-father, grand-mother, in case both the parents are dead, and minor fatherless grand-son and minor fatherless grand-daughter.' It goes without saying, Sir, that this amendment covers a much wider field than was originally intended by Mr. Joshi. I think, Sir, that the general feeling among those concerned is that the list of dependants should be kept reasonably small. I beg therefore to suggest, Sir, that the definition of the term "dependant" as already amended, may remain as it is and we may very well wait and see how it works.

Sir Henry Moncreiff Smith (Secretary, Legislative Department): Sir, I have only one word to say on the drafting of this amendment. Mr. Jamnadas Dwarkadas expressed a doubt as to whether we should find a minor grand-son or an unmarried grand-daughter. I also have a very grave doubt as to whether we shall find any unmarried grand-fathers or grand-mothers.

Dr. Nand Lal: Sir, if I may be allowed to move my amendment (No. 6) I believe Mr. Joshi will withdraw his amendment.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, one practical difficulty which weighed both with the original Committee which sat in June and again with the Joint Select Committee, was that if the grand-father or the grand-mother had other children who were earning their livelihood it would be wrong to bring them in to participate in the benefit. As some Honourable Members have expressed considerable feeling in the matter, I may say on behalf of Government that we shall be willing to

accept a compromise so as to include the paternal grand-parent provided that both parents are dead and the son's children, that is, the minor children, if their father is dead. If that is accepted by the House generally we shall introduce that addition, provided that my friend, Sir Henry Moncrieff Smith, is able to put in a draft which avoids unmarried grand-parents. .

Mr. President: Am I to understand that the Government Member has an amendment ready?

Sir Henry Moncrieff Smith: I have nothing ready, Sir. I would suggest that consideration of this point be postponed to give the drafting Department time to look into it.

Mr. President: The amendment moved is:

"In sub-clause (d) of clause 2 (1) after the word 'sister' insert the words 'grand-father, grand mother, minor grand-son and unmarried grand-daughter'."

The original question was that that amendment be made.

Since which an amendment has been moved that further consideration of sub-clause (d) of sub-section (1) of section 2 be postponed.

The Honourable Mr. C. A. Innes: Sir, I do not know if Sir Henry Moncrieff Smith would accept it, but we have got the whole clause re-drafted. If so, I think the House might possibly be prepared to go on with the consideration of this clause. What we suggest is that clause 2 (1) (d) read as follows:

"Dependant" means the following relatives of a deceased workman, namely: wife, husband, parent, paternal grand-father if the parent be dead, minor child, minor brother, unmarried sister and son's children if their father be dead."

That seems to me to bring them all in, Sir.

Mr. President: I think we might proceed to add this sub-section of the clause to the Bill on the understanding that the Government will insert this particular amendment in another place. I imagine that the terms of this amendment are not likely to lead to a constitutional crisis between the two Chambers.

Mr. N. M. Joshi: Sir, I ask for leave to withdraw my amendment.

The amendment (No. 4) was, by leave of the Assembly, withdrawn.

Mr. President: Does the Honourable Member for Commerce also ask for leave to withdraw his motion?

The Honourable Mr. C. A. Innes: Yes, Sir.

The motion was, by leave of the Assembly, withdrawn.

Mr. President: That disposes of amendments Nos. 4, 5, 6 and 7.

Dr. Nand Lal: Not No. 6, Sir.

Mr. President: I am prepared to hear the Honourable Member from the Punjab why it is not disposed of.

Dr. Nand Lal: Sir, the amendment which stands in my name runs as follows:

"That in sub-clause (d) of clause 2 (1) after the word 'sister' insert the words 'sonless grand-father, sonless grand-mother, parentless minor grand-child'."

[Dr. Nand Lal.]

The clause which is before the House when read with the proposed amendment will read as follows:

" 'Dependant' means the wife, husband, father, mother, minor son, minor daughter, minor brother or unmarried sister, sonless grand-father, sonless grand-mother, parentless minor grand-child of a deceased workman."

Mr. President: I must point out to the Honourable Member that though he is in order technically in moving this amendment, in substance, as the Honourable Member knows, he has the explicit pledge of the Government that they are going to introduce a new sub-clause in another place to meet precisely the point which he wants.

Dr. Nand Lal: If I rightly followed the Government to my understanding, it does not include grand-child, and if it does, certainly I shall be the first person to appreciate that idea.

May I ask that the amendment which the Government proposes to place before the House may be read out?

The Honourable Mr. C. A. Innes: I will answer the Honourable Member, if I may. The amendment which the Government proposed was that the whole clause should be re-drafted as follows:

" 'Dependant' means the following relatives of the deceased workman, namely:

Wife, husband, parents, paternal grand-parent if both parents be dead, minor child, minor brother, unmarried sister, son's children if their father be dead."

Dr. Nand Lal: Yes, Sir, it includes my amendment, and I therefore withdraw my amendment (No. 6).

Mr. B. N. Misra: Sir, my amendment is rather different from the amendments put forward by other Members. I move my amendment, which runs as follows:

" In sub-clause (d) of clause 2 (1) after the word 'sister' the following be inserted:

'or such others as being closely related, absolutely depend on, or are entitled to maintenance by law and custom.'"

Sir, some dependants of the workmen have been included in the clause, but as far as I understood the Honourable Member for Commerce, Mr. Innes and Mr. Joshi, they said that they do not want a large number of dependants as it will complicate matters, there will be difficulty and litigation, the amount they will get will be very small and so on. But I do not contemplate such a case. What I contemplate is where there is a person absolutely dependant on the workman, say, for instance, grand-mother—mother's mother. The mother's mother owing to natural affection brought up the grandson. In fact the mother's mother spent all her earnings and income for the grandson and brought him up. When the grandson grew he earned money and helped the grandmother. But when the grandson passes away, the grandmother is really at a disadvantage, having spent all her income and property over the grandson, on whom she was absolutely dependent. I do not contemplate a case in which if the grandson dies there are others living to help her. Take the case where there is a grandmother and grandson. The grandson grew up and was employed in some factory or somewhere else and died on account of some injury or accident. Then, the grandmother is, I think, in justice entitled to have a share from the compensation given to such a deceased workman. I consider it is only just to classify her as dependant or relation absolutely dependent upon the deceased workman. I think there will be

no objection to giving some compensation or classifying her as a dependant. For instance, there is a widow sister-in-law. There are two brothers. The elder brother died and the elder brother's wife brought up her husband's younger brother. When this boy grew up, he got employed and supported his brother's wife, because she spent all her money over him and took so much trouble over her husband's brother. If this man dies, the woman should be entitled under those circumstances to get compensation, because she was absolutely dependent on the deceased workman. The present definition covers minor son. But sometimes there may be a grown up son, who is blind, or a grown up son either deaf or dumb. Such incapable persons who are unable to earn are naturally dependent upon the income or earning of their father. In such cases even the Hindu law states that such blind, deaf or dumb sons or a son who suffers from leprosy or other incurable diseases should be maintained by the father even if they are grown up. There is no such provision. The provision only enables the minor son to be a dependant on the workman. But, in such cases, as I have pointed out, according to the Hindu Law, the father is bound to maintain them. When such a workman dies, I think these blind, deaf or dumb sons should be classified as dependants and they should get compensation. I think Honourable Members of the House will not view my amendment as adding to the list. My amendment meets such other urgent and exceptional cases. I hope Honourable Members of the House will accept the amendment. And then the second part includes those who by law and custom are entitled to maintenance. I think all the lawyer Members of this House will agree with me that the grandfather or grandmother or grandson are real dependants. Such persons ought to be allowed to be classified as dependants of the deceased workman, because they are entitled to maintenance by law. With these words, Sir, I move my amendment.

Mr. J. Chaudhuri: I oppose this amendment, Sir. My friend is under a misapprehension that we are discussing the law of inheritance here. We are neither considering the question of Hindu Law or Muhammadan Law or any other law. The simple principle is that when a workman is injured in the course of employment in a risky industry whether his immediate dependants would get compensation or not; and I submit that the amendment that Government proposes to introduce with regard to this clause is as far as we can reasonably go. The compensation will be available to Hindus, Muhammadans, Christians, Jews and other communities, all alike. So I hope my friends will not misunderstand the scope of this Bill and go off at a tangent and discuss Hindu law of inheritance or the Muhammadan law of inheritance or any other law or custom with regard to maintenance or similar intricate questions. With these general remarks I beg to oppose this motion.

(Several Honourable Members: "The question may now be put.")

(Mr. J. N. Mukherjee made a remark to a Member behind him, which was inaudible.)

Mr. President: If the Honourable Member wishes to speak, he should address the Chair.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): I beg to address the Chair, and I beg the Chair's pardon. I stood up to speak but was interrupted by my friend from behind. However, I observe that a tendency is growing up on the part

[Mr. J. N. Mukherjee.]

of certain Members of the House to cry "vote, vote" without trying to enter at all into the merits of a question. It is all very well for people who cannot imagine that they may at any time be the possible recipients of any portion of the compensation money that may have to be paid to a deceased workman's relations, to consider these question unsympathetically, and to try and rush things in an undeserved manner. I stand up, however, to protest against any such tendency. I submit, Sir, that the question before the House is a very important one, and we can not lose sight of the question of the distribution of the compensation money. The question is not one of heirship. Many of my Honourable friends have misunderstood it. The idea underlying the question is that those who have been deprived of support by the death or injury of a workman should continue to receive support. I think, Sir, that if the clause which deals with the distribution of the compensation money by the Commissioner is defective in any respect, it should be amended in its appropriate place. But, at the present moment, what we are considering is, in what manner the ring of recipients should be determined in the first place. My Honourable friend, Mr. Chaudhuri, stood up and said that there was no question of inheritance involved in the case. Certainly, there is no question of inheritance in the amendment proposed by my Honourable friend, Mr. Misra. It refers only to those relations of a deceased workman, who are entitled to maintenance by law and custom. The point is, if a workman is killed while working, certain dependants of his are thereby deprived of their maintenance or support, which they used to get from the deceased workman in his life-time. That is the chief point we have to keep in view. That being so, the question of heirship does not arise. The Commissioner, or the person who has got to distribute this money is given by the Bill some discretion in the matter, and he may pick out of the persons specified in this circle or ring of men those who are best fitted to receive the compensation. So, the question ought not to be a very complicated one; at any rate, we ought not to complicate it by imagining things which do not exist in the body of the Bill. Therefore I submit that, although as a matter of fact there may be some other dependants, as for instance, old maid servants or such like persons, who are not contemplated by the proposed amendment or by the Bill, the amendment suggests only such persons as are closely related and absolutely dependent on the deceased workman. I suppose the words "absolutely depend on" undoubtedly mean those dependants who are within the circle of his relations. If not, the matter may be cleared up.

Mr. B. N. Misra: I meant relations.

Mr. J. N. Mukherjee: Clause 8 of the Bill bears on this question of compensation. The first sub-clause of it says:

"Compensation payable in respect of a workman whose injury has resulted in death shall be deposited with the Commissioner, and any sum so deposited shall be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one such dependant, and the sum so allotted to any dependant shall be paid to him or, if he is a person under any legal disability, be invested, applied or otherwise dealt with for his benefit during such disability in such manner as the Commissioner thinks fit."

Then we pass on to where it is not a case of death . . .

Mr. President: Order, order. I point out to the Honourable Member that we are dealing here with the definition of dependants and not with

the procedure to be adopted by the Commissioner in dividing up the proceeds of any compensation.

Mr. J. N. Mukherjee: What I am pointing out is not a question of procedure at all, but a question of right to receive the compensation. If I can make myself intelligible, what I mean to say is this. If the ring of possible recipients of this compensation money be not unduly restricted, the Commissioner will have the opportunity of paying the money to the person or persons who, to his mind, may be the fittest person or persons, among the relatives of the deceased workman to receive the compensation money; and what is more, it is provided in the Bill that in case there is no such dependant within that ring mentioned in the definition, the money is to be escheated or returned to the person or employer who has got to pay the money to the Commissioner. Therefore in view of the danger of unduly restricting the number of possible recipients we are by the proposed amendment attempting to enlarge the circle and reduce the chance of an escheat or return back of the money to the person who paid it. If the object of the Bill is to provide for the distribution of the compensation money in a suitable manner, so that the dependants, that is to say, the persons who should have a share in the compensation money, the number of such relations should not be unduly restricted, in the manner proposed. The effect of such restriction will be what I have submitted to the House. Therefore it is not a question of procedure; it is a question of right which is intimately mixed up with this question of definition. I think, Sir, there is a great deal to be considered so far as the present amendment is concerned. We know that there are certain persons in the body of Hindu law who are not heirs, but who receive maintenance and whom a Hindu is bound to maintain. If a definition is laid down in the Bill without contemplating the existence of such people, my idea is that it will work great hardship and the whole object of the Bill will be frustrated by so unduly restricting the circle of dependants entitled to receive the compensation, and for the reason I have just submitted, namely, that if they are not mentioned or otherwise indicated in the definition, the compensation will revert to the person who paid it. I therefore submit for the consideration of the House that this amendment be taken into sympathetic consideration.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadian Urban) : Sir, as one of those unfortunates who unintentionally offended Mr. Mukherjee, a word of explanation as to why we asked that the question should be put may be in order. Sir, the object and scope of this Bill has not been correctly understood by the framers of this amendment. It is creating a special right, a special remedy, a speedy remedy in order to benefit workmen and their dependants. We did not want to complicate the procedure by entering into questions of who are dependants and who are not dependants. We wanted a rule of thumb by which the Commissioner is not to embark upon an inquiry whether a certain person was dependant or not. The law presumes in certain cases they must have been dependant, and we take care to enumerate from our limited knowledge as to who are the likely persons who can be safely said to depend without any evidence about it. What is it this amendment wants? "Such others as being closely related." In the first place the Commissioner will have to determine whether the person claiming compensation is closely related or related in any other way, and what is the definition of close relation? Is my wife's sister a close relation of mine or not? I know, Sir, of many a case where an unfortunate widowed sister lives with

[Rao Bahadur T. Rangachariar.]

her married sister and depends upon that sister and her husband. My friend, Mr. Mukherjee, knows that my wife's sister or my mother-in-law, who is often a welcome visitor in my house has no legal claim on me. Now, you have the case of those closely related or absolutely dependant upon. How is the poor Commissioner to determine between these two questions and again who are entitled to maintenance by law or custom? Is it a family custom? Is it *kala achar* or *desa achar*? What is this poor Commissioner to do? I have great respect for my friend, Mr. Mukherjee, and usually he has a clear vision in this matter. How is the custom to be proved? The poor Commissioner, in distributing this small amount of Rs. 200, Rs. 300 or Rs. 500, as the case may be, has to embark upon an inquiry as to whether there is a custom and how many witnesses there are to prove the custom; whether there have been prior judgments in support of the custom and whether it has been recognised in a court. All these things have to be determined. Is this the way this special remedy is to be given? If my Honourable friends will think about it they will see it is quite out of place. Therefore, you must have a rule of thumb, and the Legislature must provide that rule of thumb. I earnestly appeal to them not to complicate the machinery in this way.

Sir Deva Prasad Sarvadhikary: Sir, Mr. Rangachariar's misfortunes are so few that, when he brings forward one, one is inclined to sympathise with him. He knows his part of the country; Mr. Mukherjee and I know ours, and Mr. Misra knows his. Therefore, even at the sacrifice of losing reputation for clarity of vision at Mr. Rangachariar's hands, I give my support to this amendment. Mr. Misra has mentioned a very pertinent case, the widow of the brother, divided or undivided, does not matter. Mr. Rangachariar's mother-in-law and sister-in-law may be able to take care of themselves, for they may have their brothers or other relations but this poor widow, of whom Bengal knows so well (*Rao Bahadur T. Rangachariar*: "Of whom we all know so well"), Orissa knows so well, needs protection which the amendment suggests.

Mr. Mukherjee was referring at some length to clause 8 of the Bill. That helps us in realising that there is really no difficulty of this kind that Mr. Rangachariar thinks of. The Commissioner, who knows the local circumstances, knows local customs and knows exactly how matters stand among the classes of people concerned, will be able to deal with the question of apportionment under the very large discretionary powers that are given to him under clause 8. What are you doing here is merely extending the scope of the definition but not the liability of the employer or very much adding to the work of the Commissioner.

Supposing this widow that I am referring to—and she looms very large in Bengal—was the only dependant, not in the sense of the definition here, but the only dependant in the family, as she often is, she being not in the list, she will be absolutely unprovided for although money may be available. I do not see, Sir, that very great difficulty will come in because what is close relation, what is absolute dependence, what the law and custom in a particular tract of country is, are not fully defined. No one will be any the worse for this expansion of scope. The Commissioner may have some more work to do, but under sub-section (1) of clause 8 discretion is allowed to him to do as he thinks fit.

Mr. J. Chaudhuri: I move that the question be now put.

The Honourable Mr. A. O. Chatterjee: Sir, my Honourable friend, Mr. Rangachariar, has stated the Government case so well that I had thought it would be unnecessary for us to participate in the debate on this amendment. But my Honourable friend opposite has quoted, or stressed his experience of the conditions of Bengal, and therefore I feel more or less bound to get up and intervene.

I think my Honourable friend, Sir Deva Prasad, as well as Mr. Mukherjee over here, are really confusing the issues very considerably. They are thinking of middle-class families. We want this Bill to apply to the working-classes, to people whose income is very limited indeed. Personally, Sir, I think I have as much experience of Bengali families as my Honourable friends have, and I do not think among the working classes it is at all common to find a brother's widow dependent on a younger brother.

Sir Deva Prasad Sarvadhikary: Many.

The Honourable Mr. A. O. Chatterjee: Excuse me. I do not agree. They all earn their own livelihood. The earnings of a man are not really sufficient to maintain a very large family of widows. Therefore, Sir, I do not think the sentimental question arises at all. As Mr. Rangachariar has already pointed out, the whole scope of the Bill is based on the idea that dependency will not have to be proved and I think this amendment will cut athwart the whole principle of the Bill. I hope the House will not accept the amendment.

The motion was negatived.

The Honourable Mr. O. A. Innes: Sir, have I your permission—the Legislative Department have now put into shape the amendment of which, with the permission of the House, I gave notice a little while ago—have I your permission, Sir, to move it?

[Permission given.]

I beg to move:

"That for clause 2 (1) (d) the following be substituted:

'(d) 'Dependant' means any of the following relations of a deceased workman,

A wife, husband, parent, minor son, minor daughter, minor brother or unmarried sister;

and includes the minor children of a deceased son of the workman, and, where no parent of the workman is alive, a paternal grand-parent'."

The motion was adopted.

Mr. N. O. Sircar: My amendment is:

"That in sub-clause (f) of clause 2 (1), after the word 'person' the words 'or body of persons whether incorporated or not' be inserted."

In clause 2 (1) (e) in the definition of 'employer' we have the words "whether incorporated or not" after the word 'persons,' and I want in the case of managing agents likewise to insert the words "or body of persons whether incorporated or not" after the word 'person,' because the managing agent may be the managing agent of a limited liability company and the company may be incorporated; therefore I want to insert those words after the word 'person'.

Mr. President: Where does the Honourable Member mean to insert those words, after the word 'person' in line 1, or after the word 'person' in line 3?

Mr. N. C. Sircar: I want the insertion in line 3.

Mr. President: The question is:

"That in sub-clause (f) of clause 2 (1), after the word 'person' in line 3 the words 'or body of persons whether incorporated or not' be inserted."

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, my amendment* relates to the definition of the words "qualified medical practitioner." As it now stands in the proposed Bill, Honourable Members will see that "qualified medical practitioner" means any person registered under the Medical Act, 1858, or any Act amending the same, or under any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners or in any area where no such last-mentioned Act is in force any person declared by the Local Government by notification in the local official Gazette, to be a qualified medical practitioner for the purposes of this Act. The object of my amendment is to omit the words "where no such last-mentioned Act is in force." The result of that will be that the Local Government may declare a person to be a qualified medical practitioner for the purposes of this Act even in places where a Medical Act or any other Act referred to previously is in force. My object is this: I want to give wide power to Local Governments to qualify medical practitioners for the purposes of this Act. Now, medical practitioners have to certify as to the injuries sustained by these workmen and as we know, Sir, our country is not full of western medical practitioners. It is very difficult to find such medical practitioners even in taluk centres practising western medical science or fully qualified to be registered under this Act; and I know also there is a prejudice among this learned body of doctors to include in their fold persons who, although they may be qualified in the western science, take in the assistance of Vaidyans or Hakims; they consider that to be a disqualification. In fact, I know there was a case in Madras

Mr. Jamnadas Dwarkadas: In Bombay also.

Rao Bahadur T. Rangachariar: I do not know of Bombay, but I know of two cases in Madras where two very eminent men of the medical profession practising the western medicine had committed the sin of consulting a Vaidyan in very serious cases. The Vaidyan gave them good and sound advice and saved the life of the patient. They had not succeeded by the western system and so they had called in the assistance of the Vaidyan and succeeded in effecting a cure. This was considered a grave dereliction of duty and breach of discipline: (*A Voice*: "Grave misconduct.") So that there was a considerable agitation amongst the gentlemen practising the western science that they should be excluded from the register of medical practitioners. Sir, I know one doctor, who is also my doctor, who is well known in Madras, and who does not scruple about these things. When he finds that with the western system he cannot succeed in a case he invokes the aid of the Indian medicine. In fact, he

* "That in clause (i) of clause 2 (1) the words 'in any area where no such last named Act is in force' be omitted."

was put on special duty by the Madras Government to investigate the possibilities of including these drugs also in the pharmacopœa—I hope I am using the right word—of these medical people. Sir, therefore I want to provide that persons who are not on the register should also be declared to be qualified. I do not say that they should be declared qualified by any irresponsible person. I will leave the power to the Local Government. I fully trust the Local Government, I fully trust to the judgment of the Local Government, and I say that if the Local Government chooses to say that a certain person may be declared to be a qualified medical practitioner for the purposes of this Act, why should we quarrel with it? Why should we deprive the Local Government of the power to declare certain people qualified because this Medical Act is in force? In other places where the Medical Act is not in force you trust to the judgment of the Local Government, but if the Medical Act is in force then the Local Government is not to be trusted. I think it is not right. Therefore, I want to give the power to the Local Government to declare a person to be a qualified medical practitioner for the purposes of this Act even in places where the Medical Act is not in force. That is the object of this amendment. I therefore, Sir, move the deletion of these words.

The Honourable Mr. A. C. Chatterjee: Sir, I think my Honourable friend, Mr. Rangachariar, has moved this amendment under a misapprehension. It struck me when he was speaking that he thought that unless the definition of a qualified medical practitioner was amended in the way suggested by him, it would not be possible for a man to be attended by a Vaid or Hakim, and it would not be possible for him to tender the evidence of a Vaid or Hakim or of a man who was not qualified in the manner as at present suggested, before a Commissioner. I think, Sir, that is not the intention of the Bill. So far as I can discover, the reference to 'a qualified medical practitioner' comes in only in clauses 6, 11 and 32. The Honourable gentleman will find that it is only where a workman applies for a review under clause 6 that he has to produce the certificate of a medical practitioner. Also it is only where an employer compels a workman to accept either examination or treatment given by his own doctor that the definition of 'a qualified medical practitioner' comes in. Sir, in the interests of the workman himself, I think it would be most dangerous to authorise the employer to employ any kind of medical practitioner who may be available in the locality. There is nothing whatever to prevent a man from putting forward the opinion of his own Vaid or his own Hakim or any kind of medical practitioner before the Commissioner regarding the injuries sustained by him.

Dr. Nand Lal: He will be recognised by the Local Government.

The Honourable Mr. A. C. Chatterjee: I am coming to that. Then, Sir, my Honourable friend is trying to draw a red herring across the whole discussion by quoting the case of a man who was disqualified in Madras, according to his account, because he consulted Vaid and Hakims. Well, Sir, the Honourable gentleman himself has mentioned the case of his own medical attendant who has been entrusted by the Local Government with most important inquiries in spite of the fact that he does consort with Vaid and Hakims. I think, Sir, my Honourable friend has demolished his own case.

My Honourable friend has suggested that we should not distrust the Local Governments. I, Sir, have no desire whatever to suggest that

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we should not trust Local Governments. But these Acts, which are referred to in the definition, have been passed by local Legislatures. All these Acts have been passed by the representatives of the people in the local Legislatures and it is for the local Legislative Councils to amend the Acts if they consider it desirable to do so. We would really be interfering with the discretion of the representatives of the people, of men who are serving on the local Legislative Councils. If the amendment of the Honourable Member is accepted, there will be a very serious danger indeed of a certain amount of conflict between the Local Governments and the local Legislative Councils. My Honourable friend shakes his head in his usual oracular manner, but I again repeat my assertion that we will only be creating friction between the Local Governments and the local Legislative Councils. Sir, I have here all the local Acts. I do not know if my Honourable friend has studied them. He will find that under these Acts practically everybody is entitled to registration. I will just quote from the Madras Act. According to the Schedule of that Act, all the following persons are entitled to be registered:

"Persons possessing the degree of Doctor, Bachelor and Licentiate of Medicine, and Master, Bachelor and Licentiate of Surgery, of the Universities of Madras, Bombay, Calcutta, Allahabad and Lahore. Persons possessing a diploma or certificate granted by the British Indian Government or the Government of Ceylon to any person trained in medical college or school (*I emphasise the word 'school'*) declaring him to be qualified to practise medicine and surgery."

Mr. T. V. Seshagiri Ayyar: There are rules also.

Mr. A. C. Chatterjee: Yes, of course there are rules. That is what I am suggesting. We are really leaving it to the local Legislative Councils to consider which persons should be considered as qualified medical practitioners.

Rao Bahadur T. Rangachariar: Should also be registered. Why so?

Mr. A. C. Chatterjee: Yes, exactly. We are leaving it to the representatives of the people. My Honourable friend in this case does not trust the representatives of the people. He wants to give the discretion to Local Governments. I think, Sir, his amendment is extraordinarily unsound and I hope the House will reject it.

Mr. Darcy Lindsay (Bengal: European): I agree, Sir, with my Honourable friend, Mr. Chatterjee, that this is a most undesirable amendment to make. It would be a grave error for this House to indicate to Local Governments that there should be any lower standard of qualification for medical practitioners than their several Acts allow. We have the Indian Factories Act, and the Act of 1858 referred to in this clause. There is also, Sir, the point of view of insurance. We have heard from my Honourable friend, Mr. Kamat, that insurance forms a very important feature of this Act and that the employer is to be safeguarded by effecting insurance and, as Mr. Kamat said, at most favourable rates. That being so, Sir, we must take into consideration the point of view of the insurance companies, and any weakening of the medical qualification will, in my opinion, strike at the very root of the Act. The uncertainty of the position if it is left to Local Governments to modify the qualifications may make it almost impossible for insurance companies to give that protection that Mr. Kamat desires. The Advisory Committee which sat in Simla had the advantage of the expert opinion of Mr. McBride, a gentleman who has

a world-wide knowledge of the Workmen's Compensation Act and he was very emphatic on this particular point that the reins must be tightened where medical qualifications were concerned. One point where the advice of the medical officer is of great importance is this. A workman may go to his country and his return to work is indefinite. The employer or the insurance company who is protecting the employer wishes to know whether the workman is able to return to work. A qualified medical practitioner has to be engaged to examine the man and report. As my Honourable friend, Mr. Chatterjee, pointed out, if the company or the employer is permitted to engage the services of a man of lower qualification, he may come to a decision greatly against the interests of the workman himself and I do not agree with Mr. Rangachariar that this amendment would be for the benefit of the workman. My Honourable friend in his note of dissent says "There may be persons who for reasons of their own may not wish to register themselves or who are not fully qualified to come on the register and yet qualified enough to say 'a man has lost a thumb'." I ask you, Sir, is that any qualification—to say a man has lost a thumb? Anybody can say "a man has lost a thumb" but what we want is qualification for the proper treatment of the injured thumb, and also to say whether the wound is sufficiently healed to enable the workman to return to his work. With these words, Sir, I strongly oppose the amendment.

Dr. Nand Lal: Sir, I am in support of this amendment. Three grounds have been advanced in opposition to it. The first is that the employer will appoint a man according to his own choice, and that man, possibly to see that the object of the employer is attended to, may not act properly and may, thus, eventually prove prejudicial to the workman. The other ground which has been advanced is that it is quite probable that inefficient surgeons or inefficient physicians may be recognised and this recognition may not be beneficial either to the employer or to the employee. The third ground which has been advanced, in opposition, as I said before, is this, that if there are such people they may make efforts to be qualified, and after their having been so qualified, their names will have an entry on the register and therefore they will come within the scope of this Bill, and if they are not sufficiently able to stand the test, then they are utterly unfit to handle this work, and so the amendment is of no avail. These grounds have been set forth, as I have already submitted, in opposition.

When I examine all these grounds I find that there is no force in any of them. First of all, if the employer is without scruples, he is quite prepared to stoop low, then there will be nothing to prevent him from stooping low in the case of recognised medical practitioners too. The Government Benches will bear this in mind that no quack or inefficient man will be allowed to give certificate or stand as a witness, but a man who has authoritatively been recognised. That recognition is the greatest test. Only that man will have that distinction who is really sufficiently able to certify or examine. Therefore, there is no fear, so far as that ground is concerned. The other ground that he will be incapable, so far as that question goes, there have been a number of cases where our Indian physicians and surgeons, though they have not passed the test in some first class recognized medical colleges, are equally able, and as regards these, this appeal is made. Suppose, in some area, there is no man who has got a diploma or a degree from some officially recognized medical college, but there is a man who has had training, officially enabling him to practise and, so far as practice goes, he has a fairly good experience and

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is fully capable of giving a certificate and fully capable of examining patient or injured workman and the expression of his opinion will be sufficient to determine the question of disablement. Why should the workman be deprived of the services of the man who is living close by? On the other hand, why should that able man be depreciated so far as merits go? The third ground is that he should make efforts to qualify him in that behalf. Does my learned friend seriously mean to say, that in order to give the benefit of his services and ability to a workman or to the employer he may undergo a special test? It is not necessary at all. If he is capable and able to handle these questions, then he will be recognised and will be considered sufficiently well-qualified for the purposes of this Act. (*Mr. J. Chaudhuri*: "Leave it to Local Government.") Yes, it will be done. That is why I am recommending this. (*Rao Bahadur T. Rangachariar*: "That is my amendment.") Therefore, I have submitted there is not much strength in the opposition, and consequently, being in favour of the spirit of the recommendation which has been embodied in this amendment, I very strongly support it.

The Honourable Mr. C. A. Innes: Sir, I would appeal to the House not to accept this amendment of Mr. Rangachariar, for if that amendment is accepted, it may have a very mischievous result. I should like just to give a history of this case. When I submitted the Bill to the House, we had a very much more stringent definition of qualified medical practitioners, and we made the definition very stringent indeed because we knew what an effect upon the Insurance Companies it would have if they thought that we were in any way inadequate in our standards of medical practice. In the Select Committee, in deference to views expressed to the Select Committee, we watered down our original definition and we adopted the existing definition of qualified medical practitioner, which has been taken from the Factories Act. Now, Sir, that definition came before the House only two days ago in regard to the Mines Bill. Exception was not taken to it by my Honourable friend, Mr. Rangachariar, nor by anybody else in this House. In this particular case the thing is of far greater importance, and yet Mr. Rangachariar wishes to alter the definition here. As I have said, it may have a very great effect upon the working of this Bill. It may send up the insurance rates for every employer in India, and I suggest, Sir, that if Mr. Rangachariar wishes to get recognition or registration of his Vaidis or Hakims or anybody else, let him do so by a separate Resolution but let him not prejudice the chances of this particular Bill working successfully. I oppose the amendment, Sir, most heartily.

Mr. N. M. Joshi: From the point of view of the working classes, I think, Sir, there is some disadvantage as well as some advantage in the amendment of my Honourable friend Mr. Rangachariar. In my opinion the disadvantage is that it may encourage them to go to Vaidis or Hakims, which I do not want them to do. But unfortunately, Sir, knowing the conditions of the working classes in this country and knowing very well section 11, sub-section (4), I think there is a great advantage in the amendment also. Unfortunately Government has thought it fit to include in the Bill, sub-section (4) of section 11, which is not found at least in English legislation. According to this clause a workman, if he is not treated by a qualified medical practitioner, stands to lose something. Sir, I know very well that a large number of the working class people do go to Vaidis and Hakims, and therefore if this section stands, that is, sub-section

(4) of section 11, then evidently there is a great advantage in having the expression 'qualified medical practitioner' defined, as my Honourable friend, Mr. Rangachariar, has done; otherwise a large number of the working class people when injured will lose the benefit of the Workmen's Compensation Bill, because a large number of them go to Vaidas and Hakims, and it would be quite easy for the employers to show that the injury was aggravated on account of the Vaid, that the workman got treatment from an ordinary qualified medical practitioner and not from a registered medical practitioner. I think therefore that on the whole I would support the amendment instead of opposing it.

Mr. Jamnadas Dwarkadas: Sir, the grievance, as far as I understand, that Mr. Rangachariar makes is this. He does not want men with lower qualifications to be included in the section of this Act. I think what Mr. Rangachariar complains against, is the exclusion of certain men, otherwise qualified men who have taken degrees in the recognized Universities, the exclusion of these men from the definition under the Act.

(Dr. Nand Lal was rising from his seat.)

I can explain better if I am not interrupted. Mr. Rangachariar, I think, complained that there have been cases in which qualified medical men, who were known to have degrees and were recognized by the Universities, were excluded by the Medical Council because they showed tendency in many cases to prefer the Ayurvedic or Unani system to the English system, or because they also took the assistance of these two systems of medical examination in certain cases. Some years ago in Bombay we had a case like that, I mean the case of Dr. Popat Prabhuram, L.M.S., of the Bombay University, a well-known and highly respected physician of many years' standing. He has been qualified medical practitioner for many years past, but he was disqualified by the Medical Council on the ground—and this Medical Council I am constrained to say consisted mostly of Indian doctors—he was disqualified on the ground that he was guilty of grave misconduct in as much as he used to take the assistance of the Ayurvedic or Unani systems of medicine. That is a grave injustice; there is not the slightest doubt about that. I may also point out that in Bombay at any rate the English doctors, who are not in the Council, unfortunately, fought in favour of the inclusion of Dr. Popat and said that they themselves had found that in many cases the assistance of men who knew the Ayurvedic system was very helpful to them. Now the difficulty when you come to deal with Ayurvedic and Unani practitioners is that you have not got an organization from which you can, say, pick out the best qualified men. I quite recognize that difficulty, though there should be nothing in the Act to prevent such men as advocate the use of the Ayurvedic system from being registered; and if they refuse to be registered because their advocacy of the Ayurvedic system is challenged, then I should think they are doing an act which commends itself to us and is worthy of our respect rather than of our condemnation. But in laying this grievance we should not forget that it is a case which can be fought out on its own merits. I am in entire agreement with the grievance that Mr. Rangachariar makes. I think it is a great grievance and it has got to be redressed and fought out. But I think it ought to be made the subject of a full-dress debate if this Assembly has the power to have a discussion on it! Or, at any rate, we ought to agitate in our provinces to get the local Legislatures to amend the Act so as to make the inclusion of such practitioners possible under the definition given in the Act. I therefore think that we should be justified in carrying the section as it stands and in

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throwing out Mr. Rangachariar's amendment. If I may suggest to Mr. Rangachariar—I am very happy to do so—I think this grievance may form the subject of a separate debate.

Dr. H. S. Gour: Sir, I am afraid my friend on the left has taken advantage of the provisions of this Workmen's Compensation Act to deliver a flank attack upon a wholly different Act, the Medical Act of 1858. I deprecate, Sir, any reference to that Act, because the main question with which we are at close grips in connection with this Act is, what will be the value and effect of a workman injured in the course of his employment if he is treated by a quack instead of a qualified medical practitioner. (*Rao Bahadur T. Rangachariar:* "Will the Local Government qualify a quack?") My learned friend says, will the Local Government qualify a quack? If my friend has no apprehension of that character, he must know that the medical practitioners who are registered under the Act are also registered under the Acts of the various local Councils which are lawfully constituted bodies and exclude only those who indulge in nostrums and drugs which, time and test have proved to be not only innocuous but in many cases mischievous. But, I say, Sir, I shall not be led into a digression from the main point. The main point with which this House is confronted is this. A workman is injured. Mr. Darcy Lindsay, who is an insurance expert, has told you that if you are to enlarge the provisions of this definition of a qualified medical practitioner, you will raise the insurance premia. Is the House prepared to do it? And that is the only question with which we are at present concerned. If my friend Mr. Rangachariar has any grievance against the operation of the Medical Act, I have no doubt he will be able to find time and opportunity for ventilating it. But, so far as the working of the Workmen's Compensation Act is concerned, we must take it as a fact—I hope my Honourable friend will take it as a fact—that we shall weaken the salutary provisions of this Act by such a definition of a medical practitioner; and that being the sole question—and the sole question before this House—I would invite the attention of this House to this—and this question only—and I hope that they will unanimously throw out Mr. Rangachariar's amendment.

(*An Honourable Member:* "I move that the question be now put.")

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Sir, there appears to be some understanding on both sides. The proposed definition in the Bill gives Local Governments the power to notify as "qualified medical practitioners" persons who are registered either under the Act of 1858 or under the subsequent local Acts, which have been passed in almost all provinces of India during the past ten years; and it further provides that where no such Act is in force, the Local Government is free to notify any person as a qualified medical practitioner for the purposes of this measure. Now, let us see who are possibly excluded from the category of practitioners if full operation is given to the definition as it stands. The Vaidis is the first class and Hakims is the second class of persons who are excluded but this is not all. There are practitioners of the western system of medicine who have not thought fit to get their names registered under the local Acts which have been passed in the various provinces, because they do not perhaps like to bind themselves and bring them under certain restrictions to which every person who is registered and is a member of the local medical council is subject. So, if the amendment proposed by Mr. Rangachariar is not adopted, the one result will

be that such eminent men who have not thought fit to get themselves registered shall be excluded. That is to say, the Local Government shall not be in a position to notify them as "qualified medical practitioners" for the purpose of this Act.

The Honourable Mr. A. C. Chatterjee: Can you name any such eminent men?

Chaudhri Shahab-ud-Din: I can certainly point out some.

The Honourable Mr. A. C. Chatterjee: Are there any such men? Can you name any now?

Chaudhri Shahab-ud-Din: There are some non-co-operators who do not want to come under these Acts.

Then the second class of practitioners of western medical system who will be excluded is of those who were once registered as members of the Medical Councils, but who, for some technical reason, have been excluded from Councils, say for technical misconduct. Such gentlemen may not perhaps be fit to be registered as members of medical councils but yet if they are eminent practitioners and people have faith and confidence in them, there is no reason, if a Local Government deem it proper to notify them as qualified medical practitioners, why the Local Government should not be given an opportunity to do so. And as regards Vaid and Hakims, I quite agree that it is not fair on the part of Mr. Rangachariar that he should take advantage of this amendment incidentally to have a very complicated point solved one way or the other. The status of Vaid and Hakims is a big question and it should be fought in the local Councils. But as regards the first class of men, that is, men who practise the western medical system, they should not be excluded, especially when this is left to the discretion of the Local Government. It is not left to the discretion of any Legislative Council or a private individual. If the Local Government deems it fit to notify a certain person as a "qualified medical practitioner," even though he is not registered as such, I think the discretion of the Local Governments should not be fettered, and it should be left to them to notify such persons as "qualified medical practitioners" if they care to do so. Mr. Rangachariar is enlarging in a sense the definition, and is not narrowing it, and I have no apprehension, absolutely no fear, that a Local Government will ever, in any case, notify a Hakim or a Vaid as a "qualified medical practitioner" for the purposes of this Act.

Dr. H. S. Gour: Then the amendment is superfluous.

Chaudhri Shahab-ud-Din: No, it is not. I have pointed out that there are two important classes of men who stand a chance of not being notified as "qualified medical practitioners" under this Act if the amendment proposed by Mr. Rangachariar is carried. I would join issue with those who hold that there are no medical practitioners who have kept themselves aloof from the so-called medical councils. There are such men; I need not name them; I know some of them. Similarly, there are men who have been excluded. And if there are such men, a Local Government must be given an opportunity to notify them as qualified medical practitioners if it deems fit to do so, for the purposes of this Act. For this reason I support the amendment, though there is a danger indeed of its being extended by some Local Governments beyond the proper limits.

(Several Honourable Members: "The question may now be put.")

Mr. President: The amendment moved is:

"In clause (i) of clause 2 (1) the words 'in any area where no such last-named Act is in force' be omitted."

The motion was negatived.

Dr. H. S. Gour: I have been asked by Mr. Kabeer-ud-Din Ahmed to move the amendment* which stands in his name. He has given me authority to move it. The question which his amendment raises is a very difficult question. It has been adverted to by the Members of the Select Committee. If Members of the House will look at the last paragraph on the front page, they will see that the Joint Committee advert to this question in the following words:

"A much larger question which arises with regard to seamen is the possibility of applying the Act in the case of the crews of vessels registered, whether in or outside of British India, under the Merchant Shipping Act, 1894. We realise that there are important legal difficulties in providing an alternative remedy in the cases of such seamen, but we recommend that the whole question be taken up with the British Government."

The question to which this amendment invites your attention is the question relating to the compensation to Indian lascars not serving in foreign registered vessels but in vessels having, as it were, an Indian domicile. Steamers that ply between the ports of Bombay, Madras, Calcutta and foreign ports have all, as Honourable Members of this House know, their offices at those ports. Their agents are resident there and they live and carry on business within British India. Does the mere fact that the lascar suffers an accident outside the territorial waters of British India, take away the jurisdiction of the Indian Legislature to provide for the payment of compensation to their own seamen? That is the short question with which the Select Committee were confronted. I have read to you an extract from their report from which Honourable Members will see that they did not categorically decide that question one way or the other; they merely allude to it. One of the Honourable Members of that Select Committee, my friend, Mr. Rangachariar, has referred to that question more in detail in his note at page 2, where he says:

"I am not satisfied that it is *ultra vires* for the Indian Legislature to legislate for Indian seamen employed in foreign registered ships."

Honourable Members will see that, though it may be an innovation in this country, Workmen's Compensation Acts have been for a large number of years in force in all civilised countries of the world and under the Acts of the Legislatures of those countries seamen are entitled to compensation. It is conceivable that a French, Italian or British seaman, serving in a French, Italian or British ship, may suffer an accident in American waters. He is entitled to compensation from the employers of his own country and, by parity of reasoning, he, who employs an Indian seaman in British India, should be held liable to pay him compensation here, irrespective and regardless of the place where the Indian seaman received his injury.

* "That in sub-clause (k) of clause 2 (1), the word 'registered' be omitted and after the word 'ship' the following be inserted:

'of not less than one hundred tons; and includes any Indian seaman who has entered into a contract of service with any shipping company or its agent or master of a ship in India'."

That is the view on first principles. But when we refer to the Government of India Act we find a very clear provision existing in the Act to provide for legislation of this character. Honourable Members are no doubt aware of the existence of section 65, clauses (a) and (c). I shall refresh their memory by reading them:

"The Indian Legislature has power to make laws for all persons, for all posts and for all places and things within British India and for all native Indian subjects of His Majesty without and beyond as well as within British India."

The Indian Penal Code in one of the earlier sections—section 3 or 4—provides for the punishment of Indians for offences committed outside British India. The jurisdiction attaches to persons, whether resident within British India or going outside of it. Consequently, the *ex-territorial* jurisdiction of the Indian Legislature is recognised and finds a place on the Indian Statute Book. Is there any exception in the case of a Workmen's Compensation Bill? If there were, I have no doubt, Sir, the pundits of the Legislative Department would have supplied us with chapter and verse and told us how and to what extent the Indian Legislature has not the power to legislate for Indian seamen receiving injuries outside the territorial waters of British India. I have no doubt that the Select Committee would have bowed to the sapience and wisdom of the Legislative Department. But we find no reference to it here. We merely find that it is written here that there are important legal difficulties. But, I submit, Sir, it was the duty of the Select Committee to face those difficulties. Have they done so? I submit, not. And if they have done so, surely no reference is made to any opinion of legal experts outside the Legislative Department whom they have asked and consulted on this important question of constitutional law. I submit, Sir, the mere fact that there is a legal difficulty should not have deterred the Select Committee from facing it when it was their duty to provide for compensation also in the case of Indian seamen. I have thus far referred to two aspects of the question. I have shown to the Members of this Honourable House that so far as we can see, the powers of the Indian Legislature are sufficiently ample to give the House the jurisdiction which it wants of legislating for compensation to Indian seamen. I have also shown that apart from a very vague allusion to legal difficulties it is not clear that any legal opinion was taken on the subject of the powers of the Indian Legislature. If any opinion is taken in future, let me beg of Honourable Members on the other side to avoid as danger signals those law officers of the Crown. Let them take the opinions of men who are conversant with Indian law and the Indian constitution. Now, Sir, I pass on to a third question, and that question is: assuming that this House has jurisdiction to legislate, should we legislate? I think on this point I and my friends on the Treasury Benches would be at one. I have no doubt that this beneficent piece of legislation will not be shorn of its utility and usefulness in excluding from its scope this very large class of deserving and hardworked workmen, namely, the Indian lascars. I shall not therefore dilate upon this last question. I shall rest content by formally moving my amendment and ask the Honourable House to support it.

Mr. K. O. Neogy (Dacca Division: Non-Muhammadian Rural): Sir, I am one of those Members of the Joint Select Committee who feel very strongly that the benefits of the present Bill should be extended to the Indian seaman; but when we considered the matter in the Joint Select Committee we were confronted with the question as to how far it was competent

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for this Legislature to legislate for Indian seamen who were engaged on ships registered under the British Merchant Shipping Act. I must confess that so far as this question of legal difficulty was concerned, we had not the advantage of any outside legal opinion. We had to depend upon the advice which was tendered to us by the Legislative Department. I am very sorry I had not the opportunity of consulting Dr. Gour himself, for the very good reason, that he was not here at that time.

Now, Sir, the first answer that we got when we raised this question was that the benefits of the English Workmen's Compensation Act are available to the Indian seamen engaged on ships registered under the British Act. But I pointed out with reference to some particular cases of which I had papers with me showing the amount of difficulty which the Indian lascars has to experience while trying to get the benefits of the English Compensation Act. For instance, I had with me papers relating to cases of injured seamen residing in Calcutta who were asked to go to England in order to prove the nature of their injuries. In another case, where an Indian lascars had died as a result of an accident sustained at a French port, no compensation was received by his widow or other dependants. In yet another case I found that the mother of an unfortunate lascars who lost his life as a result of a similar accident wrote to the Government of India, to the Shipping Master, to the Marine Department of the Government of Bengal and other authorities asking for compensation.

That shows that these people are absolutely at a loss to find out as to which party to look to for help in these matters. So that, so far as these difficulties are concerned, I don't think that there is any question that the Indian lascars are deserving of every sympathy of this House.

Now, Sir, we have it on the authority of the Indian Seamen's Union of Calcutta that the class of lascars whom we are going to exclude from the benefits of this Act forms by far a large majority of the Indian lascars. In other words, for all practical purposes we are excluding all the Indian lascars from the benefits of the present Bill. Well, this is what the Indian Seamen's Union says with regard to this matter: "It practically deprives by far the major portion of the Indian seamen of their rights and privileges under the present legislation." Dr. Gour has referred to the Government of India Act, and he maintains that we have authority to legislate in this matter. I am not in a position to make any assertion in regard to that. But I would point out that the English Merchant Shipping Act of 1894 in section 125 recognises the right of the Indian Legislature to legislate in certain matters in regard to the engagement of lascars. This is what it says under the head 'Agreement with Lascars':

"The agreement shall be made in such form and contain such provisions and be executed in such manner and contain such conditions for securing the return of the lascars to his own country, and for other purposes, as the Governor General of India in Council or the Governor in Council of any Indian residency in which an agreement is made, may direct."

As I have already stated, I do not wish to dogmatise on this point, but I think this is a question which ought to be explored further than it has been up to now.

The Honourable Mr. C. A. Innes: Sir, I entirely agree with Mr. Neogy's last sentence. I entirely agree that this very difficult question of Indian seamen does require further exploration, and as the House will see from the

Joint Select Committee's Report, we have every intention of making that further investigation and exploration. All I want the House to do is not to be in too much of a hurry. We are up against here an extremely difficult question, a question which raises difficult points of constitutional law on which I for one am not in a position to give any opinion whatsoever. Now I should like to make it perfectly clear that I recognise and the Government recognise that we have to give in a Bill of this kind every consideration to the claims and needs of Indian lascar seamen. We have recognised that, and we always have recognised it. Let no one in this House think that we have not recognised that from the beginning and that we have not devoted a great deal of time and attention to the subject. We have. We discussed it in the Committee in July; we discussed it again in the Joint Select Committee. Now, the first objection I have to Mr. Ahmed's amendment is that obviously it goes a great deal too far. In the first place, the amendment as it stands makes absolute nonsense of the preceding clause in the Bill, so we can hardly accept it as it stands. And in the second place, the amendment as it stands goes a great deal further than even the English Workmen's Compensation Act has ever tried to go. The amendment states that it shall include any Indian seaman who has entered into a contract of service with any shipping company or its agent or master of a ship in India. That is to say, supposing a German or a French or a British ship or a ship of any other nationality comes to India, picks up a lascar seaman here and the lascar seaman enters into a contract with the master of the ship, that seaman is eligible for the benefits of the Bill. Now, the English Workmen's Compensation Act does not go as far as that. What it says is: "Members of the crew of any ship registered in the United Kingdom or of any other British ship or vessel, the owner or managing agent or manager resides or has his principal place of business in the United Kingdom." Mr. Ahmed's amendment goes further than that. He does not make it a *sine qua non* that the owner or managing agent or manager should have his place of residence in British India. Further, looking at it in another way, the amendment does not go far enough. Because, if we are going to introduce this provision into the Bill, Mr. Ahmed does not make any suggestion that we should make provision for the detention of a foreign ship. Supposing a man enters into a contract of service with the master of a foreign ship. While the ship is still in port, he suffers injury by accident. He gives notice of the accident and he lays his claim before the Commissioner. What is there to prevent the owner of that ship from clearing out of the port or going off to, it may be, France or Germany? The English Merchant Shipping Act makes provision in cases of that kind for detention. Mr. Ahmed's amendment does not go as far as that. Now, our difficulty is that the lawyers on the main point disagree. Dr. Gour seems to have no doubt that the Indian Legislature can make this Workmen's Compensation Bill cover accidents occurring outside the limits of British India. Our advice received from the Legislative Department was that it was very doubtful whether they could do so. We arrived at the conclusion that, if we introduced provision of this kind, it would merely cover the case of accidents occurring either when the ship was in the Indian port or when it was within Indian territorial waters. And we did not think it was going to do much good to introduce partial legislation to cover accidents of that limited class. What is the real grievance of the Indian lascar seaman serving on a British ship in this matter? You have got to remember that the lascar serving on a ship registered in the United Kingdom is covered by the English Workmen's Compensation Act already. He can, and he does, recover compensation under that Act. He has done so frequently. But we

[Mr. C. A. Innes.]

recognise that it must be inconvenient for a lascar to sue in the British courts and in the Industries Department, what we thought ought to be done was to see whether we could not provide him with an alternative remedy, the option of suing under the English Act in the English courts or of suing under the Indian Act in the Indian courts. And, if we can do that, then we shall have done far more for the lascar seaman than will be effected by Mr. Ahmed's amendment. Now, I have promised, we undertake to take up that question with the Board of Trade at Home. All I ask the House to do is this—I ask them to remember that this is an experimental Bill, that we are merely making a start with this Bill in a difficult piece of legislation. And I am quite prepared, when we have cleared up that question, to make further provision for the Indian lascar seaman and I hope the House will accept that as a reasonable solution for the present of a very difficult question.

Dr. H. S. Gour: Sir, in view of the assurance given by the Honourable Mr. Innes, I beg to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. N. C. Sircar: Sir, my amendment is:

"That in clause (2) (1) (m), the following be added at the end:
'or any bonus earned by the employee'."

This section deals with wages. It says:

"Wages includes any privilege or benefit which is capable of being estimated in money."

Bonus is a privilege which cannot be estimated. Bonus is generally paid occasionally for any good work done by any employee and it cannot be part of wages and cannot be estimated. For these reasons, Sir, I ask that the words "or any bonus earned by the employee" be added at the end of the clause.

Mr. A. G. Olow (Industries Department: Nominated Official): Sir, I rise to oppose this amendment. I am quite unable to see any difference between a bonus and wages. Mr. Sircar himself admits in his own amendment, by the use of the last four words that a bonus is earned by an employee. Let us suppose that this amendment is carried. How is the Commissioner to say what is a bonus and what is wages? Some mills—I can give instances to Mr. Sircar,—pay a weekly bonus, some mills pay a monthly bonus and some pay an annual bonus. There is no difficulty whatever in estimating the amount of the bonus. The amount of the bonus is announced in the company's reports and is published in the newspapers. It is known to the employer and to the worker. The only effect, if we agree to exclude a bonus, will be that the employers will gradually cease paying wages at all. Month by month they will hand over Rs. 20, Rs. 25 or Rs. 30 to the employee and say: "This is a bonus which I give you because you have done excellent work for me." This is not a fanciful suggestion. At one time in an Income-Tax Act, they specified that salary would be included and bonus would not be included, and the result was that they gradually found that salaries were disappearing and that bonuses were increasing correspondingly. I ask the House to do justice to workmen. What we are trying to do is to give compensation that will bear some relation to the earnings of the workman before he was injured. Mr. Sircar

himself admits that this is part of the workman's earnings, and I ask the House to include it in his wages.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. N. C. Sircar: Sir, my next amendment is :

" That in sub-clause (n) (ii) of clause 2 (1), for the word ' three ' the word ' one ' be substituted."

My ground for moving this amendment is this. A workman generally does not get more than Rs. 100 as a monthly wage. It is only Supervisors who get a higher pay than Rs. 100, and the workmen generally never get more than Rs. 100. I therefore ask that the word " three " be substituted by the word " one ".

The Honourable Mr. A. C. Chatterjee: Sir, the Honourable gentleman has not given any arguments at all in support of his amendment. I do not really think it is necessary to waste the time of the House at this late hour of the day. I only want to say, Sir, that ordinarily, there ought not to have been any limitation with regard to wages, especially as we had put in other limitations in other parts of the Bill. But we purposely wanted to limit the application of this Bill to the poorer classes, to the lower middle classes, that is to say, to the artisans, the skilled artisans, and the foremen in the factories. A great many of them do earn more than Rs. 100 a month now-a-days and I think it would be extremely unjust to a very deserving class of artisans, skilled mechanics and people of that type if my Honourable friend Mr. Sircar's amendment is carried.

The motion was negatived.

Mr. President: The question is that clause 2, as amended, do stand part of the Bill.

The motion was adopted.

Mr. President: In view of the fact that there is an important Select Committee sitting this afternoon, I propose to adjourn now.

The Assembly then adjourned till Eleven of the Clock on Monday, the 5th February, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 5th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

INTEREST-FREE ADVANCES FOR PASSAGES TO EUROPE.

318. ***Lieutenant-Colonel H. A. J. Gidney:** (a) Will Government be pleased to state why Government servants of Asiatic domicile have been excluded from the recent concession of interest-free advances for passages to Europe?

(b) Does not the concession in effect apply, almost exclusively, to officers in the Imperial Services?

(c) If it is thought that facilities are required to enable Government servants of non-Asiatic domicile to visit their homes, do Government contemplate granting similar advances to Government servants employed in Delhi who wish to visit their homes, for example, in Madras?

(d) Will an advance be granted to a Government servant of Asiatic domicile who has made or proposes to make his home in England or to visit that island on medical advice for reasons of health, or to such a Government servant who wishes to educate his children there?

(e) Is it a fact that Government servants of non-Asiatic domicile already draw additions to their salaries in the way of overseas allowance and, in some instances, higher salaries than those fixed for the same posts when not held by officials recruited outside India?

(f) If so, will Government be pleased to state why at this late date it is necessary to super-add a concession which is denied to other officials?

The Honourable Sir Malcolm Hailey: (a) Because the officer of non-Asiatic domicile is not working in his own country whereas officers of Asiatic domicile are.

(b) No. It is being extended to officers of non-Asiatic domicile in the provincial services.

(c) No. The concession has been granted entirely on account of the high cost of passages to Europe.

(d) This is not permissible under the rules for the reason stated in answer to part (a).

(e) Officers of non-Asiatic domicile in certain departments who are drawing pay under a time-scale receive overseas pay. At present certain officers of Asiatic domicile also draw this pay, but new entrants, except Indians entering the Indian Civil Service by means of the open Competitive examination in London, until 1925, draw pay according to domicile, only those of non-Asiatic domicile being eligible for overseas pay. There is no

overseas pay for posts above the time-scale, and there is no differentiation in pay according as the incumbent is of Asiatic or non-Asiatic domicile.

(f) The Honourable Member is referred to the answer to parts (a) and (c) of this question.

Lieut.-Colonel H. A. J. Gidney: The Honourable Member in reply to part (c) of my question stated that the concession was due to the high cost of passages in force now. I should imagine that this reason should apply equally to the excessive railway rates that obtain to-day in India.

Mr. President: That is not a supplementary question. That is an assertion.

CONCESSIONS TO TEA-GARDEN COOLIES ON A. B. RAILWAY.

319. ***Rai Bahadur G. O. Nag:** 1. With reference to the information supplied privately to me in reply to my question No. 165 asked on the 17th January, 1923, that concessions in fares have been granted by the Assam Bengal Railway to coolies of tea-gardens in Assam firstly because the Railway has directly benefited by the development of the tea industry in Assam, and secondly because the coolies on the expiry of their employment on tea-gardens settle down and help in adding to the sources of revenue to the Government of Assam by clearing jungle and taking up land for cultivation, will the Government kindly ascertain from the said Railway since when these concessions have been granted, and since when the Railway discovered that these concessions could be justified on the two grounds mentioned?

2. Will the Government ascertain from the said Railway if it grants such concessions to the people who annually migrate in large numbers to Assam merely to take up land and settle down as cultivators?

3. Are the Government of India aware of the large influx of immigrants in recent years from the Eastern Bengal districts to Assam who have helped in reclaiming waste-lands in Assam? Are such people granted concessions in fares by the Assam-Bengal Railway? If not, why not?

Mr. C. D. M. Hindley: The information is being obtained from the Agent, Assam Bengal Railway, and will be communicated to the Honourable Member in due course.

TONNAGE OF MERCHANT MARINE.

320. ***Mr. W. M. Hussanally:** What is the gross tonnage of the Merchant Marine respectively of (1) Great Britain, (2) France, (3) Spain, (4) Portugal, (5) Japan, (6) America and (7) India?

Mr. A. H. Ley: The gross tonnage of vessels of 100 tons and over as recorded in Lloyd's Register Book, 1922-23 edition, belonging to the countries specified is as follows:

Great Britain	19,295,637
France	3,845,791
Spain	1,282,757
Portugal	285,878
Japan	3,586,918
The United States of America	17,082,460
India and Ceylon	235,100

These figures include steamers and motor vessels and in several cases also sailing ships. The figures given for the United States of America include those of vessels plying on the Great Lakes.

Mr. W. M. Hussanally: Cannot we have any figures for India alone without Ceylon?

Mr. A. H. Ley: I must ask for notice of that question.

Mr. W. M. Hussanally: The question did not ask for figures for Ceylon at all.

INDIAN COASTAL TRADE.

321. ***Mr. W. M. Hussanally:** What is the total amount of Indian coastal trade? How much of it is served by Indian Merchant Marine and how much by Merchant Marines of other countries?

Mr. A. H. Ley: The Honourable Member is referred to the "Annual statement of the Coastal Trade and Navigation of British India" which contains all the statistical information available about coastal trade.

INDIAN SHIPPING COMPANIES.

322. ***Mr. W. M. Hussanally:** How many Indian Shipping Companies were started during the past 50 years? How many of them succumbed and why? How many of them still survive?

Mr. A. H. Ley: The Honourable Member is referred to the answer given to a somewhat similar question (No. 136) asked by the Honourable Mr. Lalubhai Samaldas in the Council of State on the 24th March, 1922. I may add that a later issue of the Statistical Department publication "Joint Stock Companies in British India and Mysore," i.e., for 1919-20, has also been placed in the Library.

DEFERRED REBATE SYSTEM.

323. ***Mr. W. M. Hussanally:** (a) What is "deferred rebate system"? How much is this rebate granted by Shipping Companies to shippers in and from India? Which companies grant this rebate and why?

(b) Is it a fact that this "deferred rebate" is granted only by Shipping Companies belonging to foreign countries for the purpose of keeping shippers in hand?

Mr. A. H. Ley: I am afraid that I cannot undertake to give within the limits of an answer to a question a description of the system known as the 'deferred rebate' system. The whole subject has recently been under inquiry by the Imperial Shipping Committee at home, and I hope to be able shortly to place in the Library a copy of the Imperial Shipping Committee's report which will give the Honourable Member full information.

Sir Deva Prasad Sarvadhikary: Is it a fact that a part of the deferred rebate system is that the rebate is paid at the end of a specified period and is forfeited if the party entitled to it happens to give his custom elsewhere.

Mr. A. H. Ley: I believe that is so.

RATE WAR AMONG SHIPPING COMPANIES.

324. ***Mr. W. M. Hussanally:** (a) Is it a fact that a sort of rate war exists among foreign shipping companies as against Indian Companies?

(b) If the system of "deferred rebate" and of rate war exist in India do Government propose to make these systems impossible by Statute?

Mr. A. H. Ley: The Government of India have no information regarding the alleged rate war. They propose to take no action in regard to the deferred rebate system until they have been able to study the report referred to in the answer to the previous question.

AIDS TO SHIPPING FIRMS.

325. ***Mr. W. M. Hussanally:** (a) Have the Government of India, in the past, given any direct or indirect aid to any Indian National Shipping firm, such as bounties, mail contracts or subscriptions, cheap loans, preferential railway rates, reservation of coastal trade and the like, with a view to encourage Indian ship-building and navigation as is done by other countries? If not, why?

(b) If the answer to the above question be in the negative, do Government propose to offer any such aid to Indian Shipping firms in the near future?

Mr. A. H. Ley: (a) Mail contracts are purely business transactions and differ intrinsically from the aids specified in the Honourable Member's question. The Government of India have given no assistance of the nature indicated to any shipping company whether registered in India or not.

(b) The Government of India have no present intention of doing so.

I would add that information regarding Mail services by steamers is given in Appendix XI to the Annual Report on the Posts and Telegraphs of India for the year 1921-22. The contract of the British India Steam Navigation Company expired on the 31st January last and has been extended for one year. It is proposed shortly to call for tenders. Mail Contract with the P. and O. S. N. Co. is arranged by His Majesty's Postmaster General and the payments are allocated between different administrations according to the Morley Award.

B. I. S. N. COY.'S TRADE.

326. ***Mr. W. M. Hussanally:** (a) Is it a fact that the British India Steam Navigation Company has almost the total monopoly of carrying all coastal trade and mails in India? What was the amount received by this Company, from Government of India in 1921-22 for (i) carrying mails, (ii) carrying Government stores?

(b) What amount was paid in the same year to the P. & O. Company for similar purposes?

(c) When do contracts with these Companies expire?

(d) Do Government propose offering these contracts to Indian Shipping firms on the expiry of the above contracts with a view to encourage Indian National Shipping?

Mr. A. H. Ley: The Government of India have no information of the proportion of the coastal trade of India carried by the ships of the British India Steam Navigation Company.

Particulars asked for about the mail contracts and the payments made under them are being collected and will be furnished by the Department which deals with this subject. The Government of India have no knowledge what stores departments or Local Governments may at times have sent by sea from one port to another in India and do not propose to endeavour to collect it.

(d) The action that will be taken in this matter will be decided when the event arises.

RAILWAY PREFERENTIAL GOODS RATES.

327. ***Mr. W. M. Hussanally:** (a) Is it a fact that Indian Railways or any of them, allow preferential rates to any foreign shipping companies for the carriage of such goods as are intended to be exported abroad; or imported from other countries?

(b) And is it a fact that railway freight rates for goods transported from one place to another within India and intended for local consumption are higher? If so, why?

Mr. C. D. M. Hindley: (a) The reply is in the negative and (b) therefore does not arise.

INCOME FROM INCREASED POSTAL RATES.

328. ***Mr. W. M. Hussanally:** 1. With reference to answers given by Sir Sydney Crookshank to supplementary questions to No. 249 on 23rd January, 1923, will Government please state (a) the income from increased postal rates sanctioned last year up to 31st January, 1923, or 31st December, 1922, (whichever be available) as compared with the income for the same period the year before? The income from Telegraphs to be excluded?

2. Has the anticipated income been reached?

3. What has been the cost during the above period of reprinting, overprinting, re-labelling, re-packing freight and all other incidental charges incurred in consequence of the increased postal rates?

4. Deducting this expenditure what has been the nett income from the increase in postal rates?

Colonel Sir Sydney Crookshank: The necessary information is being collected and will be supplied to the Honourable Member as soon as it is available.

VACCINE FOR BOVINE TUBERCULOSIS.

329. ***Rai Bahadur G. C. Nag:** Are the Government aware of the alleged discovery by the Pasteur Institute of Lille, of a vaccine for conferring immunity from tuberculosis on bovine animals and will they consider the advisability of instituting suitable inquiries of the French

Government with a view of enabling the treatment to be introduced into this country as soon as possible?

Mr. J. Hullah: The researches referred to in the question are well known. In 1921, Mr. Edwards, now Director of our Bacteriological Institute, at Muktesar, was in personal communication with the Sub-Director of the Institute at Lille on the subject, but so far as he is aware the work has not yet gone beyond the experimental stage.

The question of bovine tuberculosis is receiving attention in the Muktesar Laboratory. Such statistics as are available indicate that the disease is rare in this country, and it has not yet been settled whether Indian cattle are more resistant than European cattle or whether the bacillus in India is less virulent than in Europe. Work on these problems has already been published in India and the Director of the Institute at Muktesar is now about to conduct further investigations. Bovine tuberculosis is one of the subjects for discussion at a veterinary conference to be held at Calcutta this month.

N.-W. F. COMMITTEE REPORT.

330. ***Dr. Nand Lal:** (1) Is the Government of India aware that the public is anxious to know as to when the N. W. F. Committee Report will be out?

(2) Will the Government of India be pleased to state as to why its publication has been delayed?

(3) Will the Government of India be pleased to enlighten this Assembly as to when it (the aforesaid report) will be placed on the table?

Mr. Denys Bray: (1) Yes.

(2) The Report has only recently reached Government in its complete form and is still under consideration.

(3) I regret that I am unable to give the Honourable Member the information for which he asks.

ROYAL COMMISSION ON PUBLIC SERVICES.

331. ***Rai Bahadur G. C. Nag:** Will Government kindly state what expenditure was incurred by it on the Royal Commission on Public Services in India respectively in 1886-87 and 1916?

The Honourable Sir Malcolm Hailey: The Commission of 1886-87 was not a Royal Commission. It was appointed by the Governor General in Council. The expenditure incurred on it in that year was Rs. 8,29,784. Some expenditure was also incurred in the following year but actual figures are not available.

The total cost of the Royal Commission in 1912-15 was Rs. 12,28,159. It has recently been ascertained that the figure given by Sir William Vincent in reply to a question asked in the Assembly by Mr. M. K. Reddi Garu in September, 1921, did not include expenditure incurred in England which has been included in the above estimate.

UNSTARRED QUESTIONS AND ANSWERS.

LICENSE FOR RAILWAY VENDORS.

141. **Lala Girdharilal Agarwala:** 1. Is it a fact that vendors of articles of food, etc., are not allowed to sell those articles to passengers on railways without making some payment to the Railways for that sort of license?

2. Is this sort of tax permissible under any rule or law, if so, what?

3. Are not the Railways bound to look to the convenience of passengers while travelling without any direct or indirect taxation?

4. Will the Government be pleased to state what is the total amount thus realized by the Railways within the last 3 years and do Government propose to stop the practice in future?

Mr. C. D. M. Hindley: (1) Yes.

(2) and (3) This is not a tax.

The ordinary practice is that a small charge is made to vendors and contractors licensed to sell sweetmeats, etc., on station platforms, and it is to the convenience of passengers as well as of railways that only authorised vendors subject to railway control and inspection should be allowed on the platforms.

(4) Government is not in possession of the information and as at present advised do not propose to take up the question of interfering.

REDUCTION OF B. N. RAILWAY STAFF AT KHARAGPUR.

142. **Mr. N. M. Joshi:** (a) Is it a fact that a large reduction has been made in the low-paid Indian staff in the Bengal-Nagpur Railway workshop at Kharagpur?

(b) Is it also a fact that the number of working days and the daily hours of work have been reduced so as to considerably reduce the earnings of the employees who are working?

(c) Will Government be pleased to explain why this step has been taken?

(d) Will Government be pleased to state what they propose to do to remedy the sufferings caused by the unemployment or insufficient employment? and

(e) Is it a fact that at this very time or only a short time ago some highly paid officers have been appointed on the above-mentioned Railway?

Mr. C. D. M. Hindley: (a) The services of a certain number of daily paid staff in the Bengal Nagpur Railway workshop have been terminated. The men affected were unsatisfactory workers.

(b) Short time in the Kharagpur Workshop has been introduced.

(c) This step has been taken for financial reasons.

(d) Government propose to take no action as the services of only those men have been terminated whose work did not justify retention.

(e) I presume that the Honourable Member means to enquire whether additional highly paid posts have recently been created and if so this is not the case.

THE AMBALA CANTONMENT COMMITTEE.

143. **Mr. Pyari Lal:** 1. Is it a fact that the Ambala Cantonment Committee has refused to entertain applications for the construction of upper storeys in that cantonment since June 1922?

2. Is the Government aware that this said Committee has taken this action on the plea of there being a general prohibitory order therefor, by the District Commander?

3. Will the Government be pleased to state the nature of this prohibitory order and the reasons for which it has been given?

4. Is it a fact that on a reference by the All-India Cantonments Association to the Lahore District on the subject, the District Commander has denied the existence of any such prohibitory order under its letter No. 20537-9-Q-2, dated the 20th December, 1922 to the Honorary Secretary of the Association?

5. Do the Government propose to direct the Cantonment Committee, Ambala, to entertain and consider such applications, on their merits?

6. Is the Government aware, that in several cases, the applicants gave written assurances that no pipe water shall be used in the construction?

7. Do the Government propose to take immediate action on the matter?

Mr. E. Burdon: 1—7. Government have no information on the subject, but are inquiring. I will inform the Honourable Member of the results as soon as possible.

THE BENARSI DASS HIGH SCHOOL, AMBALA.

144. **Mr. Pyari Lal:** 1. Is the Government aware that an application for the construction of upper storey in the Benarsi Dass High School, Ambala, was delayed in the Cantonment office for more than six weeks and then rejected?

2. Is it a fact that the applicant informed the Secretary, Cantonment Committee, of his treating the application as sanctioned under Section 92 (1) of the Cantonment Code, and asked him to return the plans?

3. Is it a fact, that instead of returning the plans, the Secretary stopped the applicant on a public road and insulted him by saying that he blindly signed the letter for the return of the plans under the influence of his "Jackals"?

4. Has the attention of the Government been drawn to the "Cantonment Advocate" of 25th November, 1922 giving details of the above incident?

5. Will the Government be pleased to state the facts of the incident?

6. If the facts be as stated in the "Advocate," will the Government take necessary action in the matter?

7. If so, will the Government be pleased to state what action it proposes to take?

Mr. E. Burdon: 1—7. The Government of India have no information on the subject but are inquiring. I will let the Honourable Member know the results as soon as possible.

CANTONMENT ADMINISTRATION.

145. Mr. Pyari Lal: 1. Is it a fact that the control of civic Cantonment Administration has now been transferred from the Q. M. G., Army Headquarters to the Commands?

2. If so, is the Government aware that there is no civic expert on the staff of the Commands?

3. Will the Government consider the desirability of appointing such an expert to the staff of the Commands?

4. Has the Government seen the article headed "Decentralisation in the Army Department", published in the "Cantonment Advocate" of 25th December, 1922?

5. Is the Government aware that as stated in the aforesaid article, the All-India Cantonments Conference has already passed a Resolution to request the Government to transfer this control to its civic Department?

6. Has the Government considered this suggestion? If so, with what result? If not, will the Government be pleased to give it their early consideration?

Mr. E. Burdon: 1. The process of decentralising control is now generally under consideration by Government. A partial delegation to Commands has already taken place.

2. Yes.

3. The question of appointing officers to assist the General Officers Commanding-in-Chief in exercising control is being examined.

4 and 5. Yes.

6. As I have already indicated in my reply to the first part of the question, the whole matter of the future administration of cantonments is, at the present moment, under consideration.

NON-OFFICIALS ON CANTONMENT COMMITTEES.

146. Mr. Pyari Lal: 1. Is the Government aware that there is great dissatisfaction in Cantonments at the nomination of the non-official members of the Cantonment Committees, under Section 4 of the existing Cantonment Code?

2. Has the attention of the Government been drawn to an article headed "Why is election delayed", published in the "Cantonment Advocate" of 25th December 1922?

3. Is the Government aware that the Government of India Cantonment Reform Committee has urged on page 86 of its printed Report that "action" on such of their proposals as can be given effect to, should not be delayed?

4. Is it a fact that in pursuance of this recommendation the Government has already modified Section 216 of the existing Cantonment Code?

5. Will the Government be pleased to state the reasons why action has not been taken to give effect to the Reform Committee's recommendation regarding the introduction of elective principle in Cantonment Committees so far, by a modification of Section 4?

6. Will the Government be pleased to do so now?

7. Is the Government aware that there is great misunderstanding in cantonments with regard to the genuineness of Cantonment Reform, owing to the great delay in its introduction?

Mr. E. Burdon: 1. Government are aware that a change of the existing system is desired in certain quarters.

2, 3 and 4. Yes.

5 and 6. Government have decided to introduce legislation which will provide, amongst other things, that a certain number of the members of cantonment committees should be elected members; but they consider that it is unnecessary and would not be convenient to introduce this particular change in advance of their wider proposals.

7. No.

LALA GULZARI LALL OF CANTONMENT COMMITTEE, NEEMUCH.

147. **Mr. Pyari Lal:** 1. Is the Government aware that no action has been taken so far in restoring Lala Gulzari Lall to his seat on the Cantonment Committee of Neemuch as was contemplated by the Government reply No. 13668/3 (A. G.-8), dated the 18th September, 1922 to the All-India Cantonments Association?

2. Will the Government be pleased to state why the action has been delayed so long?

3. Will the Government be pleased to take immediate action in consonance of the reply referred above?

Mr. E. Burdon: 1—3. Enquiries are being made in the matter and I will inform the Honourable Member of the result as soon as possible.

AMRITSAR GRIEVANCES.

148. **Mr. Pyari Lal:** 1. Is it a fact that the action contemplated in the Government reply dated 23rd October, 1922 to my question regarding (Amritsar Grievances) has not yet been taken?

2. Is the Government aware that as a consequence of this delay the grievances of Amritsar people remain unredressed?

3. Will the Government be pleased to state reasons why action has not been taken so far in the matter as indicated by the Government reply quoted above?

4. Is the Government aware that both the question and reply were published in the *Cantonment Advocate* of 25th October and 10th November, 1922 respectively?

5. Does the Government know that the non-cancellation of the order even after the Government's admission of its illegality, has given rise to grave discontent in Amritsar and other cantonments?

6. Will the Government be pleased to take immediate action in the matter?

Mr. E. Burdon: 1—6. Enquiries are being made, and I will let the Honourable Member know the result as soon as possible.

THE CRIMINAL LAW AMENDMENT BILL.

The Honourable Sir Malcolm Halley (Home Member): I have to introduce:

"The Bill further to amend the Code of Criminal Procedure, 1888, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings."

The Bill has already been introduced by publication, and therefore under the rules I have not to ask for the leave of the House to introduce it. But the circumstances are so unusual and I myself feel the occasion in some sense to be so momentous that I cannot content myself simply with laying the Bill on the table of the House. There is possibly no question on which European and Indian feeling in this country has been more divided than in regard to the maintenance of racial distinctions, as we use the term, in criminal trials. There is no question on which antagonism has been more pronounced. To me therefore this is not merely a question of revising a chapter of our Criminal Procedure Code; it is not merely a question whether we should attempt a formal improvement of procedure in a sphere of justice, where, it is alleged that justice has often broken down. These may be important objects in themselves; but the character of this Bill transcends them; there are aspects of the question which bring it almost to a different plane. I would ask the House to consider with me all the circumstances of the case. I shall not attempt to go into the long history of the conflict between the communities on this question; nor need I revive memories of the embittered controversy of 40 years ago. That is past, and those memories had best stay in the past which holds them. But I emphasize this fact only, that for 40 years we have made no movement designed to bring us together on a question the solution of which is vital if we are to secure understanding and good will between the two communities. Other barriers which seemed irremovable have yielded; and claims which at first seem impossible have been conceded. But here we have stood fast. To the Indian the retention of the trial privileges of Europeans has appeared to be the wanton ~~assertion~~ ^{assertion} of a claim of superiority on the part of one race over the other. If that seemed inexcusable in itself, it was aggravated by the general belief, supported in some cases by statements of judicial authority, that the retention of these privileges had on occasion led to a complete denial of justice. If that has been the Indian view, we ought at the same time to remember what the European view has been. To Englishmen there is no more deeply-rooted tradition than that of the inviolable right of trial by a jury of their own countrymen. Further than this, a large portion of our English population out here does not come to India of its own choice, for those who are in the British Army in India are drafted here in the course of their military service. Then again you must also remember that there have been occasions, some of them unfortunately in the not distant past, when racial feeling has run so high that Europeans here might well be justified in believing that there was a danger that false prosecution, tainted evidence and social pressure on the Indian Magistracy, might involve a real denial of justice to them.

But I do not wish to enlarge on the picture as it appeared to one side or the other. I can speak to-day of the case as it stands to-day, and not as it stood in the long yesterday. For to-day, for the first time in 40 years, we have the earnest of a solution of this question. The House knows well

[Sir Malcolm Hailey.]

the stages by which we have proceeded to this Bill. It is not a Government proposal; it is based on the recommendations of a Committee as representative, as impartial in temperament and as skilled in law as we could ever hope to attain. There were only three officials on it; one, I regret to say, no longer an official of the Crown, though I think the Crown has no more loyal friend. Much as India owes to Sir Tej Bahadur Sapru, not the least of its debts will be to him as Chairman of this Committee; and much as the Committee itself was indebted to his legal acumen and great knowledge of the law, his greatest contribution was the sense of moderation and of equity with which he guided its deliberations. There were on that Committee in all six Europeans, nine Indians and one representative of the Anglo-Indian community. Their final conclusion was admittedly a compromise. While it proposed to withdraw many of the exclusive privileges enjoyed by the European British subject, yet on the other hand it sought to improve the position of Indians generally in regard to criminal trial procedure. Whatever the fate of this Bill, yet the report of the Committee is in itself a great achievement; history will recognize that it exhibited a spirit of tolerance and a sense of moderation rare in the affairs of life and perhaps unique in the annals of India. All honour is due to the representatives of two communities which could arrive at a common understanding on a question with such a past, so pregnant with difficulties, and so rife with points of difference.

We have translated that understanding into our Bill. There are of course some exceptions; the House knows them, and I do not wish to dilate on them save in two points of importance. If His Majesty's Government have been unable to agree that Dominion subjects should be deprived of the status which they now enjoy in common with the European British subject, and if in addition they have had to make a reservation regarding the transfer of certain classes of cases to the High Courts, nevertheless I do not think their attitude should be misinterpreted. They have not stood out against the proposals of the Committee in regard to the withdrawal in great bulk of European privileges generally. So far they have followed the common understanding on which the Committee arrived. But as regards Dominion subjects, they had a peculiar and a difficult position. We know well the feelings of India on the subject of franchise and other disabilities which Indians suffer in the Dominions; I think there are few Englishmen in India who do not sympathise with them. But, at the same time I do not think that India can cavil if His Majesty's Government, with an outlook on the essential solidarity of the Empire as a whole—and especially at this time—were unable to accede to a measure which in their belief would alienate the Empire from India, and destroy all chance of bringing into full effect that Resolution of reciprocity to which the greater part of the Empire representatives agreed. Then, again, as regards the reservation in respect of transfer in certain cases of charges against men coming under the Army Act, here also His Majesty's Government stood in a special position. As I have said, the majority of these men come out to India not of their own choice, but because they are drafted here in the course of their Military service. As a result of this Bill they will already be in a position less favourable than that which they enjoy in England under the English Law. It is not unreasonable that His Majesty's Government should seek by this measure of reservation to prevent any discontent which might arise in the British Army owing to the reduction under this Bill of privileges which they now enjoy in offences which do not fall within the special category.

Here then the case now stands. Perhaps the greatest achievement of the Committee is that whereas the present discrimination in trial procedure turns in part on the race of the trying Magistrate, that distinction has now gone. Such privileges as the European will retain will be privileges of procedure only; there will be no provision in our Code which lays down that a European should not be tried by an Indian. That in itself is an advance exceeding even the most optimistic expectations of those who considered the question 10 or even 5 years ago. There are no doubt those who are disappointed that the privileges now enjoyed by European British subjects will not be entirely withdrawn; and there may be others, who while they do not go to this length, are dissatisfied with the details of the Bill. But, is India, for that reason, prepared to reject a measure which shows that the two communities are prepared to arrive at a common understanding on a question which has for many years kept them apart? The solution is not a final one. It offers no obstacle to further advance on the road which has already been marked out. Indians have evidence that Europeans resident in India are prepared to place a growing confidence in the sense of justice of Indian Magistrates and of Indian Courts. More than that, they have patent proof, for all the world to see, that the European community in order to foster that goodwill with Indians, which is so vital to both communities, are prepared to make sacrifices of principle and to surrender safeguards to which they had hitherto held with great tenacity. Believe, me, the sacrifices that they are prepared to make are to them no light ones. I am quite sensible that Indians who have joined in this compromise have also, on their side, felt that they were making sacrifices in that they withdraw their claim for a full cancellation of all privileges enjoyed by European British subjects. But it is just those mutual surrenders that give the understanding its unique value. It is only by mutual surrender that you can ever arrive at a solution of differences which strike so deeply into the life of two communities. Whatever confidence you may have in the ability of India to shape its own course, and ultimately to gain a position in the Empire which will satisfy its own aspirations, no one can doubt that if in that struggle it carries with it the goodwill and secures the co-operation of Europeans in India, the advance will be more rapid and the foundations of its position will be more secure. (Hear, hear.) It is because I feel that this Bill establishes a new landmark in the mutual understanding of Europeans and Indians; it is because I feel that it gives to India so conspicuous an opportunity of showing to the outside world a tangible proof that Europeans and Indians are prepared to work together with a mutual knowledge of each others difficulties and with a mutual desire to work together in a common understanding, that I commend it to this House. Of all things the spirit of compromise and goodwill is the most elusive. Capture it while you may, and enshrine it in an imperishable form in your Statute Book.

THE WORKMEN'S COMPENSATION BILL.

Mr. President: The House will now resume consideration of the Report of the Joint Committee on the Bill to define the liability of employers in certain cases of suits for damages brought against them by workmen, and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

Mr. K. O. Neogy (Dacca Division: Non-Muhammadian Rural): Sir, I have given notice of an amendment for the re-insertion of the provisions

[Mr. K. C. Neogy.]

relating to employers' liability which were omitted from the Bill by the Select Committee. I move:

" That after Chapter I the following be inserted as Chapter I-A :

" CHAPTER I-A

EMPLOYERS' LIABILITY.

Defence of common employment 3. Where personal injury is caused to a workman :
barred in certain cases.

- (a) by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or
- (b) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or
- (c) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where the injury resulted from his having so conformed; or
- (d) by reason of any act or omission of any person in the service of the employer done or made in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by any authority and which has been so approved) or in obedience to particular instructions given by any person to whom the employer has delegated authority in that behalf;

a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer.

4. In any such suit for damages, the workman shall not be deemed to have undertaken any risk attaching to the employment unless
Risk not to be deemed to have been assumed without full knowledge. the employer proves that the risk arising from any negligence, act or omission, referred to in section 3, was fully understood by the workman and that the workman voluntarily undertook the same.

5. The provisions of this Chapter shall not apply in the case of any suit for damages
Limitation. in respect of an injury which is instituted after the expiration of six months from the date of the injury."

It will be noticed that I have taken these amendments *verbatim* from the clauses as they stood in the original Bill with a slight alteration in clause 4. Now, Sir, the distinction between workmen's compensation and employers' liability may be briefly stated to be this. This Bill, in the provisions relating to workmen's compensation, provides for an automatic remedy in the case of accidents arising out of the employment of any workman irrespective of any negligence on the part of the employer or any superintendent or any co-worker. But the employers' liability provisions relate to the workman's right to damages in cases where any injury has been sustained by him on account of any act, omission or negligence either on the part of the employer or any co-workman or a superintendent. Under the workmen's compensation provisions, there is a monetary limit to the amount of compensation, but under the ordinary law the employers' liability to pay damages to an injured workman, when the injury results from any negligence on the part of the employer, is not limited by any such monetary

maximum. It is interesting to note that the necessity for legislation on employers' liability arose in England as early as 1880, while the first Workmen's Compensation Act was passed in 1897. This necessity arose in England because of the peculiar application of the doctrine of common employment of the Common Law of England to certain cases of accident which defeated the claims of the workmen on the ground that the injury was a result of any act or default of their fellow-workmen of different grades. Now the question has been raised as to whether the same necessity exists in India. It is admitted on all hands that, so far as this defence under the Common Law of England is concerned, it is an unjust defence, and the question is whether that defence is open to any employer in India. A learned Judge of the Madras High Court has asserted that the Judges of the Indian Courts could be depended upon not to apply that pernicious doctrine in India. But Mr. Justice Coutts-Trotter is only one among several Judges of one out of several High Courts in India, and while his opinion is entitled to great respect, I do not think it can be accepted on his authority that the High Courts will rule out any such defence. Besides, there is no knowing that there will be any uniformity of decision in this matter in the various High Courts. It may be said that the Common Law principle of common employment will not be applied to India because the Common Law rules do not apply to India; and that the principles of justice, equity and good conscience will guide the High Courts in India. But I think it has been pointed out by as high an authority as Sir Frederick Pollock that the Common Law principles are apt to be introduced into India, not as Common Law principles, but as principles of justice, equity and good conscience. After all, what do you lose by providing for any such contingency as may arise on the application of the doctrine of common employment in India? Turning now to objections taken not on legal grounds but on the merits of employer's liability, I find that the Bengal Chamber of Commerce is prominent among the objectors. But these provisions are unanimously approved by the Local Governments, and while the Bengal Chamber of Commerce takes exception to them I may point out that the Bombay Chamber of Commerce has given its positive approval to this proposal, and similarly other commercial bodies also have approved, or at least not signified their disapproval, of these provisions. Now the report of the Select Committee says that it has not been demonstrated to their satisfaction that the necessity for legislation on these lines has arisen in India, and that if the doctrine of common employment is aimed to be applied to such cases in India the defence of common employment and that of assumed risk should be removed not only from the very limited class of workmen to whom this Bill will apply, but from all workmen. I should have given effect to this recommendation of the Joint Committee in my amendment had it been open to us to do so, because we have already adopted the definition of 'workman' in clause 2; and therefore it is no longer open to us to change that definition for this particular chapter. I may suggest to the Government, if they are prepared to accept these provisions, to amend the definition of workman in another place so as not to place any restriction on the definition of workman so far at least as the employer's liability provisions are concerned,

On a point of order, Sir, shall I move each clause separately, or all the three clauses together? I have made certain changes in clause 4 of this chapter which may have to be explained later on. Really the discussion will turn upon clause 3, as to whether or not we are going to accept this provision.

Mr. President: As a matter of form, the Honourable Member had better move each clause separately.

Mr. K. O. Neogy: Therefore I beg to move clause 3 as read out by me.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadar Rural): Sir, before we proceed to the discussion of this clause I want a ruling from the Chair on one or two points. The first is whether the Mover is entitled to make changes or even a slight change as he called it in the wording of the three or four sections as they stood originally. I can quite understand that he could ask for the reinsertion of the old sections as they stood, but what he is now trying to do is to insert certain changes of his own from the original sections. Whether he can do that without any notice to us is the first point. Secondly, I want to know whether in the event of these sections being carried by the House I can move an amendment which would be a consequential amendment; because, there are certain sections in the English Act from which the Mover has got his amendment, on which I may base my amendments. Whether I would be allowed without notice to insert my consequential amendments, if his amendment is now carried, is the second point on which I seek your ruling.

Mr. President: I see no objection to the Honourable Member proposing to amend the Bill as it came back from the Joint Committee by inserting a clause in a somewhat different form, but we will deal with that point as it arises; it does not happen to arise on clause 3. On the other point raised by the Honourable Member as to whether he will be able to move amendments to this amendment without notice, I think on the understanding which we came to on Saturday I undertook that I would waive in principle at all events any objection which the Chair might uphold to want of notice; and unless very good reason is offered to me by objectors I shall continue to proceed on the course which I laid down for myself on Saturday.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I should just like to explain the position of Government in regard to this matter. I shall briefly begin by re-stating in my own words what I understand the English law in regard to employer's liability to be. Under the English common law the liability of an employer to compensate a workman for accident arising out of his employment used to be limited very seriously. Even if the workman could prove that the injury was due to the negligence of an agent of the employer, the employer had two important lines of defence open to him. One was what is known as the defence of common employment, and the other was the defence of assumed risk. Consequently as far back as 1889 before the English Government or any one had ever thought of workmen's compensation, the English Government passed the Employer's Liability Act. The effect of that Act was that it removed the defence of common employment; that is to say, if a workman was injured by reason of the negligence of any superintendent or manager or foreman, the employer was made liable. The Act did not affect the doctrine of assumed risk, though that defence has been removed in certain American Acts. It is important to notice in this connection that there is an essential difference between an Employer's Liability Act and a Workmen's Compensation Act. Under the former Act the workman has to prove negligence; under a Workmen's Compensation Act the workman has not to prove negligence. Therefore, a Workmen's Compensation Act is far more in favour of the workman than any Employer's Liability Act. Now, the original position of Government was this. We

assumed that the Indian Courts would adopt as a matter of course the English common law in respect of this doctrine of common employment and we also assumed that they would adopt the doctrine of assumed risk; that is, we thought that in the event of a suit by a workman against an employer, the Indian courts would allow an employer to set up these two defences. Originally, our idea was, therefore that we should remove these two defences in India in respect of all workmen. We thought that *prima facie* defences of this kind were inequitable defences; and we thought it right and proper that we should not allow employers to set them up in India. That was our preliminary tentative position when we assembled our Committee in July last year. In the course of the discussions in that Committee we put forward that proposal, and we were warned by Mr. Macbride, a very great expert on all questions of this kind, that if we made our employers liability clauses in this Bill applicable to all workmen in India, the inevitable result must be that we should open the door for a vast amount of litigation. Now, as I have frequently explained to this House, one of our main objects throughout this legislation has been to limit litigation as far as possible. Consequently as a result of our deliberations, that Committee recommended that the employer's liability clauses of the Bill should merely apply to the workmen covered by the workmen's compensation clauses. We in the Government, as our Notes show, recognised that that conclusion was not a particularly satisfactory one, but our policy in drafting the Bill was to follow as far as possible the advice of the July Committee. That was our policy, because we recognised from the first that the proposals included in this Bill must be in the nature of tentative proposals and that those proposals would be circulated and criticised all over India. But on further examination we found that we had landed ourselves in great difficulty, in a position which we really could not defend. If it is inequitable that the employer should be allowed to set up defence of this kind, it seems perfectly obvious that it is equally obvious that those defences should be removed, not in respect of particular classes of workmen, but in respect of all classes of workmen. On the other hand, as I have said just now, we were warned that if we did remove those clauses in respect of all classes of workmen, we would open the door to a large amount of litigation, and that was the position in which the Bill stood when we got to the Joint Committee.

Then again, on further examination we found reason to believe that the whole assumption on which we had proceeded was probably not well founded. As I have explained, we had always assumed that the Indian Courts would apply the English common law in this matter as a matter of course. Mr. Neogy has quoted the remarks of Mr. Justice Couts-Trotter in this matter. Mr. Justice Couts-Trotter, I may say, I happen to know, had a good deal of experience of workmen's compensation and employer's liability cases in England before he ever came to India, and what Mr. Justice Couts-Trotter says is this:

"The doctrine of common employment is now recognised as judge-made law and every writer of authority regards it as an illogical anomaly. I would rather leave it to the Indian Courts to reject its application in toto as an accident of the English law dictated neither by equity or good conscience which, I hope, they could be trusted to do rather than truckle with it, as has been done in section 4 of the Act."

Mr. Neogy says that there is no guarantee that Mr. Justice Couts-Trotter is right, that there is no guarantee that the Indian Courts will not apply this doctrine. But what I should have liked to hear from Mr.

[Mr. C. A. Innes.]

Neogy and from the other lawyers in this House is whether they can point to any case-law in India, whether they can point to any large body of case-law in India, which shows that the Indian Courts up to date have applied these two doctrines. I understand that there is one case on record, I believe there is a case reported in the Allahabad High Court which tended to show that the Courts would have adopted this doctrine of common employment. But I understand further that the remark was more in the nature of an *obiter dictum* than a considered judgment. Therefore that is my point. If we leave these clauses in the Bill, they will apply only to a limited class of workmen; and will do very little good to the limited body of workmen who are covered by this Bill. Those workmen will utilise the workmen's compensation clauses of the Bill; they will have nothing to do with the employer's liability clauses of the Bill. One has got to remember that in most countries of the world the Employer's Liability Act and the Workmen's Compensation Act are not really supplementary pieces of legislation; they are intended to provide alternative remedies. And you have also got to remember that the English Employer's Liability Act was passed as far back as 1880. It was passed in 1880, that is long before any Government in the world had conceived the idea of workmen's compensation. The English Employer's Liability Act was of the nature of a feeler in the direction of workmen's compensation legislation, and now that we have the workmen's legislation in England, what has been the result? The result has been that the Employer's Liability Act has become more and more of a dead letter. In the year 1918, I think I am correct in saying, that the total number of suits filed in England under the Employer's Liability Act was only 63, and the departmental committees of 1920 which sat on this matter in England, pointed out that the comparative success of the first Workmen's Compensation Act and the comparatively very limited operation of the Employer's Liability Act made it clear that it was along the lines of workmen's compensation rather than employer's liability that the future legislation of this class must develop. Now we are beginning, we have got all experience behind us, we can choose on what lines we are going to proceed, and we have chosen to proceed at once without the preliminary step of an Employer's Liability Act, upon the lines of the workmen's compensation, and I think that that being so, the Employer's Liability Act is for the moment unnecessary. As I have pointed out, these sections, if Mr. Neogy's amendment is passed, will apply only to a very limited class of workmen. The majority of the workmen will not use the Act at all. It may be of some limited use to the higher paid workmen who might be able to get higher damages under the Employer's Liability Act than under the Workmen's Compensation Act. But as I have shown, there is no certainty, there is no guarantee that the Indian Courts will apply these two doctrines at all. That being so, I suggest that it is wiser to leave the Courts to deal with the matter as they think fit and to reserve our legislation until the necessity for it has been proved, and if the necessity is proved, we should legislate, not for a very limited class of workmen, but for all workmen. In this view, Sir, I hope that the House will reject this amendment.

Mr. B. S. Kamat: Sir, I speak with a certain amount of diffidence on this amendment of Mr. Neogy on the ground that I am not a lawyer and not fully conversant with the section of the Employer's Liability Act of England of 1880. But, it seems to me, Sir, that Mr. Neogy who was a

Member of the Joint Committee which considered this Bill has now as an after-thought proposed to insert all these sections which the Joint Committee after a great deal of deliberation thought fit to omit. The question involved is this, whether in addition to the remedy which we give to the ordinary workman we should provide an alternative remedy, namely, by incorporating the additional provisions of the Employer's Liability Act of 1880, or whether we should give him the rough and ready remedy which the Workmen's Compensation Bill provides; and secondly, if we give him an additional remedy by the employer's liability sections, whether we should take away the right of defence or two defences which an employer might be able to raise in the Courts in defence of himself.

Mr. Neogy thinks that if it is not sufficient that the remedy provided by the Compensation Bill alone should be allowed. He wants an additional and an alternative remedy. Now, I do not think it would serve the interests of the workman himself to have an additional remedy. As my friend, the Honourable Mr. Innes, has pointed out, there is an amount of litigation involved in that proposal. Those who have read the provisions of the Employer's Liability Act of 1880 and have also read the literature that has sprung around it owing to the interpretations of each and every section of the Act will be almost bewildered, and I am sure if they go through the whole literature they will find that it is far better to leave the Employers' Liability Act alone. Now, if you adopt Mr. Neogy's amendment, as Mr. Innes pointed out there might be litigation over each and every word and phrase in these clauses. The defences that are likely to be raised are: what do you mean by "Superintendent"? Is he the properly authorised superintendent? Then, the question will be raised whether the workman did not enter the service voluntarily or the principle or the maxim of law which the lawyers call *volenti non fit injuria* even if you shut out the doctrine of common employment. Now, how is the ordinary workman in India to fight in the Court against these subtle and ingenious arguments which might be raised. It only means he will have to go into the hands of the lawyers and we want to save him in the Workmen's Compensation Bill from going into the hands of the lawyers in order to fight out such subtle interpretation of law, as to whether it was an assumed risk or whether the man entered the service knowing full well the service which he was entering into and whether also, secondly, he was not more highly paid than similar classes of workers outside because there was a greater hazard. Now, all these subtle interpretations of law he will have to face through his lawyer and I think it is far better not to entangle him in these different provisions of law. Then, again, my friend, Mr. Neogy, while stating his case, pointed out that one great advantage of giving the alternative remedy to the workman is that, if he wants to sue the employer under the provisions of the employer's liability section, there would be no limit to the damages that might be claimed for. I do not know whether he is quite correct in the statement of facts. The Employer's Liability Act, 1880, does not show any such thing. (Mr. K. C. Neogy: "What about the present Bill?") Indeed, if you want to be equitable at all, and I am sure my friend, Mr. Neogy, wants to be equitable, if he wants to copy the provisions of the Employers' Liability Act in this Compensation Bill, then in a sense of fairness it is also necessary that he should adopt section 3 of the Employer's Liability Act, which provides a limit to the damages. It is not correct to say that a workman can go to the Court and claim damages even to the extent of ten or fifteen thousand rupees. The Employers' Liability Act, if he has read it correctly, does provide a limit in

[Mr. B. S. Kamat.]

section 3. That section lays down that the amount of compensation recoverable under this Act (*i.e.*, the Employers' Liability Act) shall not exceed such sum as will be found to be more than his estimated earnings during the three years preceding the injury. Now, it is not correct to say that the workman can go and claim any amount of damages under the Employers' Liability Act. The utmost he can claim is a sum not more than 3 years' earnings preceding the injury. Now, I want to ask Mr. Neogy whether he is prepared to accept as a consequential amendment, if his amendment is carried, my amendment that section 3 of the Employers' Liability Act shall also be inserted in this Chapter. (Mr. K. C. Neogy: "No, no.") Now, if he is not prepared to accept that, then I say he is inequitable and unfair. Because you are giving two remedies or two weapons to the workman, and it is not fair that he should have these two remedies and that, at the same time, you should take away the two defences from the employer, namely, the defence of common employment and the defence of assumed risk. The two things go together and I think, if this House is not prepared to have section 3, namely, the section which puts a limit to the amount of damages claimable, that the other sections should be inserted according to the amendment of Mr. Neogy. I have no serious objection to Mr. Neogy's amendment on the merits, but I contend that if he wants to insert those provisions of the Employers' Liability Act of 1880, then, I say, equity requires that section 3 also of that Act ought to be incorporated and ought to be copied here. I do hope the House will see that it is fair and just and equitable that section 3 of the Employers' Liability Act is also embodied in the Act, if the sections which Mr. Neogy wants to insert are carried in this House.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I think there is some misapprehension in the mind of my Honourable friend, Mr. Kamat, about these sections giving an alternative remedy to the workman. I think he was led to believe that, on account of some remarks which fell from my Honourable friend, Mr. Innes. Mr. Innes said that in some countries the Employers' Liability Act is enacted as an alternative remedy. But neither was the Employers' Liability Act so enacted in England as an alternative remedy nor are the sections which Mr. Neogy wants to put in here also an alternative remedy. The alternative remedy, both in England and in India, exists already. Even if the sections may not be in the Bill, the alternative remedy will remain to the workman. My Honourable friend ought to refer, in order to be convinced of that, to section 5 of this Bill. Sub-section 5, clause 3, of the Bill deals with the alternative remedies. Therefore, it is absolutely clear that the sections which my Honourable friend, Mr. Neogy, wants to put in do not give a new alternative remedy. What these sections do, is to remove certain defences which employers can plead in England. That is the only thing which these sections do. But they do not give an alternative remedy at all. Sir, everybody seems to be agreed on the point that these sections are not quite adequate. If the employers' liability is to be defined, it must be defined for all workmen. But unfortunately the Government does not promise to bring forward another Bill immediately or within a short time, in order to 'define employers' liability. If the Government would promise to bring forward another Bill, I should certainly advise my Honourable friend, Mr. Neogy, to withdraw these sections from this Bill altogether because there is an advantage in having the employer's liability defined for all classes, and there is no difference of opinion on this point at all. In the absence

of any such promise from the Government, however, I think it is better to have the employer's liability defined at least in the case of those workmen who are included in the Workmen's Compensation Act. My Honourable friend, Mr. Neogy, has already explained that these sections will be particularly useful to those workmen who get wages varying from Rs. 80 to Rs. 300. I think there is a large number of workmen belonging to this class and these sections will be particularly useful to them. I therefore on the whole support the amendment of my friend, Mr. Neogy.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, if I were to give my vote as a member of the Bar I would have supported the amendment which has been proposed by Mr. Neogy. But I am afraid I have to give my vote as a legislator. And I have got to see not only the profit of the legal profession but I have got to see the other side also, that is the workman and the employer. Giving my deep consideration to this question, I feel constrained to oppose this amendment for a number of reasons. The first reason which has actuated me to stand in opposition to it is this, that it is sure to give rise to litigation and litigation of a very highly technical character, which may involve both the workman and the employer very seriously and perhaps both of them may become regular combatants in the law courts, which will mean, so far as my way of thinking goes, a great expense of money. Not only that. It will, no doubt, hamper the progress of the Workmen's Compensation Act also. These are the three grounds which compel me to go against my own profit and to be in favour of the development of industry in this country. I agree with Mr. Joshi when he says that we have got some other law in India which can come to the help and assistance of the workmen beyond the scope of the Workmen's Compensation Act. In spite of this knowledge of his, he yet supports the amendment, and it is extremely difficult for me to say that he is consistent. If there is any law according to his way of thinking, then he will have to accede to my contention that the present amendment is unnecessary. Is he really serious to over-burden our Statute Book? If a law is already in existence, as he himself admits, then this new law need not be devised. On that ground also the amendment according to the very argument of Mr. Joshi has got no force. The third ground is that which centres round the question of practicability. We cannot ignore that question, and I fully agree with the Honourable Mr. Innes when he very ably expressed this view, which view is based on history. When we look into the case law, we find that the Workmen's Compensation Act has been much more resorted to and the Employers' Liability Act was not used so frequently. The latter was not called in to help the workman, whereas the Workmen's Compensation Act was generally resorted to. Why? Because, the Workmen's Compensation Act gives you cut and dry material. Certain formulæ have been incorporated. A certain maximum amount of compensation, in some cases is allotted. The nature and description of injuries of a permanent character are fully described. The workman can understand very well what compensation he will be entitled to. He makes a reference to the employer. If the employer enters into an agreement or technically compromises, then he feels contented with that agreement. Otherwise he goes to the law court and seeks redress. From this we can easily deduce that this method is naturally more convenient to the workmen as well as to the employer and decidedly less expensive. Therefore, having this precedent in our favour, we feel justified in saying that the amendment is not such an amendment as should have the support of this House. Therefore, in brief, I oppose this amendment.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban):

Sir, if I felt that there was any practical need of incorporating this clause in this Bill I should have given it my hearty support. As it is, however, reading clause 3 of the Bill as it stands and the concluding portion of clause 3 of Mr. Neogy's amendment, in this Bill at all events this provision is unnecessary, and to be able to say that in regard to any amendment is, I think, to plead for its rejection. What is the present clause 3? "If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employers shall be liable to pay compensation in accordance with the provisions of this Chapter." And then the clause has certain provisos excluding the possibility of damages being awarded in certain events. I need not read those out but shall draw the attention of the House to the corresponding words in Mr. Neogy's amendment. They are: "a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer." Comparing those words again with the words in the present clause 3, we have this, that if the injury is caused to a workman by accident arising out of and in the course of his employment, the employer except in certain eventualities is liable. Therefore, to a certain extent at least there is over-lapping of ground. I need not go in detail into the question that Mr. Kamat has raised, because if you have the poison, there must also be the antidote. If you have what Mr. Neogy proposes, then Mr. Kamat's proviso must come in. That would only add to the complexity of the Bill and would take away from it the simple straightforward and comprehensive nature which I believe is one of the features of the Bill and which ought to commend itself to the House. Sir, I have spent much of my life in drafting pleas, tenable and untenable, and many other pleas than of common employment and assumed risk would occur to the draftsman which the amendment of Mr. Neogy cannot provide against. I think India may well congratulate herself that its simple Civil Procedure Code has helped us in doing without that fearfully complex plea system till lately obtaining in England, and that the practitioners here, in spite of what Dr. Nand Lal has said, have never troubled themselves about nicety of pleas that is yet the privilege of English draftsmen. What has been apprehended by Mr. Neogy is therefore more or less imaginary, particularly in view of the plain straight and unambiguous provisions of the Workmen's Compensation Bill that we are now considering. Sir, Mr. Neogy himself has alluded to it and the Honourable Mr. Innes has brought it out more clearly that the Workmen's Compensation Act was the result of a sort of evolution. Much earlier than that Act, the Employers' Liability Act came and when the Workmen's Compensation Act came, the Employer's Liability Act became more or less obsolete, and that for very good reasons. Supposing we were here to say or be told, Sir, that before we have reforms in this country in still more generous measure we should have to go over the whole ground covered in England commencing from the Magna Charta, I do not think we shall be in a very enviable state of things. We have the result of the toils and struggles in England resulting in the Workmen's Compensation Act and we ought to begin to build upon that. And if it is really felt that some enactment of the nature of the Employer's Liability Act is necessary it ought to be much more comprehensive whether the Government gives the guarantee which Mr. Joshi wants to have or not. I do not, in leaving out these sections, read

a desire on the part of the Joint Committee that the go-by shall be given to the principles of the Employer's Liability Act, but I think that they must have felt that what the present Bill provides is sufficient as a good first step as I called it in welcoming this measure. I myself had my doubts, Mr. Seshagiri Ayyar voiced them, whether the Joint Committee should have done what it did in picking and choosing. We have an opportunity here in this House now of considering on its merits what the Joint Committee has rejected and I hope that having regard to all the points of view that have been urged the House will be of opinion that for practical purposes the Bill that is before us is a good first step and we need not complicate the issues.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, as one of the Members of the Committee when it first sat, I wish to voice my opinion regarding Mr. Neogy's amendment. I support that amendment mainly because it affords provision to a class of workmen whose pay ranges from Rs. 83 to Rs. 300 and who, as provided by the Joint Committee, will only receive compensation graded on the salary of Rs. 83. I consider that those people who are in receipt of a higher salary up to the limit of Rs. 300 are entitled to a proportionate rise in compensation according to their salary, because as drafted or re-drafted by the Joint Committee, these workmen will not receive that compensation. I therefore consider that the Employer's Liability Act will provide an adequate compensation for these workmen, and if the Workmen's Compensation Act, as presented to this House for acceptance to-day, denies these workmen that compensation, I consider they should be given an opportunity of another source of compensation. I have listened very attentively to what the Honourable Mr. Innes said, and much as I agree with all that he has said in the matter of excessive litigation which would almost stifle this Bill,

for as its practical application is concerned, surrounded as we are in India with so many difficulties, with so many castes and creeds demanding special investigations, yet at the same time, even at the risk of increasing the number of lawyers in India, I support Mr. Neogy's amendment, because, as I have said before, it does provide adequate compensation for a certain class of workmen which the present Workmen's Compensation Act denies them.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I cannot help saying that those of this House who have opposed this amendment have not considered the serious situation which would arise by omitting provisions relating to the liability of employers. I do not know whether the Honourable Mr. Innes means to suggest that by not making a provision we are in any way facilitating the work of the Courts or bettering the condition of the workmen. The law as regards employer's liability and the law as regards the liability to pay compensation to workmen are both existent in India as well as in England. Supposing you had no law relating to workmen's compensation, there would still be the remedy to the Indian workman by a suit for damages. You are only simplifying the work by enacting a few provisions by which the Commissioner will be enabled to fix the compensation in an easy manner. As regards the liability of employers, although you may not make a provision in this Act, still the liability would be there. If I am convinced that by not introducing the provision we are likely to help either the capitalist, or the employee, or the Court, I would have voted against the amendment, but the absence of law does not suggest that there will be no remedy for the wrong. The remedy will

[Mr. T. V. Seshagiri Ayyar.]

be invoked, and in invoking the remedy what will be the position? Instead of turning to certain specific provisions in an Act, the party would be compelled to have recourse to the English law. There are doubts in this country as to how far the common law of England or the Acts of the English Legislature would be applicable in this country. I have got before me two articles, both practically within a month. One of these articles points out that in Madras it has been held that the common law of England is not applicable except in the Presidency Towns. But in another article it is pointed out that, although by Statute the common law is not made applicable to mofussil towns, the principles of equity, justice and good conscience would be invoked and the principles of English law would be brought in for the purpose of determining these cases. Therefore, by omitting provisions in the Workmen's Compensation Act, you will not shut out the remedy. The remedy will be sought in the complicated decisions of the English Courts, and I am sure no greater danger to the Courts or to the workmen can be apprehended than the bringing in of a large body of undigested decisions of Courts in England. It is for this reason desirable that you should introduce provisions in the Act itself which would simplify the procedure and would make the remedy easy for the workmen. It is for that reason that I take it Mr. Neogy has asked for the introduction of these provisions. There is no use in running away from danger when you have got it before you. If you do not introduce the provision relating to employer's liability the workman will know that he can fall back upon the English law. He will certainly have recourse to it, and what will be the result? Instead of having a cut and dried formula, instead of well-defined provisions in the Act, you will drive him to have recourse to a large number of undigested decisions of the English Courts with the result that the work of the Court, the work for the workman would be made more difficult than before. Therefore, the idea which the speech of the Honourable the Commerce Member has brought in, namely, that by not introducing the provisions relating to workmen you are minimising the chances of litigation and bettering the position of the labourer, must be wiped out of your mind altogether. As soon as he finds that there is provision for workmen's compensation, if he find that there is negligence on the part of the employer, the workman would undoubtedly have recourse to the Courts and if he has recourse to the Courts, are you bettering his position by not making a provision in the Act? Are you making it better for him, or for the capitalist, or for the Courts by driving him to have his relief in English law? That is the position you have to consider. I will not say that the provisions as introduced by Mr. Neogy are perfect. They are capable of improvement. It may be, as pointed out by Mr. Kamat, some restriction will have to be placed upon the liability of the employer. That is not a matter upon which I am speaking. I am arguing the general principle whether this House will be justified, will consider it proper not to have these provisions relating to the liability of employers in an Act which provides for compensation to workmen. If the Honourable the Commerce Member will be good enough to say that very soon he would introduce an Act relating to the liability of employers, then it may be that we shall stay our hands and will not press the amendment. But if he is going to say 'I shall have only an Act relating to workmen's compensation and I shall have nothing to do with an Act relating to employers' liability, then he is courting danger' which he is anxious to avoid. For these reasons I ask that these sections be adopted as part of the Bill.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): I wish to remind the House of a remark which fell from my Honourable and learned friend, Dr. Nand Lal, a remark which I should like to endorse most heartily, that this Legislature should not cumber the Statute Book with any provision unless it is perfectly satisfied that there is a necessity for that provision. With regard to this amendment of Mr. Neogy, Sir, what is the question we have to ask ourselves? It is whether the necessity has been proved for introducing this particular chapter on the employers' liability. From the Joint Committee's report it appears that they considered this question very carefully. They discussed both sides of it and by a majority they formed the opinion that the necessity was not proved. The question of the necessity, Sir, depends upon the answer to another question, which is whether our courts in India will follow the old English doctrine, the judge-made doctrine, the common law doctrine of the employers' liability and assumed risk. Now, as regards the supporters of this amendment, Sir, I listened to the debate carefully, and until Mr. Seshagiri Ayyar rose, I did not hear any suggestion that there was any probability much less any certainty whatever that our Indian courts would adopt the English law in this respect. I do not think, Sir, that Mr. Seshagiri Ayyar himself has shown that there is really any risk at all. He has referred to certain discussions, general discussions, but no discussions relating to this particular matter. What is the actual position with regard to that, Sir? Is any Member of this House satisfied that there is at the present moment any risk of our Indian courts adopting these doctrines and applying them to suits between employers and employees? We have one very definite opinion and that is an opinion of a High Court Judge in this country, a Judge of the same High Court of which my Honourable friend, Mr. Seshagiri Ayyar, himself was at one time such a distinguished member. He has expressed an opinion that the courts in this country will not and cannot follow these judge-made doctrines, an opinion which apparently in his own mind amounts to a practical certainty. Sir, if the courts do apply these doctrines, then I think will come the time for legislation but we should not legislate to meet a hypothetical danger. Mr. Innes has explained to the House several times already that this Bill is an experiment. He has explained also that it is particularly desirable that we should start this Bill on as simple and clear lines as possible. Let us proceed with the Bill on that understanding and should necessity arise in the future it will not be a difficult matter to add provisions to the Bill on the lines of the Employers' Liability Act of 1880.

Mr. Darcy Lindsay (Bengal: European): In rising to oppose the amendment, I do not wish it to be understood that I necessarily oppose the principle of the employers' liability but I hold very strongly that this Workmen's Compensation Bill should stand on its own footing and not have tacked on to it what should be, if necessity arises, provided for by a separate Act entirely. In the Statement of Objects and Reasons given by the Government for the inclusion of Chapter II. in the draft Bill, it is stated "modifications are made in the ordinary civil law affecting the liability of employers for damages in respect of injuries sustained by their workmen;" and the very meagre reference to employers' liability in the Bill as originally drafted, shows that the one idea was to amend the common law or to improve the common law. I maintain that there are other means of bringing about that end, if it be at all necessary or desirable. Again, the Select Committee in their report admit that this reference to employers' liability in the original draft was only a partial remedy. Well, then, Sir,

[Mr. Darcy Lindsay.]

why apply only a partial remedy? It is likely to lead to great confusion. We have heard from several Members that the great object of this Bill is to avoid litigation in every possible way. We are told, on the other hand, that the employers' liability section is likely to create litigation. I would also point out to you, Sir, that practically none of the provisions of the Bill which apply to the workman's compensation section apply to the employer's liability. We do not, or we did not in the Bill as originally drafted, allow our Commissioner to deal with the settlement of employer's liability. No, the workman would have to go to court to obtain his relief. The Honourable Mr. Innes has told us, that when the Workman's Compensation Act came into operation in England, application for damages under the Employer's Liability Act became far and few between. That shows that the workman in every way prefers to claim under the Workman's Compensation Act and not run the risk of a suit under the Employer's Liability Act.

Another point was raised by the Honourable Mr. Kamat that if my Honourable friend, Mr. Neogy's amendment were carried and the employer's liability section reinstated in the Bill, there is no provision made for limit of award of damages. Now, that is a most important issue. We have been informed that in England the Act allows three years' wages as a maximum. Talking as a late insurance official, because I am now numbered among the "unemployed," I feel that to support my late profession I ought to support this amendment, because it undoubtedly means considerably more premium. Where there is no limit to the risk involved, the premium must of necessity be higher. That to my mind has got a very important bearing on Mr. Neogy's amendment and that is a very strong reason why it should be rejected. As I have said before, the experience in England goes to show that the Employers' Liability Act is more or less a dead letter; and, therefore, why cumber the Indian legislation with what is no longer found of any use at Home? I think my Honourable friend, Mr. Seshagiri Ayyar, is really in agreement with me that there should be a separate Act. If there is any necessity for such an Act in future—and the Honourable Member has, I think, explained both in the Report of the Joint Committee and also in what he stated to the House to-day—that if later on it is found necessary to adopt an Employers' Liability Act the Government will take measures to bring in such a Bill. I strongly advise the House, Sir, to reject this amendment and not confuse what, to my mind, is a very first class Bill—the Workmen's Compensation Act.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muham-madan Rural): I move that the question be now put.

Mr. President: Amendment moved:

"That after Chapter I the following be inserted as Chapter I-A:

"CHAPTER I-A."

EMPLOYERS' LIABILITY.

3. Where personal injury is caused to a workman:

- (a) by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the

employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or

- (b) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or
- (c) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where the injury resulted from his having so conformed; or
- (d) by reason of any act or omission of any person in the service of the employer done or made in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by any authority and which has been so approved) or in obedience to particular instructions given by any person to whom the employer has delegated authority in that behalf;

a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer."

The question is that that amendment be made.

The motion was negatived.

Mr. President: That disposes of clauses 4 and 5.

Dr. Nand Lal: Sir, I beg to move:

"That in clause 3 (1) after the word 'personal' add the words 'and bodily'."

When we see the provision of clause 3 (1) we find that the expression 'personal injury' occurs there. The House will agree with me that the word 'injury' is not defined in the Bill. If some definition of 'injury' had been given, I would not have attempted to move this amendment. But the fact is that the word 'injury' seems to be such a word that it ought to be defined. When I see the General Clauses Act, I cannot find any definition of this word. I do not think the English Act gives the definition of this word either—I am subject to correction—but my recollection of the study of the English Act is that the definition of this word 'injury' is not given there. We have got the Indian Penal Code, no doubt, where the word 'injury' is defined. But that definition serves the purposes of the criminal law. Sir, you will be pleased to see section 44 of the Indian Penal Code. There the definition runs as follows:

"The words 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation, or property."

Now the definition which is available to us is of a very abiguous character, and perhaps it will not be of any help to us for the purposes of the Bill which is under debate now. Because if a workman feels irritated or feels aggrieved he will have no cause of action. If, again, his implement is broken, then according to the scope of this Bill he shall have no cause of action. If in consequence of some obnoxious smell in the vicinity of the factory he suffers, he shall have no cause of action. He shall have cause of action only in the case where he has got some bodily injury. And my contention seems to be supported by the mere perusal of Schedule No. I. When we go into that Schedule we find the descriptions of various injuries given there. From that the natural inference can be drawn that the Select Committee, or the framers of these clauses, contemplated that injury, to all intents and purposes, so far as the purview of

[Dr. Nand Lal.]

this Bill goes, means bodily injury. But, Sir, this inference in the absence of a statutory definition, will not be of great avail. Whenever there will be a question, 'whether a certain injury comes within the scope of the word 'injury', which is incorporated in clause 3, the question will require determination. Both parties will set forth their own construction, according to their own convenience and profit, and in some cases, Sir, it may give rise to unnecessary litigation. And therefore the champion of labour will have to give serious consideration to this point. The help that is sought to be extended to the workman will not be such as they desire to extend to him. It is quite probable, Sir, that Honourable Members who may oppose this amendment may premise or argue, 'that supposing on account of work which is entrusted to the workman he has become lunatic or there is some sort of mental shock given. Say, he is working in the mine or is working in the factory, and there is a fall or the engine bursts or something like that happens and it may give rise to a shock and that shock may affect his brain. It could be argued in this way, that the definition which I am going to propose will not meet such a case. In reply to that I would submit that you have not made such provision as may cover that case. Now, Sir, you will agree with me that the word "personal" is very ambiguous. And when we are going to frame a law we should try and see that the meanings which are attached to a word in common parlance should not be given prominence, because this is a Statute, it is to be interpreted in a certain way, with reference to a particular significance or sense. Therefore either the word 'personal' should have been defined or the word 'injury.' I quite concede that the word 'personal' was indispensably necessary; if the word 'bodily' had been used in place of the word 'personal' then clause 3 would have been considered very defective. However, the defect, to my mind, now is that the word 'bodily' is not incorporated in the clause and I suggest that this Honourable House will consider the character of this amendment and will accept it. Otherwise I am afraid there will be loopholes for litigation and the poor workman who has been given some help will eventually say "Well, the help which was given to me has been practically wasted in the form of litigation." Therefore, Sir, with these few remarks I commend this amendment to the House and I hope the Government Benches will also support it, because it is more or less a verbal sort of amendment.

Mr. Darcy Lindsay: I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The question is that the following amendment be made:

"That in clause 3 (1) after the word 'personal' add the words 'and bodily'."

The motion was negatived.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I move that in clause 3 (1) in proviso (a) substitute the word 'seven' for the word 'ten.'

By this clause, Sir, we exempt the owner from his liability for certain classes of injuries; and in proviso (a) we provide that if the injury is of such a nature that it does not result in the disablement of the workman for a period exceeding ten days, the employer shall be exempted. Sir, when we look at the English Act—the Workmen's Compensation Act of 1906—we

find that the period there has been fixed at seven days only and not ten days. I do not know why that period has been changed into ten days in this Bill. The period when the workman is injured and is away from his work is the period when he needs the help most and therefore it is very necessary that this period should be reduced. It may be argued that where the injury were of a nature that the workman received some cuts or some light bruises or some scratches, the employer should not be made liable to pay him compensation for that. But there is no fear on that point as we have already provided in the Bill the definitions of injuries under which the employer will be made only liable. Therefore it is necessary that the period should be reduced as much as possible in the interests of the workman and his family. I move, Sir, that the period fixing it at ten days should be reduced to seven days only.

The Honourable Mr. C. A. Innes: Sir, I sincerely hope that the House will not accept this amendment. This particular clause which the Honourable Member proposes to amend is a very important clause indeed. Practically every Compensation Act in the world makes provision for a waiting period, that is the period for which disability must last before compensation is due. The reason why this waiting period is provided is, in the first place, to minimise the risk of malingering. In the second place, the waiting period prevents a very large number of claims which will be so trivial that the administrative expenses would consume most of the amount awarded. It is true that the English Act provides a waiting period of one week. In America, on the other hand, the waiting period is 14 days and in other countries it is very much longer still. In Sweden, I believe, it is as much as 60 days, and in Denmark I believe it is as long as 13 weeks. My fear is, that the period of 10 days provided in the Bill is not long enough. Originally, the Government proposed 20 days, but after very careful discussion we arrived in the July Committee at this period of 10 days, and that has been accepted also by the Joint Committee, and I hope that the House will accept that period as a fair period, a period which is generous to the workmen. I should like this House to remember this. If we adopted this amendment which Mr. Agnihotri proposes, we should probably increase the number of cases under this Bill by as much as 20 per cent. That is the estimate which we have framed after studying figures based on English and American experience. It is not going to give very much benefit to the workmen; it is only a matter of three days. On the other hand, we are going to increase the work caused by this Bill enormously. As I have said, the waiting period has been carefully arrived at in consultation with two Committees, and I hope that the House will stick to the period drafted in the Bill and will not accept the amendment by Mr. Agnihotri.

The motion was negatived.

Raj Bahadur Lachmi Prasad Sinha (Gaya cum Monghyr: Non-Muhammadian): Sir, I beg to move:

"That to proviso (b) (i) of clause 3 (1) at the end the following be added:

'Provided the employer is not aware of the fact before the workman joined his work under such intoxication on the date of accident.'

Sir, I move this amendment which is in the form of a proviso to clause 3, sub-clause (1) (b) (i). In moving this amendment, I do not think that much explanation is necessary because it is self-explanatory. Sub-clause (b) (i) as it stands provides that the employer will not be liable for payment of compensation to a workman if the latter joined his work, before

[Rai Bahadur Lachmi Prasad Sinha.]

the accident or injury took place, under the influence of drink or drugs. Sir, in this connection may I ask whether the employer or his agent is or is not to see that his workmen who are, or may be, liable to injuries or accidents from the nature of their work do not join their work under such intoxication. I think the House will admit that in such cases the responsibility lies on the employer and not on the employee. Moreover, Sir, it may be urged how is the employer or his agent to find out as to who amongst his labourers are intoxicated. In this connection, I would simply say that I want to throw the responsibility on the employer in such cases, and I hope the Government will kindly try to suggest some means which will have the desired effect of the proposed amendment. We are not all draftsmen here, and we can only recommend some principles on which certain clauses or sub-clauses of Bills may be based and drafted, and so far as the drafting is concerned it rests with the Government drafters to carry out the suggestions if accepted by this House.

Lastly, I would like to draw the attention of this House to the Minute of Dissent attached to the Joint Committee's Report by the Honourable Mr. Raza Ali who says "According to the English law, the employer is liable to pay full compensation in the case of death or permanent total disablement even if the accident is due to the misconduct of the workman." With these remarks I move my amendment.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, I rise to support the amendment on the ground that, unless

1 P.M. some such provision is made in the Bill, which will in these cases throw the responsibility on the employer, illiterate workmen will find it a very difficult job to obtain any compensation from their shrewd employers. In the majority of cases where compensation is claimed by working men who have sustained injuries, the employer will try to shelter himself under this clause on the plea that when the workman did come to his work he was under the influence of intoxicants and as such is not eligible for compensation. The case of such a nature will be more explicit and clear if I quote the example of firemen or drivers on running train engines. Their duties, as I think, Honourable Members are aware, are such that, in spite of their utmost vigilance and watchfulness, accidents and injury happen to them, and in some cases so serious as to result in death. Now, in such cases, it is very easy to refuse compensation on the plea that they were at the time drunk. What the amendment attempts is to ensure that the employer should engage a supervisor to see that no workman under the influence of intoxicants goes to his work. Unless this amendment be made, Sir, any employer, who is generally much more intelligent than the employed, can give the plea that the workman was under the influence of intoxicants, so it should be made the duty of an employer to see that the employee is not under that influence. With this in view, I support the amendment.

Mr. A. G. Clow (Industries Department: Nominated Official): Sir, I suggest, in the first place, that the common-sense of the House will not allow this amendment to be carried. The spectacle suggested to us by the speeches of the two Honourable Members on my left is that of the employer in the morning drawing a chalk line in front of the factory and asking all his workmen to step solemnly along it. I do not think you will get the workman to agree to an examination every morning as to whether he was sober or not.

But, apart from this, is there any employer who is going to allow a man whom he knows to be drunk to enter his factory, to work with his machines possibly to involve him in a very serious accident costing many lives? For he will certainly have to pay for the other workmen injured, even if he is excused liability on behalf of the drunk workman.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move:

"In clause 3 (1) in proviso (b) (ii) after the word 'workmen' add the words 'and not countermanded by a person in authority superior to the workman'."

Sir, we have provided in this clause that, if a workman were to wilfully disobey an order expressly given or a rule expressly framed for the purpose of securing the safety of the workman, such a workman should not be entitled to any compensation under this Bill. So far as this rule goes, it is very wholesome and desirable, but there may be cases in which an employer or superior officer may order such a workman to do a particular work which may amount to disobedience or the breach of such rules and in such cases the employer will get the benefit of the obedience to his orders by the workman which the workman had no alternative but to obey being the immediate order of his employer or superior officer and with the knowledge that his act would amount to breach of the rules or the regulations or orders expressly laid down for the safety of such workman. Under these circumstances, I think it desirable that no loopholes should be given to the employers which would give undue advantage to him over the workmen and therefore I move this amendment. Sir, it may happen that the amendment which I have proposed may not be in strict accordance with the drafting rules or the draft may not be approved by the Members on the Government Benches. But my whole object is to put before the Government my view and difficulty on this point and to request them to make the necessary changes in the Bill.

The Honourable Mr. O. A. Innes: Sir, as far as the Government Benches are concerned we think that we have provided for the point raised by Mr. Agnihotri by putting in the word "wilful". It must be "wilful disobedience". I put it to the House that the inclusion of the word "wilful" covers the point raised by Mr. Agnihotri and that his amendment is not necessary.

Mr. President: The question is that the following amendment be made:

"In clause 3 (1) in proviso (b) (ii) after the word 'workmen' add the words 'and not countermanded by a person in authority superior to the workman'."

The motion was negatived.

Mr. K. B. L. Agnihotri: As "wilful" has been explained to cover my second amendment* which I also wanted to put before the House, I beg permission to withdraw it.

Mr. N. M. Joshi: Sir, I beg to move the following amendment which stands in my name:

"To proviso (b) in clause 3 (1) at the end add the following:

'Unless the injury results in death to the workman or in his permanent total disablement in either of which cases the employer shall be liable to pay compensation to which the workman would otherwise have been entitled'."

* "In proviso (b) (iii), after the word 'workmen' add the words 'unless done under orders of a person superior in authority to him'."

[Mr. N. M. Joshi.]

Sir, in order that the House may understand the exact scope of my amendment I would like to explain first what the original section 3 (b) is. That section is intended to prevent compensation being given to workmen in cases of accidents which take place on account of the serious and wilful misconduct of the workman. Serious wilful misconduct is defined in this section in three ways, namely, first, when the workman goes to work under the influence of drink, secondly, when the accident is due to the fact that the workman has wilfully disobeyed a rule and thirdly, when the accident which takes place is due to the fact that the workman had removed a safety guard. Now, Sir, to a layman, this clause seems to be quite reasonable, and my Honourable friend Mr. Agnihotri just mentioned that he approved of it. But, Sir, to those people who have studied the principles on which the Workmen's Compensation Bill has been framed and the principles on which the Workmen's Compensation Acts of other countries are based, this clause itself is altogether against those principles. The principle of the Workmen's Compensation Bill, as has been explained several times, is that the industry which creates risks for workmen should bear the civil liability for the accidents that take place. While defining that principle, there is nowhere mention of negligence either of the employer or of the employee. This is the general principle of the Workmen's Compensation Bill. If the principle of negligence is to be brought in here, then certainly we must bring in negligence of the employer also. If on account of the wilful misconduct of the employee he is to be deprived of the compensation, then certainly the employee deserves more compensation in those cases where the negligence of the employer is proved. You cannot modify the principle only in the case of the employee and not modify it in the case of the employer. The Bill, as it is before us, provides no additional compensation for those cases where the wilful negligence of the employer will be proved. I therefore think that this clause, as it has been drafted, is against the principle of workman's compensation.

Then, naturally, you will ask me, how did this come here at all? My surmise is that this clause has been introduced here on the model of the English Workmen's Compensation Act. But the misfortune of the workman in India is this, that although the clause is based largely upon the English clause, this Bill drafted in such a way that, while portion of the clause which was in favour of the employer has been taken in here, the portion of the clause which favoured workmen has been taken out. That is the misfortune of the Indian workman. I do not know what explanation the Government can give for putting only one part of the English clause in the Bill and omitting the other part which favoured the workman. Sir, I would like the House to remember, in the first place, that the amendment which I am proposing is just to restore the English section in our Bill—in principle, I do not say the words—but I want to restore the spirit of the English section, namely, even where wilful misconduct of the workman is proved and the accident has caused the death of the man or has totally disabled him, compensation should be paid. Sir, the principle on which the English clause is based is this, that in the case of death and total disablement, when you refuse to give compensation to a workman you do not punish the workman at all. You punish those people who depend upon the workman or those people who have to maintain the workman. This is the principle on which the English practice of giving compensation even where wilful misconduct is proved is based.

Sir, this principle was mentioned by Mr. Gladstone now Lord Gladstone when he introduced an amendment in the English Workmen's Compensation Bill exactly similar to the amendment which I have moved. Therefore, the House is assured that it is not an argument of my invention. There was another argument which was given by Lord Gladstone when he introduced this principle in the English Act, and that was this. Where a workman is killed on account of the accident, if you charge him with causing the accident on account of serious wilful misconduct, you are charging a dead man whose lips are sealed, who cannot give evidence and show to the world that the charge brought against him is false. That was the second argument given by Lord Gladstone when he moved an amendment similar to mine in the House of the Commons. I hope these arguments will find favour with the House.

But, Sir, there are also other arguments why my amendment should be accepted. In the first place, several times when amendments are being discussed, arguments are brought forward that we must not put too great a burden upon the industry. I assure the House that even if they accept my amendment, the burden on the industry is not likely to be too great. After all, are the cases of wilful misconduct causing the death of workmen going to be too many? What is the meaning of a workman by wilful misconduct causing the accident and killing himself? It means that the man is practically willing to commit suicide. Take the third sub-clause of this clause (b)—"the wilful removal or disregard by the workman of any safety guard."

When a workman wilfully removes the safety guard he is prepared to commit suicide. Is there any one here who believes that such cases of practical suicide will be too many? Personally I do not take that cynical view of human nature at all. I do not also believe that there will be in many cases a wilful disobedience of orders. Sir, as this is also the English law, we must therefore go by the experience of England in this respect. Are the cases under this clause going to be too many? In order to assure the House that the cases are not going to be too many, I propose to quote to the House an authority from England. When this amendment was being discussed in the English House of Commons, Mr. F. E. Smith, a very distinguished and famous lawyer and who is now Lord Birkenhead, occupying one of the highest positions in England, gave this as his experience of this clause. He said:

"The point of view which appealed to me so strongly was this. An workman would not commit a breach of rules for any improper motive if the result of that breach was likely to inflict upon him permanent disablement or death. The Legislature however was not only entitled but bound to provide against cases where a man might well say 'Whatever happens is a trivial matter and I shall get compensation'. But to say that it was necessary in the case of where a man's life or limbs were concerned was flying in the face of all human experience."

Mr. F. E. Smith, now Lord Birkenhead, says that to say that a man will wilfully do something that will cause his death or disablement is to fly in the face of human experience. Sir, I therefore feel that the burden on the industry, if my amendment is accepted, will not be very much indeed. Then, Sir, there is likely to be used another argument. It may be said that the conditions in England are quite different from the conditions in India. I therefore want to show to the House that whatever may be the difference in the conditions between England and India, there is no difference between the conditions in England and India, as regards this point at least. Let us see what are the conditions which are material in this respect. The first is

[Mr. N. M. Joshi.]

the workman having been at the time thereof under the influence of drink or drugs. Is there any one, who is likely to say the working classes in India drink more than the working classes in England? I do not think there will be anybody here who will make that statement. Then the second section is about the wilful disobedience of the rules. Is there any one here who will say that an Indian workman or for the matter of that an Indian is less law-abiding than an Englishman? My experience is that an Indian is a quiet, docile creature and he obeys the laws more readily than even the Englishman. What about the third? The third is the wilful removal or disregard of any safety guard. This I consider to be suicide. Is it proved by anybody that an Indian is more prone to commit suicide than an Englishman? I do not think any one can show that. I therefore think that the argument that the conditions in England and India differ does not hold good at least in this case.

Sir, I have thus shown that the clause as it stands is against the principles of the workman's compensation, and even though my amendment be accepted it will only be a compromise, because the ideal amendment would have been to drop this clause altogether. But I do not take the ideal course; I am prepared to accept a compromise which was accepted in England. Thirdly, I have shown that my proposal has the support of experience—experience, not of a theoretical man like myself, but the experience of English statesmen, English lawyers, who had very great experience of the working of the Compensation Act in England. Sir, if necessary, I would like to add one authority more in my support. When reading this debate in the House of Commons I came across the Division List. I looked through the list of people who had voted in favour of this amendment and I found there the name of Mr. Rufus Daniel Isaacs. Sir, this gentleman I think is well known to my Honourable friend Mr. Innes and to the other Members of this House. He is no other than His Excellency Lord Reading. I have therefore shown, Sir, that my amendment has not only the support of experience as well as of principle, but of great personages. I need not therefore say anything more, and I strongly hope that the House will accept my amendment.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): Sir, I notice that the first point which Mr. Joshi insists upon is that his amendment is required to balance the fact that the employee cannot get anything from the employer even should he suffer through the wilful negligence of the employer. But surely, Sir, as the Honourable Mr. Innes has pointed out to us and as has been emphasised from the Treasury Benches, should it be found that under ordinary common law the workman has not got his rights safeguarded, a Bill for employer's liability will be brought in. That I think covers this point.

The second point Mr. Joshi makes is that the industry should compensate the injured workman for all accidents. I notice that he does not suggest that the workman who is drunk or suffering from drugs or wilfully disobedient, etc., should get compensation unless the injury should cause death or permanent injury. Now, if the industry is to compensate for all accidents, why are these left out? Surely, surely, because we want to put every discouragement in the way of the workman coming to his work drunk and removing the safeguards wilfully. We should not forget, Sir, that a wilful act such as the removal of safety devices does not only endanger

the limb and the life of the workman himself but may also endanger those of his innocent fellow workmen. Now, Sir, Mr. Joshi has pointed out that the present Lord Birkenhead said that he could not conceive a workman disregarding a safety device if he thought that this might lead to his permanent injury or death, and that he may only do this if he thought that the injury would be a trivial one. Sir, is the House to encourage a workman to risk a trivial injury which may become a serious injury, and say to him, "because you thought it would only be a trivial injury, we will not therefore penalise you, by saying you are not to receive compensation?" That seems to me to be the point. Merely because a very high Member of the House of Lords at Home, who is also a very high legal exponent, should have said this in his more youthful days, I see no reason why we should follow. Surely, we should take advantage of the experience gained since the debate which Mr. Joshi referred to.

Mr. N. M. Joshi: They have not repented it yet.

Captain E. V. Sassoon: There is no reason to think that because they have not repented it, it was not wrong. We have seen the results. We hope, therefore, to benefit by the results. It may be that if our method is shown to be better than that of the Home Government, they may bring in an Act amending their present Act. Now, Sir, it appears to me that the only point that Mr. Joshi can bring forward—which he has not brought forward—is that this allowance should be given to the family as a compassionate allowance. That seems to me to be the only argument that could be brought forward. "The workman is not alive to be told not to do it again and his poor dependents are the ones who are going to suffer. Therefore let us give them something that they do not deserve." But, Sir, should this be brought under this Bill? Surely, if you are going to tell the widow and the children that they are going to have an allowance though they are not entitled to have it because the husband was killed or permanently injured, why should they not have an allowance if the husband was killed or permanently injured while walking down the street, or in any case which does not come under this Act? Surely, if we are going to bring in a measure of this kind, this is a matter which should come under a National Accident Insurance Act, and not under this particular Bill. In other words, why should the widow receive compensation as a compassionate allowance just because her husband happens to be a workman? Under this Bill therefore, I do not think that this point should be brought in, in this place. If it is intended that everybody who gets killed by an accident or is permanently injured is to have compensation, then this should be done in a much wider measure. Therefore, Sir, I oppose Mr. Joshi's amendment for these reasons, firstly we do not want to encourage anybody to go to work drunk or under the influence of drugs or to remove safety devices, and, secondly, from the point of view of a compassionate allowance this is not the place to make the provision.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, I strongly support this amendment. I may confess that my feeling as regards this Bill has been one of distrust. Having regard to the fact that industries in our country are not yet developed, this Bill may work as a deterrent to the growth of industries and industrial activities in this country. Therefore, I am one of those who would like to be very cautious in enacting provisions to the benefit of the workmen and to the injury of the employer. But, in this case, Sir, I feel strongly

[Rao Bahadur T. Rangachariar.]

that I can trust to the Britisher's commonsense. His commonsense has told him that it is not likely that a man for the sake of a paltry sum of hundred or two hundred or three or five hundred rupees that he may get that he would willingly kill himself or permanently disable himself. If death results, or if total disablement results, the law presumes—that is how I read the English law—that it cannot be wilful or culpable neglect on the part of the employee. It will be a safe presumption to draw in such a case for I have yet to find a man who will kill himself for the sake of two hundred rupees, unless he is insane or temporarily insane. I mean it is human nature. Therefore it is a safe rule of evidence to go upon; and as we are anxious in this case, as we have been told several times, to avoid the clutches of lawyers and law courts, why give a loophole to employers to resort to law in such a case. You want to save the employee from the clutches of the law, but you put the employers in those clutches by suggesting these differences. I do not know if Captain Sassoon would like to be placed in my hands: What is it you are doing here? A man has killed himself. He is an employee, poor fellow, who leaves behind a widow and children quite unprovided for. All that the amendment says is in such a case compensate him to the limited extent which this Act provides. What does it provide? Forty-two months' wages.

Mr. N. M. Joshi: Thirty months' wages.

Rao Bahadur T. Rangachariar: And in the case of total disablement, something more. Therefore I think it is not a very harsh measure to adopt, it is a reasonable course to adopt. Captain Sassoon suggests that we should wait for national insurance legislation. I do not know when we are going to get that; but here we are legislating for workmen's compensation as between employers and workmen. Why not take this opportunity to provide for this case here? Captain Sassoon, by this very argument, admits the necessity for some legislation. In his generous heart he feels no doubt that some compassionate allowance is needed for the widow and poor children of the workman. He feels that; then why not provide for it in a measure which deals with the liability of the employer to the workman. In this country it is much more necessary than in England, because the presumption of ignorance here can be more safely drawn than in the case of English workmen. English workmen are educated; they know the value and use of the appliances which are provided there. But here, Sir, even members of highly placed families do not know the actual use of the various parts of the machinery installed in the works. I know, Sir, of the case of a daughter of a Member of the Executive Council who very nearly killed herself by tying her silk cloth to the switch of an electric fan. Thereby she was about to be killed. What I mean is that ignorance is so great in these cases that you can safely draw the presumption, if such accident occurred that it was due to ignorance and not to wilful disobedience to any lawful order or rule. I therefore submit, Sir, that it is but right that we should provide for such cases. The Government themselves recognise the necessity for it in the original Bill. That is a strong argument in favour of this amendment. No doubt the original Bill as introduced provided only for half compensation; but now I see Mr. Joshi has grown more ambitious and he is asking for full compensation as in the English Act. The English Act allows full compensation and therefore Mr. Joshi asks for it. If any one will move for half compensation, I am willing to accept it, whether Mr. Joshi is willing to accept

it or not. But it seems to me that it is a case where we must provide for some compensation; otherwise we shall be acting cruelly in the case of the ignorant workman for whose benefit we are enacting this measure. The one argument that has been used against this is that it will encourage carelessness. Sir, it is an argument which has no weight behind it. As I have stated already, a man cares more for his life than for anything else. Therefore it is not likely to have that effect; if we pass this amendment it is not likely to have that effect. I therefore strongly support the amendment.

The Honourable Mr. C. A. Innes: Sir, as Mr. Rangachariar has just pointed out, Mr. Joshi's amendment goes further than we went in the original draft of this Bill. We provided in these circumstances only for half compensation, and I wish to point out to the House that there was no clause in the Bill which aroused greater opposition than that. Practically every employers' association in the country condemned it, and no less than six Local Governments thought that there was no justification for that clause. I desire to point out to the House that Mr. Joshi's clause is even more drastic; it is not a matter of half compensation—it is a matter of full compensation. Now, Sir, let us see what Mr. Joshi's arguments are. His first argument is that the omission of this clause is against the whole principle of workmen's compensation. I deny that in toto. What is the main principle of the Workmen's Compensation Act? The main point of it is that the workman has not got to prove negligence on the part of the employer. Now what I want to point out here is that we are not dealing with negligence; we are dealing with accidents arising when a workman is directly under the influence of drink or drugs; we are dealing with accidents arising out of wilful disobedience of rules expressly framed for a workman's safety; we are dealing with accidents arising out of wilful removal of safety devices. It has nothing to do with negligence. In each of these cases we assume that there was not merely negligence, but something wilful. Therefore, Mr. Joshi's argument that the omission of this clause is against the principle of workmen's compensation is entirely unfounded.

Now, let me take Mr. Joshi's next argument. He has got no argument at all. All he can say is that this appears in the English Act and therefore we must have it in our Act; and here again I join issue with him at once. All the way through we have made it perfectly plain that we never intended our Bill to be a slavish imitation of the English Act. We made it perfectly plain that we intended to legislate for India and India's conditions. Now, I am not going to say—and I hope Mr. Joshi will not think that I am going to say—that my objections to this clause are due to any difference between the conditions of India and the conditions of England. I am not going to base my objections to the clause on any argument based on different conditions of industry. I make Mr. Joshi a present of arguments of that kind. My objection to the clause, as usual, is based on principle. As I have said, all that Mr. Joshi has been able to say was that this appears in the English Act. He said that we must adopt the principle of the English Act. Now, what is the principle on which this clause of the English Act is based? Mr. Joshi has told us. He says in the first place it is a principle that you should not punish the sons and the children for the sin of the father. If a man by reason of his being drunk kills himself in a factory, then, he says, it is wrong in principle that his dependants should be punished, and therefore you must pay compensation which otherwise if the workman had not been drunk and had been killed you would

[Mr. C. A. Innes.]

have had to pay to his dependants. Now, I put it to the House, is it right in principle? It is purely a matter of a compassionate allowance. Is it not the way of the world? Suppose a man is accused of murdering another man and suppose he is hanged; his dependants suffer, his wife and children suffer; does any one pay them compensation? The wife and children of the murdered man suffer; does any one pay them compensation? Here you have got a precisely similar case; when a man by reason of his being drunk does a thing which reacts most terribly on his dependants, why should you say that compensation shall be paid to his dependants? At any rate, why should you say that the employer should pay that compensation? If you want to pay compensation let the State pay it; do not put it upon the employer; do not let the employer have to pay compensation for an act which he could not have prevented. Then again, Mr. Joshi referred to some arguments used apparently by Lord Gladstone, or Mr. Herbert Gladstone, as I think he was then, in the House of Commons. Mr. Herbert Gladstone said that it was unfair to make a charge of this kind against a dead man. It seems to me, Sir, a singularly weak argument. In this case we are not merely dealing with a dead man, but we are dealing with men who are permanently disabled, so that that argument loses its force. I say that we are here now to legislate for India. We are not here to copy the English law merely because it is the English law, and if we are going to copy the English law, I say that that provision of the English law must satisfy our sense of logic and our reason.

Now, Sir, I come to the main objection to this clause, the objection which has weighed most with me. What is the main object, what is the main benefit that we hope to get from this legislation? We are placing a burden upon the employer; we are placing upon him the obligation to pay compensation to workmen for injuries referred to in this Bill. We hope that by doing so, and by the pressure of the Insurance Companies, those employers will be more and more careful in their factories. They will pay more and more attention to the safety of their workmen; they will go in for safety devices; they will frame more carefully rules for the safety of their workmen. And yet, Mr. Joshi comes and says that he wishes to introduce a clause which makes it very nearly useless, for an employer to put in those safety devices, to make those safety rules. According to him, if a workman injures himself or kills himself by his own wilful misconduct or by his disobedience to rules or by the removal of the safeguards, still the employer has got to pay; therefore why should the employer go in for these safety devices? That is one of my main arguments against this clause. The other argument is this. You cannot defend a clause like this by any argument based on reason, and you cannot pretend that it is fair to the employer to make him responsible for accidents which he could not possibly have prevented. Sir, I oppose the amendment.

Mr. B. S. Kamat: Sir, after the very able manner in which the Honourable Mr. Innes has shown the weakness of some of the arguments of Mr. Joshi, there remains very little for me to say, but there is one point to which I wish to draw the attention of the House with reference to the English Act. But before I do so, let me explain my own position in the matter. I have my sympathy for the desire of Mr. Joshi to give some sort of compassionate allowance to the workman who loses his life even by his own wilful misconduct, and if he had drafted out an amendment to

that effect in the proper manner, probably it would have been possible for me to support it; but as it is, I am afraid his amendment, as drafted, cannot be supported.

Mr. N. M. Joshi: May I say one word, Sir? Compensation is compassionate allowance, and it is nothing but that. That is the principal argument.

Mr. B. S. Kamat: Mr. Joshi based the whole of his case on the parallel of the English Act, and he led the House to believe that under the English Act the amount of compensation or compassionate allowance claimable by such workman or his dependants would be the same as if in the case of death due to any other cause and not by drunk or wilful misconduct. There is nothing like that in the English Act at all. If he carefully and critically studies that Act, he will see that all that the Act provides for is this: "If it is proved that the injury to a workman is attributable to his wilful misconduct, then in that case his claim shall not be disallowed except in case of death. Well, this only means his claim is only allowable"

Mr. N. M. Joshi: According to the Act.

Mr. B. S. Kamat: There is a good deal of difference between the fact that his claim, in spite of the fact that he was drunk, is allowable and the fact that he is entitled to the same allowance as otherwise such claim is referred to an arbitrator who probably allows one-third or one-fourth or the full amount of compensation as he deems fit. Under Mr. Joshi's amendment on the other hand what Mr. Joshi wants is that, although the workman, by his drunkenness or by his mischief has brought on his own death, the employer is to be penalised by the giving of the full amount of the compensation, as if the workman was not drunk. There is no such provision in the English Act at all. All that the English Act provides is that his claim should be allowed. There is a worldwide difference between that and Mr. Joshi's amendment. And, although I have full sympathy with the object Mr. Joshi has in view, I am afraid I cannot support him in the amendment as drafted by him.

One word as regards what has fallen from Mr. Rangachariar. He says no man would bring death on himself for the sake of two or three hundred rupees. Well, we do not say that he would bring death on himself for the sake of the money. Whatever may be the motive, why should an innocent man, i.e., the employer, be penalised? If Mr. Rangachariar wants to give him something out of sympathy, he can devise to give something in another form. But don't penalise the employer for no fault of his.

Mr. R. A. Spence (Bombay: European): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: Amendment moved:

"To proviso (b) in clause 3 (1), at the end add the following:

"Unless the injury results in death to the workman or in his permanent total disablement in either of which cases the employer shall be liable to pay compensation to which the workman would otherwise have been entitled."

The question I have to put is that that amendment be made.

The Assembly then divided as follows:

AYES—22.

Abdul Majid, Sheikh.	Jatkar, Mr. B. H. R.
Abdul Rahim Khan, Mr.	Joshi, Mr. N. M.
Agnihotri, Mr. K. B. L.	Lalthe, Mr. A. B.
Ahmed Baksh, Mr.	Misra, Mr. B. N.
Asjad-ul-lah, Maulvi Miyan.	Nag, Mr. G. C.
Ayyar, Mr. T. V. Seshagiri.	Neogy, Mr. K. C.
Bagde, Mr. K. G.	Rangachariar, Mr. T.
Basu, Mr. J. N.	Sinha, Babu L. P.
Chaudhuri, Mr. J.	Srinivasa Rao, Mr. P. V.
Faiyaz Khan, Mr. M.	Subrahmanayam, Mr. C. S.
Ibrahim Ali Khan, Col. Nawab Mohd.	Venkatapatiraju, Mr. B.

NOES—51.

Ahsan Khan, Mr. M.	Ley, Mr. A. H.
Akram Hussain, Prince A. M. M.	Lindsay, Mr. Darcy.
Allen, Mr. B. C.	Mahadeo Prasad, Munshi
Barua, Mr. D. C.	Mitter, Mr. K. N.
Blackett, Sir Basil.	Moncrieff Smith, Sir Henry.
Bradley-Birt, Mr. F. B.	Muhammed Hussain, Mr. T.
Burdon, Mr. E.	Muhammed Ismail, Mr. S.
Cabell, Mr. W. H. L.	Mukherjee, Mr. J. N.
Chatterjee, Mr. A. C.	Nabi Hadi, Mr. S. M.
Clew, Mr. A. G.	Nand Lal, Dr.
Crookshank, Sir Sydney.	Percival, Mr. P. E.
Dalal, Sardar B. A.	Rama, Mr. Manrobandas.
Davies, Mr. R. W.	Rhodes, Sir Campbell.
Faridoonji, Mr. R.	Samarth, Mr. N. M.
Godney, Lieut.-Col. H. A. J.	Sarifraz Hussain Khan, Mr.
Gowala, Mr. P. P.	Singh, Capt. E. V.
Haigh, Mr. P. B.	Singh, Mr. S. N.
Hailey, the Honourable Sir Malcolm.	Spence, Mr. R. A.
Hindley, Mr. C. D. M.	Townsend, Mr. H.
Holme, Mr. H. E.	Townsend, Mr. C. A. H.
Hullah, Mr. J.	Tulshan, Mr. Sheopershad.
Hosannally, Mr. W. M.	Ujagar Singh, Baba Bedi.
Ikrumullah Khan, Raja Mohd.	Webb, Sir Montagu.
Imes, the Honourable Mr. C. A.	Willson, Mr. W. S. J.
Iswar Saran, Munshi.	Zahiruddin Ahmed, Mr.
Jamnadas Dwarkadas, Mr.	

The motion was negatived.

The Assembly then adjourned for Lunch till Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Five Minutes to Three of the Clock. Sir Campbell Rhodes was in the Chair.

Sir Montagu Webb (Bombay: European): Sir, I beg to move:

"In clause 3 (2) omit the words:

"If a workman employed in any employment involving the handling of wool, hair, bristles, hides or skins contracts the disease of anthrax or."

The effect, Sir, of this amendment, if it be carried, would be to exclude the disease of anthrax from the operation of the Act. I do not suppose that I need occupy the time of the House by any lengthy description of the disease of anthrax. It is a cattle disease; and it also affects sheep and goats. In recent years, it has been communicated to human beings, and

shows itself in the form of a malignant pustule, or boil, or carbuncle which generally proves fatal. In Europe and in the United Kingdom, one or two people have died of this disease every year. I believe a little over 100 people have died of anthrax in the last 25 years; and in the United Kingdom and in Europe a determined effort is now being made to stamp out the disease.

Now, I desire at the start to make it quite clear that I have not the slightest desire to relieve the employer from his liability, make full, proper and adequate compensation to any labourer who contracts an occupational disease who may suffer or die of anthrax whilst working for that employer. But what I do submit, Sir, is that in this country among the people who work in those trades,—who handle wool, hair, hides or skins—men, women and children, it is a matter of extreme difficulty, if not impossibility, to decide where, how and when anthrax may have been contracted. In the first place, a great quantity of hair and wool, bristles, hides and skins come into India from outside, partly over the sea, and more largely over the land frontiers. Now, no arrangements exist, no organisation, by which hair, or wool, or hides and skins infected by anthrax can be examined, there is no means of detecting the presence of the anthrax germ. Then again, skins, bristles, hides, wool and so forth are transported all over this country. There is at no stage any organisation or machinery to detect whether those goods are infected by anthrax or not. The germ is a difficult one to detect and a very difficult one to kill. I believe that it can retain vitality for many years under the most unfavourable circumstances. Now in these circumstances although Government may from time to time notify that different parts of the country and the cattle in those districts have been affected by anthrax, it is impossible, I submit, to make regulations which would protect all the people who may handle wool, hair, bristles, hides or skins. Then again, Sir, in my experience the people who are engaged in this trade are very often daily labourers. They are not permanent employees. Those people who are engaged in picking and sorting wool and handling skins are very often coolies taken on in the morning and discharged in the evening. I would ask this House how are these people to be examined to discover the presence of anthrax. It looks like some skin disease which is very very common in India. How are these coolies and labourers to be examined? How is medical provision to be afforded? Are they, before they commence the day's work, to be stripped, men, women and children, to discover if they have any sore on their bodies, which may possibly turn out to be anthrax? And then supposing that there is a sore, is it every doctor who can tell whether that sore is anthrax or not? I believe that it requires a bacteriological examination to decide whether the sore or boil or whatever it is, is anthrax or not. It is a matter of the very greatest difficulty to detect. I have not been able to discover with the information at my command, that anybody in this country has died of anthrax through handling hair, wool or hides or skins. They may have done so. I am very familiar with the wool business myself and within my own experience nobody handling wool has died of anthrax. I believe some little time ago somebody who used a Japanese shaving brush died of anthrax. That is not quite the same case as that of labourers who are engaged in the wool trade or the hides and skins trade. I have during the course of the last ten years myself attended more than one conference in Yorkshire and London, and I am very familiar with all the steps that have been taken and the legislation that has been passed to endeavour to check and

[Sir Montagu Webb.]

eradicate this disease in Europe, but I feel that it would be a matter of very great difficulty to apply those measures and steps in this country where the conditions are so entirely different. It is for this reason, Sir, that I move that we take anthrax out of the scope of the operation of this Bill. I do so, Sir, not because I do not recognise the danger of anthrax, not because I do not recognise the liability of the employer to compensate work people who may suffer from that danger, and not because I am not aware of the fact that anthrax is included in similar legislation in other countries. I do so because I urge that conditions in India are such that the practical application, the equitable application of the principle of compensation as between employer and workman will in practice prove to be almost impossible. If anthrax be included in this Bill, it will mean that labourers, men, women and children either must be inspected to discover if they are affected by anthrax, or, the employer will be liable to pay compensation for people who die of anthrax who have not contracted the disease whilst in his employ, but have caught it somewhere else. It is for these reasons, not because I desire to relieve the employer from the liability to compensate, but because the practical difficulties in this country are so great as to make the equitable application of the principle in practice almost impossible, that I move that the words which I have read out, be omitted from the beginning of clause 3, sub-section (2).

The Honourable Mr. C. A. Innes: Sir, I am afraid I must oppose this amendment. Sir Montagu Webb's first point was that anthrax requires bacteriological examination and that no ordinary doctor can diagnose a case of anthrax straight off without first having some bacteriological examination. Well, Sir, I have taken expert advice on that very point. I have taken the advice of the Sanitary Commissioner with the Government of India, who is himself a very great expert on anthrax and who has just attended on our behalf an Anthrax Conference in London. He tells me that it is by no means necessary that every factory and every woollen mill should keep a trained bacteriologist. He says that the malignant pustule which is the ordinary manifestation of the disease can be diagnosed clinically and no doctor would think of awaiting the result of a bacteriological examination before commencing treatment. Even in Germany only in 50 per cent. of the cases is the material sent to a bacteriological laboratory in order to confirm diagnosis. I think, Sir, I have answered the first point made by Sir Montagu Webb.

Sir Montagu Webb's second point was that, as far as he knew, cases of anthrax were of very rare occurrence in India. If that is so, and I believe it is, then I do not think that employers need worry very much if we do include anthrax within the scope of the Bill. We have included anthrax within the scope of the Bill because essentially it is an occupational disease; possibly it is the most typical occupational disease there is: and I think I am correct in saying that every Workman's Compensation Act in the world, or practically every one, makes provision for anthrax. We included it in the Bill because in woollen mills, in exporters' godowns of wool, hides and other places where anthrax is liable to occur—in these industries anthrax is essentially a disease of the industry. Moreover, I think there are certain things that can be done for the workman in places like that. In England pictures of the malignant pustule are placed everywhere for the information of workmen, so that they may seek early treatment. Pictures of this kind are hung up in the factory. Nor is there I think any neces-

sity why those workmen should be inspected before they come to work. After all it is for the workman to prove that he has got the disease.

As regards Sir Montagu Webb's last point, namely, that in these woollen mills and in exporters' wool godowns daily labour is usually employed, I think I am correct in saying that the disease of anthrax supervenes very quickly; not only that, its fatal effect follows very quickly. On the whole, I think, that the case for inclusion of anthrax in the Bill particularly strong and I would repeat that anthrax is the most typical occupational disease that any one could think of.

Lieut.-Colonel H. A. J. Gidney: Sir, when this subject was brought up in the Committee which sat on the Bill I pressed strongly, and I think I was left almost unsupported in the end, for the inclusion of other occupational diseases besides anthrax. In fact I went so far as to enumerate a few diseases, such as lead poisoning, kala-azar (which is a residential disease pathognomonic to certain parts of India), chrome poisoning, etc., etc. The Committee did not agree with me. At the same time I think they felt that when this Bill had been in operation for some time—this being an experimental stage of it—there would be need to include these occupational diseases to a greater extent than they have seen fit to do to-day. There is no doubt that the occupational diseases included in a similar Bill in England cover a very large field indeed, and to only include anthrax in this Bill is, I consider, a very very conservative attitude to take up; and, for this reason, I do not agree with Sir Montagu Webb's amendment; in fact, I oppose it. If Sir Montagu Webb is correct in his figures that no deaths from anthrax, to his knowledge, have taken place in such occupations in India, why, as Mr. Innes said, why should the employer trouble himself about its inclusion as an occupational disease in this Bill? But as such deaths are likely to take place, and are most certainly due to occupation I think the employees so occupied should be protected, especially when one considers the extreme rapidity and fatality of this disease and the difficulty owing to the paucity of research institutions of diagnosing it in its earliest stages in India as compared to England. Sir Montagu Webb has not adduced any good reasons in support of his amendment except to plead the cause and protection of the employer. His other reason is that conditions in India are such that the equitable application of compensation between the employer and employee will be almost impossible of execution. If anthrax be included, labourers he says, must be inspected. That is exactly what the Workmen's Compensation Act is going to lead to, *viz.*, more careful inspection of employees. If anthrax is to be excluded from this Bill it would deprive the Bill of a very important and necessary safeguard. I, therefore, oppose the amendment, Sir.

Mr. Darcy Lindsay: I move that the question be now put.

The motion was adopted.

Mr. Chairman: Amendment moved:

"In clause 3 (2) omit the words:

'If a workman employed in any employment involving the handling of wool, hair, bristles, hides or skins contracts the disease of anthrax or'."

[Mr. Chairman.]

The question is that that amendment be made.

The motion was negatived.

Mr. N. M. Joshi: Sir, I beg to move the following amendment which stands in my name:

"In clause 3, sub-clause (5), after the word 'person' insert the words 'and damages have been awarded in his favour'."

This, Sir, is the clause where alternative remedies have been dealt with. The clause as it stands states that a man who goes to a Court for a suit in damages for an accident is prevented from going to the Workmen's Compensation Commissioner. My amendment proposes that if a man goes to a Civil Court for damages for an accident and if he succeeds in getting damages he should be prevented from going to the Workmen's Compensation Commissioner. But if he does not succeed in his suit, then it should be open to him to go to the Workmen's Compensation Commissioner. Sir, this amendment is again an instance of my fondness for slavishly following English legislation. To frankly admit, I admire the English legislation; I admire the English people also, at least the English people in England. But, Sir, I cannot understand why my Honourable friend Mr. Innes should not like Indians like myself slavishly following the English legislation. I am, therefore, causing great disappointment to him by asking the House to slavishly follow the English legislation. After all, what is the argument to prevent a man going to the Workmen's Compensation Commissioner if he fails to get any damages from the Civil Court? The argument is that the man should not be encouraged to go into litigation. Sir, if that is the argument, this clause does not prevent that. The man has his alternative remedies. If there had been any clause here to prevent a man going altogether to the Civil Court, I should have supported it. I am in favour of giving only one remedy to the working classes. To give them two remedies no doubt is to put them at a disadvantage; and therefore if the Government had proposed that the workman should have only one remedy I should have supported it. But unfortunately they put before the working class man—they suggest to him, as a matter of fact he does not know it himself—they suggest to him by means of this section that there are two remedies open to him. Is it right, after having done that, to penalise the man if he sometimes makes a mistake and goes to the Civil Court. Therefore I think it is absolutely wrong—at least as long as the working classes in India are illiterate and ignorant—to penalise them for a small mistake of theirs. I hope therefore that the House will accept my amendment.

Mr. K. B. L. Agnihotri: Sir, I rise to support the amendment moved by Mr. Joshi. I shall take the House through clause 19 also which will show that this sub-clause (5) is absolutely unnecessary. In clause 19 we provide that 'no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner'. Now if this clause stands in this Bill, then sub-clause (5) becomes unnecessary for the simple reason that a Civil Court will not entertain any suit and to penalise the worker for his ignorance in merely approaching the Civil Court for a remedy which the Court cannot and will not grant, will be very very hard for the workman. And if Mr. Joshi's amendment is accepted, then even though the sub-clause be superfluous, it will have some meaning. I therefore suggest that Mr. Joshi's amendment be accepted.

The Honourable Mr. O. A. Innes: Sir, I should just like to explain the view the Government has taken on this very difficult question of alternative remedies. Our view is that we have provided a special law which enables the workman to recover compensation from his employer. We have also provided a special machinery to enable him to recover that compensation. The law is special in that the workman has not got to prove negligence. We deprive the employer of what would be a defence under the common law. We treat the injury as a risk of the industry. We make the employer in the public interest pay. That is to say, the law to that extent imposes a special disability upon the employer, and it gives a special benefit to the workman. Now having done that for the workman, we think it only right that we should do something for the employer. We think it only fair that we should protect the employer from being harassed, not only by claims under this Act but also by suits in the Civil Courts. Therefore we give the workman his choice. He can go to the Civil Court if he likes. He can lay a claim before the Commissioner under this Act if he likes. But he must exercise his option; he cannot do both.

And the second point is that under this law we want to encourage him to use this Act. It is for that reason as I explained before that we tried to draw the Bill in such a way that both the workman and the employer can understand it, and that they can come to an agreement among themselves. And if there are disputes we try to encourage the workman to take our simple and inexpensive machinery of the Commissioners. Our whole object is to prevent the workman from wasting his money in the Courts, and the employer from being harassed by suits. That is my objection to Mr. Joshi's amendment. Mr. Joshi wants that the workman should first be able to go to Civil Courts, if he gets his damages there well and good; he cannot go any further; but if he fails in the Civil Court, he must be allowed to file a claim under this Act against his employer. I say that bearing in mind the objects with which we set out, the course suggested by Mr. Joshi is not right, and that it is fair that the workman should be required to exercise his option whether he should go to the Civil Court in the first instance or whether he should claim under this Act. I oppose the amendment.

Rao Bahadur T. Rangachariar: Sir, this is one of those cases where people in this country, especially the English people, expose their dread of Courts. I do not know why they have a dread of Courts at all. It is there they get justice; after all we are concerned in seeing justice done. I think lawyers in this part of the country are perhaps to blame. The heavy fees in Calcutta perhaps account for it; the gold mohurs which they reap in Calcutta apparently account for this dread of Courts; but the poor pagodas of Madras do not drive parties away from Courts. Now, Sir, what is the object of this? Let us remember that this Act provides a new right and a new remedy, a new right which depends upon one set of circumstances, whereas the ordinary remedy under the law depends upon another set of circumstances. Here the liability arises by the mere fact of employment. This law assumes, as the Honourable Mr. Innes told us just now, that by the mere fact of employment this liability arises on the part of the employer; and in order to give relief in respect of that liability a special machinery is created. Under the ordinary law a workman, if he resorts to the ordinary Courts, has to prove other circumstances, not merely the fact of employment; he undertakes another burden, namely, he has to prove negligence on the part of the employer before he can get a farthing; so that a man may be entitled to compensation under this Act but will not

[Rao Bahadur T. Rangachariar.]

be entitled to damages in the Civil Courts. This section provides a punishment, therefore, for a man daring to go to the Civil Courts. We are enacting a law here saying "Be afraid of Courts; if you go anywhere near the precincts of a Court, take care, we will come down upon you. Although you may be entitled under this Act to compensation you may not be justly entitled to damages in the Civil Court. But you are entitled to something in law which this law creates and we will deprive you of it; we impose a fine on you, the fine being that we will deprive you of what is justly due to you." Sir, can any civilized Legislature support such a proposition? Is a Legislature going to say,— "Impose a penalty on people going to the Courts established by His Majesty and by the Government of the country"—not national Courts established by the Congress Party—I can quite understand if a penalty is imposed by saying that if you went to these panchayet Courts established by the Congress party we will impose a penalty. But, Sir, what is the crime he has committed? He has committed the sin of approaching a Court established by this very Government, and the Legislature says "We will impose a penalty upon you. How dare you go?" Therefore, we will deprive you of what is justly your due. Therefore, Mr. Joshi's amendment has got substance behind it, principle behind it, justice behind it. On the other hand, the proposal made by Government is ridiculous on the face of it. The Government expose themselves to ridicule. They themselves dread their own Court which they established. That is what they are saying in so many words. Sir, if a man goes to a Civil Court and loses, he pays costs. If he is an unsuccessful party, he pays costs; costs no doubt oftentimes are not fully compensatory of the actual costs incurred—that I know. But that is not all. That may be a reason for increasing the costs to be awarded by altering the rules by which costs are to be awarded. But do not make it a penalty for a man going to the Court and say "we will deprive you of what is your due." We deal with a set of ignorant people. The man may be an innocent person in the hands of a scheming lawyer. (Mr. R. A. Spence: "Are there any?") I suppose there are. Just as there are scheming merchants—are there not scheming merchants who took advantage of the war boom? Now, Sir, there are black sheep in every fold. Let us not therefore sneer at only one set of people. There are honourable persons and other kinds of persons in every class and profession. Therefore, I say, Sir, it is quite reasonable to suggest that if a man has already got compensation for injuries sustained, let him not have any more. But where his action failed? As I said before, if the cause of action is the same for both cases, that is, if he has to prove only the same set of facts in either case, then no doubt I can understand it. But, where he has to prove more in one Court and less in another Court, that the Court where he has to prove less should say: don't give him any compensation because the other Court has already refused it; that seems to me illogical and to be a case of creating jealousy. Don't give it to him because he has been to my neighbour. It seems to me to be a very indefensible position for any Government or anybody to take up. I therefore, Sir, support Mr. Joshi's amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, my object in rising to address the House is to draw pointed attention to certain aspects of the Bill and of the clause under consideration to which attention has already been drawn to some extent. My Honourable friend, Mr. Agnihotri, has said that section 19 drives the party injured to the

Commissioner. I submit, Sir, that seems to me to be the effect of section 19 (1) and (2) of the Bill. It reads:

"If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by the Commissioner."

There is no other alternative. Then the second sub-clause says:

"No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act *required* to be settled, decided or dealt with by a Commissioner."

Therefore, Sir, I think in almost 99 cases out of a hundred, all matters which crop up in connection with compensation for injury have to come up before the Commissioner, and they are required by the Bill to be decided by him. Therefore my Honourable friend, Mr. Joshi, suggests that the words "and damages have been awarded in his favour" be added to sub-clause (5) which will read as follows after the addition proposed has been made:

"Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and damages have been awarded in his favour."

That is how it will read when the present sub-clause (5) is supplemented by the words proposed by him to be added. Otherwise, the first portion of the clause, being followed by the subsequent portion of it, gives no intelligible meaning to the following words "and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury if he has instituted a claim to compensation in respect of the injury before a Commissioner." These words must mean that the same matter is covered by the civil suit as well as by the proceeding before a Commissioner, not cases where there are other elements justifying a claim for compensation or damage, which can be taken before a Court of law for adjudication. We are not concerned with the question of agreement, but of a civil suit instituted before the Civil Court. Therefore, there seems to be an inherent inconsistency in the Bill itself as framed because it compels an injured workman to go to a Commissioner in all cases under the Bill and then vaguely mentions the Civil Court. We can get some meaning out of it only when we contemplate that in such cases only where the facts justifying a claim for compensation both before a Commissioner as well as in a Civil Court overlap each other, the former proceedings operate to the exclusion of that in a Civil Court and in no other. Nobody can go before the Civil Court for compensation within the meaning of clause 19 of the Bill, but he must appear before the Commissioner for redress in all cases arising in any proceeding under the Bill. Therefore, I submit, Sir, the matter deserves grave consideration by the Honourable Members and to my mind, my friend's amendment, to say the least, suggests some way out of the difficulty. Without it you give the injured man no relief by pointing out to him the road to the Civil Court. I leave the matter in the hands of the House with these words.

Mr. R. A. Spence: Sir, I have even a greater feeling for lawyers than my Honourable friend, Mr. Rangachariar, and I am basing my arguments against this amendment because I have a great belief in them. I don't

[Mr. R. A. Spence.]

believe there are any scheming lawyers. The Honourable Mover of this amendment, as far as I understand him, objected to the workman being able to go to the law and also being able to go to the lawyer. And he complained, I think, that, if this amendment was not supported by the House, a man who had gone to the lawyer would not be able to go to the law of this Act. Well, now, surely, if he had gone to the lawyer and the lawyer had advised him that under the Civil Code he had a claim for damages and he had exercised that power of free will, which my Honourable friend Mr. Rangachariar thought no man should be deprived of—the right of going to the Courts which has been established by this Government and not by the Congress Party—if exercising that power of free will, he goes to the Civil Court as advised by his lawyer and if he loses his case, surely the lawyer will tell him that his case, having failed in the Court, had failed because he had got no case and therefore he would have no case under the law of this Act and therefore there would be no hardship for him in being prevented from taking proceedings under this Act.

The Honourable Mr. Innes has told us the reasons which have induced Government to cut down that clause and honestly I think his arguments are very strong and I think we ought to refuse to accept this amendment.

Dr. Nand Lal: Sir, I am in favour of this argument advanced by the Honourable Mr. Innes that the workman may be made to adhere to this Bill. I am also in favour of this argument which has been advanced by the same Honourable Opposer that the employers should not be harassed. Conceding to that extent, yet I feel bound to submit before this House that things opposed to equity should not be countenanced in the form of any provision. There is a workman, altogether ignorant; he seeks for legal advice. Unfortunately, he is ill-advised and goes to the ordinary Civil Court, contemplating that he will secure a decree there, and his suit in regard to damages,—not for compensation as defined by the present Bill which is being debated upon—is unfortunately dismissed. Now injury he has sustained. He has suffered. There is another rule of law which can be availed of by him but he is deprived of it. Why? Because he was ill-advised. It is simply inequitable that he should be deprived of the provision of this Bill so far as compensation, with reference to certain prescribed injuries goes. I concede that if he is allowed any damage from the Civil Court, the amount of that damage may be deducted. But there is no reason why we should allow a peculiar provision in this Act that he should altogether be deprived of his remedy under the Workmen's Compensation Act if he resorts to the Civil Court with a view to seek ordinary remedy. Apart from that, you will be pleased to see, Sir, that the wording of clause 3, sub-clause (5) is: "Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person." Supposing he has got a different cause of action against a person other than the employer. Then, in that case also, he is told "Oh, you should not go to the Commissioner under the Workmen's Compensation Act." Now, in this case the employer will not be harassed. It is "any other person". Is this House going to deprive the workman of another remedy against another person? I submit that this House will support the amendment which speaks for itself and is really commendable. With these few remarks I most heartily support this amendment which is based on equitable grounds.

Sir Henry Moncrieff Smith: Sir, Mr. Joshi, if I understood him aright, was professedly attempting to follow the English law. I should like to explain to the House as briefly as possible that Mr. Joshi's amendment is really not the English law at all. There are certain special provisions in the English law which recognise claims in the Civil Court—in the County Court. But when claims are made there, they have one particular effect which Mr. Joshi has not mentioned and which perhaps the House did not realise, and that is, that if the Civil Court proceeds to assess compensation, it shall, if it is of opinion that the proceedings ought to have been brought under the Workmen's Compensation Act, award to the employer the whole costs of the case. Now, we have not got that in our law. It might be rather a dangerous provision in our law if Mr. Joshi amends it in that way, because the workman having got something out of the Civil Court and having had costs awarded against him would say, "At all events, let me again try my luck with the Commissioner; at least I may get something which will be a set off against the costs which have been awarded to the employer against me." In India a provision of that sort would probably swallow up most of the compensation subsequently awarded. As has been suggested, not by laymen in this House at all but several times to-day by lawyers themselves, this might be an advantage to the lawyer. It will force every workman, once he becomes acquainted with the law, to go to a lawyer and seek his advice as to the Court where he will stand the best chance of getting adequate damages or compensation. I would remind the House that compensation under this Act is not damages. It is quite another thing from damages—damages which a Civil Court can award. In this particular case compensation is defined as the compensation obtainable or awardable under the provisions of this Act. Now, Sir, if the workman is to be driven to take legal advice—it is suggested that he should and ought to take legal advice . . . (*Mr. N. M. Joshi:* "I am against it. You can prevent it.") Mr. Joshi will prevent the workman taking legal advice in this matter, he would like the workman to make up his own mind without any assistance whatever in the matter as to the proper course he should pursue. I think that is dangerous too, because it will merely tend to swell litigation. The workman, as a matter of fact, in such a case, would not proceed to file a suit for damages without some advice, and I think the House will realise how dangerous it is for any would-be client to decide on litigation without taking advice. In many places he can get it very cheaply. There are struggling pleaders just beginning their career, or perhaps pleaders who have struggled for many years without establishing a career, who are quite prepared to give advice—advice that certainly is not fit to be followed in every case—without due consideration of the law on the subject and of the facts. Sir, I think, if the workman deliberately or even inadvertently goes to the Civil Court and decides to bring a claim there for damages, then he should stand by what he has done. No provision is made in this case—I do not quite know what Mr. Joshi's contention is, but would he allow the workman half way through the proceedings in the Civil Court to change his mind and ask the Court to stay proceedings and then say, "I am going to the Commissioner to get compensation in that way. I wish to take no further proceedings in this case." In such a case the workman's money will have been wasted, and he will undoubtedly have to pay the cost of the suit up to that time. (*Mr. N. M. Joshi:* "Something is better than nothing.") I do not agree that something is better than nothing. If we are going to have anything in the law, we must have the thing complete. It is these "somethings that are better than nothing" that lead to difficulties

[Sir Henry Moncrieff Smith.]

and to a series of rulings on every difficult section or provision in our law in India. I entirely disapprove of that suggestion that we should have something that is better than nothing. I would suggest that the workman should in this case choose his remedy and should stick to it.

Mr. Chairman: Amendment moved:

"In clause 3, sub-section (5), after the word 'person' insert the words 'and damages have been awarded in his favour'."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—23.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bijpai, Mr. S. P.
Basu, Mr. J. N.
Chaudhuri, Mr. J.
Ginwala, Mr. P. P.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.

Mahadeo Prasad, Munshi.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Rangachariar, Mr. T.
Sinha, Babu L. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—40.

Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Ikramullah Khan, Raja Mohd.
Ines, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.

Kamat, Mr. B. S.
Ley, Mr. A. H.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Shewpershad.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, I beg to move:

"That in clause 3 (5) the following be substituted for sub-clauses (a) and (b):

'If he has received compensation in respect of the injury under the provisions of this Act except with the leave of the Commissioner and in any suit so instituted the amount of compensation recovered under this Act shall be taken into account in awarding damages'."

Sir, this amendment deals with the converse case. We have just now dealt with the first portion of this section in which if a man went to a civil court we told him he ought not to claim compensation under this Act. This latter portion of the section deals with the case of a man where he is

sought to be prevented from going to the ordinary court. And on what ground? Mark the words—"if he has instituted a claim to compensation under the Act he cannot go to the civil court." If he has merely instituted a claim, which may be infructuous, he cannot go to the civil court. Honourable Members may have noticed from the various provisions of this Bill this compensation is awarded under various restrictions. The man has to give notice of the accident within a reasonable time. He has to give notice of the claim, and if he does not do this it is left to the discretion of the Commissioner whether to award compensation or not. Then again, the amount awarded under this Act is very small. Again, as Honourable Members must have noticed, the nature of the accident may be such that more compensation and damages would be awarded in the civil court. Therefore the right to go to a civil court is inherent with us. Whenever there is a wrong there is a remedy. That is a well-known rule of law. There can be no wrong without remedy. Therefore the right to go to the civil courts established by the Government of the country is the inherent right of every subject of His Majesty. By this clause we propose to take away that right; and for what reason? Because the man has merely instituted a claim for compensation which may or may not be successful. Therefore it is not right to have such a clause. You cannot take away this valuable inherent right of every citizen except for good cause; the good cause will be if he has recovered sufficient compensation. But merely the instituting of a claim should not be a ground for driving him out of court. That is why I have proposed, Sir, that "if he has received compensation in respect of injuries under the provisions of this Act" he should not go to the civil court unless the case is so serious that the Commissioner considers that he can give leave for going to the court. It will be seen, I do not permit him to go to Court without the leave of the Commissioner. I provide safeguards against vexatious claims, so that if he has received compensation he cannot go to the civil court except with the leave of the Commissioner, and even when he goes to the civil court, I make adequate protection to the employers by providing "and in any suit so instituted the amount of compensation recovered under this Act shall be taken into account in awarding damages." Therefore, it is a just provision; the employer does not suffer, the employee does not suffer; on the other hand the inherent right of every subject of His Majesty is preserved. You do not do any violence to that well known rule of law 'No wrong without a remedy.' On the other hand, if you leave it as it is, you simply say because you have instituted a claim to compensation, therefore you should not go to the civil court or because merely an agreement has been come to. If an agreement has been come to, what is the satisfaction to the man by merely having an agreement. If compensation had been given under the agreement, I can understand it. Supposing he does not register the agreement as is required under the Act, the agreement is no good. Therefore, in either case only if he has recovered compensation, he should be deprived of the remedy which he has under the law. Therefore, I move the amendment which stands in my name.

The Honourable Mr. C. A. Innes: Sir, if Mr. Joshi's amendment was bad, then I say Mr. Rangachariar's is worse, much worse. In the first place if the amendment proposed by Mr. Rangachariar is accepted, it will mean that there will be no objection to a workman filing simultaneously a suit under the common law and a claim under this Act, and that goes, as I have said, against one of our principles. I should be prepared to say

[Mr. C. A. Innes.]

that there was something in Mr. Rangachariar's argument if there was any chance of a workman losing his claim before a Commissioner on the ground that he was not a workman covered by the Act. If he lost it purely on a technical point, then naturally he ought to have his remedy in the civil court; but he has got his remedy, for this Act, as you see, applies only to workmen as defined in this Bill. If, therefore, a man is non-suited in a claim before the Commissioner on the ground that he is not a workman, then there is nothing to prevent him from filing a suit in a civil court. Then, again, Mr. Rangachariar makes an important point of the fact that merely if a workman has instituted a claim before a Commissioner, he is not allowed to go to the civil court and he points out that this is unfair. He suggested that there might be some reason in it if we only debarred him from going to the civil court if he got compensation from the Commissioner. But this Act is far more favourable to the workman than the common law. If a workman filing a claim before a Commissioner where he has not got to prove neglect, fails, then *a fortiori* he will fail before a civil court. We are preventing him from wasting his money. But the real reason why I object to Mr. Rangachariar's amendment is this; let us assume that the workman has obtained compensation from the Commissioner and then wants to be allowed to file a suit in the civil court. If we accept the amendment, we practically tempt the workman to waste the compensation that he has got from the Commissioner in prosecuting probably a useless case in a civil court. Sir, I say that is not right and I oppose the amendment.

(At this stage Mr. President took the Chair.)

Mr. President: Amendment moved:

"That in clause 3 (5), the following be substituted for sub-clauses (a) and (b):

'If he has received compensation in respect of the injury under the provisions of this Act except with the leave of the Commissioner and in any suit so instituted the amount of compensation recovered under this Act shall be taken into account in awarding damages.'"

The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move the following amendment which stands in my name:

"In clause 3, in sub-clause (5), omit sub-section (b) "

We have deprived, Sir, the workman from going to a civil court for damages in two cases. The first is where he has instituted a claim before the Commissioner in respect of any claim and the second is where an agreement has been come to between the workman and his employer providing for the payment of damages or compensation in respect of the injury in accordance with the provisions of this Act.

I beg to move an amendment that this sub-clause (b) which deals with 4 P.M. the agreement, may be deleted.

Sir, in the former portion of sub-clause (5) we have already provided that the workman may bring a suit for damages against any other person if he so likes. When he can bring a suit for damages against a person other than an employer, why should he be debarred from bringing that

suit if an agreement has been arrived at between himself and his employer in respect to the liability of the employer. This will be incongruous. Sir, it is also possible that the employers may take advantage of this sub-clause, and at the time when a workman seeks employment the employer might say to him that he would only be given employment if he gave an agreement that in no case will he be entitled to go to the Civil Court for damages; and the workman will have to agree to it for the sake of work and this will be very hard for the workman. Therefore, I beg to submit, that this sub-clause (b) should be deleted.

Mr. A. G. Clow: Sir, I ask the House to reject this amendment. I do not think the Honourable Member has considered what the effect of it will be. The obvious effect will be that the good employer, the benevolent employer, who at once puts his hand into his pocket and pays out the compensation will still be liable to a suit for damages, whereas the quarrelsome employer who says "No, I refuse to give any compensation," and who forces the employee to file a claim before the Commissioner will thereby protect himself from a suit. Now, our whole object has been to encourage employers to pay compensation without any trouble. We have tried so to frame the Act that they will be able to calculate compensation without legal help, without official help; and the amendment moved by the Honourable Member simply strikes at the root of all this. It is a direct incitement to the employer, in order to protect himself, to refuse to pay compensation at once.

Mr. N. M. Joshi: Sir, I should like to know from my Honourable friend Mr. Clow or from anyone else how the workman by this clause is protected against a dishonest employer. Suppose an employer, who is a very wealthy man and a very well educated man, persuades his employee, who is a poor illiterate man, to come to an agreement that he should accept compensation of Re. 1 or Rs. 2 a month, whereas if the complaint is made to the Compensation Commissioner a compensation of Rs. 10 a month will be due to him. How is this case provided for by this clause. As a matter of fact, my fear is that if you keep this clause, many poor people, illiterate people, will, in sheer ignorance accept a very small dole or small monthly payment from the employer, and if they once accept it and if any other people afterwards tell them that they have made a mistake they shall not be able to go to the Workmen's Compensation Commissioner and complain that they were cheated. I therefore think that this amendment is a very proper amendment and should be accepted in the interests of the ignorant and illiterate working classes of this country.

The motion was negatived.

Dr. Nand Lal: Sir, the amendment which I propose to move is as follows:

"That in clause 3, sub-clause (5) (b), for the words 'an agreement has been come to,' substitute the words 'a lawful compromise in writing has been arrived at'."

Supposing, Sir, a workman goes to the civil court and institutes his claim; he will be confronted with this plea, which I am afraid in a majority of cases may be raised, that there was an agreement between the employer and the workman who is now suing in the civil court. It is very risky so far as the interests of the workman go, because agreement covers both oral agreement and an agreement in writing. If the agreement which

[Dr. Nand Lal.]

I should like to be substituted is reduced to writing, then that is a pretty good safeguard against injustice. But if the mere word "agreement" remains, as it has been proposed, in this clause, then every employer when he will be impleaded as defendant will say, "Oh, there was an agreement between myself and the workman"; and then both parties will be compelled to produce a number of witnesses. I think the House will agree with me that if both the parties have got to produce evidence it is very expensive, very costly, and litigation may be prolonged. But if this modest amendment of mine is accepted, Sir, the natural result thereof would be that there would be no fear of this sort. A compromise which has been reduced to writing will be produced there and then, and it will put the whole litigation to an end. Of course a second question will naturally crop up, and that would be whether that compromise is lawful or unlawful. To substantiate my contention in this connection, I may put forward a hypothetical illustration. Supposing a workman is a minor and he goes to the court and the employer says: "There was an agreement between this minor and myself." Will this House approve of this agreement which has been entered into by a minor forming one party and the employer the other party? The whole doctrine of minority would be set at naught altogether; in some cases we protect minors. But here is an Act of a very peculiar character in which the minority is also not protected. That minor workman may be duped away, he may be induced to subscribe to an agreement or bond or a deed of compromise. Therefore that deed or that bond or that agreement will be altogether unlawful. If this amendment is accepted by this House it will decrease litigation instead of increasing it. Many Honourable Members have been showing themselves averse to litigation. Here is an amendment, and I shall see how many of them will now come forward and express their sympathy with it. With these few words, I place this amendment before the House.

Captain E. V. Sassoon: Sir, the Honourable Member seems to have omitted to look at clause 28 and clause 29 of the Bill, from which he will see that no agreement is effected unless it has been registered by the Commissioner who will only do so on being satisfied as to its genuineness. On the other hand, if the employer omits to send the agreement to be registered by the Commissioner under clause 29, the workman has all his rights under this Act. Therefore, the Honourable Member will realise that the workman is well protected from the unscrupulous employer who may try and make him sign an unjust agreement without having to go to the law at all.

The Honourable Mr. C. A. Innes: Sir, I would like to supplement what my Honourable friend, Captain Sassoon, just said. As Mr. Sassoon has correctly pointed out, all important agreements under this Act have to be registered, and therefore have to be written. But I think probably Dr. Nand Lal had in his mind, when he proposed his amendment, the case of half-monthly payments for temporary disability. We definitely decided that we should not insist on the registration of those half-monthly agreements for the simple reason that the Commissioner would be flooded up with applications for registration if every petty compensation for a few days' temporary disability had to be reduced to writing and had to be registered with the Commissioner. So what we have tried to do is to provide another remedy for the workman. Supposing the employer and the workman come to an agreement for half-monthly payment, the workman

always has the power under clause 6(1) of the Bill to apply to the Commissioner for a review of that agreement, and further powers are given under section 10 where the Commissioner is empowered to accept a claim, whether by way of half-monthly payment or otherwise, even though that claim may be time-barred under the rest of the Act. I think we have met the point sufficiently well.

The motion was negatived.

Mr. President (to Mr. N. M. Joshi): Is your point not met by the amendment just disposed of?

Mr. N. M. Joshi: No, Sir. I beg to move the amendment which stands in my name, namely:

"To clause 3, sub-clause (5) (b), at the end add the following:

'and provided the agreement has been registered with the Commissioner'."

Sir, this amendment will practically make the registration of agreements almost compulsory. The Honourable Mr. Innes just said that important documents will be registered, but the unimportant ones will not be registered, and it is not that every agreement will be registered. It is necessary at the present stage of our working classes who are mostly illiterate and ignorant that every agreement should be registered. I have personally no fear that there will be hundreds and thousands of these agreements from every province and from every district so that the Workmen's Compensation Commissioner will be flooded with them. I do not believe accidents take place in such large numbers as was made out by my Honourable friend, Mr. Innes. I therefore think that my amendment will safeguard the interests of the illiterate and ignorant workmen against dishonest employers and I hope that protection is due to them.

Mr. J. Chaudhuri: Sir, may I suggest that the word "settlement" may be substituted for the word "agreement" in Mr. Joshi's amendment, as the word "agreement" is likely to cause difficulties in many cases.

The Honourable Mr. O. A. Innes: Mr. Joshi said that he did not believe that there would be many claims under this Act and he didn't believe that, if we prescribed that claims for half-monthly payments must be registered, the Commissioner would be flooded with applications for registration. Well, Sir, English experience shows that most claims for compensation arise in respect of temporary disabilities and small accidents, and I find that in one year there were no less than 355,000 claims admitted. As I explained in reply to Dr. Nand Lal, we have tried to provide for this point in another way. We do not propose, we never have proposed to insist on the registration of half-monthly payments but we have provided under clause 6 (2) a machinery for the purpose and we have given power under clause 10 (1) to a Commissioner to extend the period for a claim if he so thinks fit. I do not think myself that that amendment is either necessary or desirable.

The motion was negatived.

Clause 3 was added to the Bill.

Mr. B. N. Mishra (Orissa Division: Non-Muhammadan): Sir, I beg to move:

"In sub-clause A (i) of clause 4 (i), for the word 'thirty' the word 'sixty' be substituted."

[Mr. B. N. Misra.]

This clause provides that in the case of death of a workman only thirty months' wages will be paid as compensation; that is quite sufficient. Sir, probably some of the Honourable Members will call me very greedy as I am always asking a little more. But I think Honourable Members will find that this proposal to raise thirty to sixty months' wages will not entail such hardship on the mill-owners, factory owners and rich people, nor will they find it difficult to make that payment for it will be a payment in the interests of labour itself. Sir, the workmen that are in view come mostly from the labouring class who get say about Rs. 15 to 20 or say 25 a month. The amount that is contemplated under this section will probably be from Rs. 600 to Rs. 800. Rupees 20 to 25 has been ascertained to be the average monthly wages of the workman. Now, Sir, will this payment really entail hardship upon the millowners? It has been said that it is a new Act and that industry will perhaps be ruined if workmen are allowed such compensation. Sir, this is not a general order of things. Accidents are, of course, rare. For instance in the case of agriculture or in the case of landed owners, we get famine or we get floods occasionally. We do not get them often. What is done in such cases? Whenever there is a flood or a famine, even the benign Government not only gives up the rent from the poor tenants but also comes to the relief of the famine-stricken or the flood-stricken people. I think that is a very wholesome rule observed by the Government.

Mr. President: Order, order. The Honourable Member has wandered very far from his own amendment.

Mr. B. N. Misra: Sir, I was giving an illustration.

Mr. President: The illustration is out of order.

Mr. B. N. Misra: The mill-owners, factory-owners or mine-owners, are not such poor people as will find it difficult to meet these occasional accidents which will be due to the negligence or it may be really due to some actions on the part of the owners themselves or it may be due to some natural causes. But these rich people amass their wealth with the labour of these poor labourers. The prosperity of these industries is due to the workman's labour. If the workmen are not properly looked after or if there is not sufficient inducement to workmen, I think these industries cannot prosper. These small payments, instead of being a hardship to the millowners or factory-owners or mine-owners, will really do good to them inasmuch as it will induce the workmen to readily come forward and join the factories, etc. Now, Sir, the amount that has been fixed is thirty months' wages in case of death. Is that the value set upon a man's life—whether he be a workman or any other man? If you put it at thirty months' wages, I think it is too little. If it is intended to help his dependants, then also it is very little. Of course the maximum is fixed at Rs. 2,500. Probably that may help the higher paid men such as engineers and others who get perhaps Rs. 200 or Rs. 300 a month. In their case Rs. 2,500 may be sufficient. But in the case of poor workmen, thirty months' wages is very small. The Honourable Mr. Innes said that even when a man is murdered, nobody compels the murderer to pay compensation to the relations of the deceased. When a man has murdered, the moment it is found out, he is hanged by the neck and nobody lives to pay compensation. Our civil law lays down that no man's heirs or successors are responsible for the guilt or criminal

action of his predecessors. That is why the heirs or successors are not asked to pay compensation. The man is either transported to the Andamans or is kept in jail for several years.

Mr. President: Order, order. The Honourable Member is getting even further from his amendment.

Mr. B. N. Misra: Sir, my submission is, it is really a moral duty on the part of these owners who are rich men to meet this occasional expenditure which will really be a relief to the workman and will not really tell so much upon the industry. I therefore submit that thirty months' wages is too small and that it ought to be increased to sixty months' wages.

Mr. President: Amendment moved:

"In sub-clause A (i) of clause 4 (1), for the word 'thirty' the word 'sixty' be substituted."

The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move that:

"In sub-clause A (i) of clause 4 (1), substitute the words 'thirty-six' for the word 'thirty'."

My amendment is based on the same principle as that of Mr. Misra. No doubt I am more modest in my demand than Mr. Misra. I have followed the period that has been allowed in the English Statute, and I shall not be ashamed of my slavish imitation of the English provision where it is beneficial to workmen. Sir, in the English Statute, thirty-six months' period has been allowed. My own impression is that even sixty months' period which was moved by Mr. Misra was not a long period. But thirty-six months' period is not much longer than the thirty months which has been allowed in the Bill. I do not know, Sir, on what basis these periods have been fixed. I submit that thirty-six months will not be long enough to put heavy pressure on the employer or the owner but will be much more convenient to the workman or his family. No doubt, the standard of living in England is higher than in this country. But at the same time, the number of dependants here is much larger than what it is in England. I submit that such a modest amendment as to substitute "36" for "30" should be accepted by the House.

Mr. President: Amendment moved:

"In sub-clause A (i) of clause 4 (1), substitute the words 'thirty-six' for the word 'thirty'."

The Honourable Mr. O. A. Innes: A scale of this kind must always be more or less a matter of opinion. We worked at it very hard. We had a Committee on it, as the House knows, in July, and we had a Joint Committee on it. Both the Committees have agreed that this scale is, having regard to the conditions of India, on the whole not only a fair scale but a liberal scale. It has been accepted generally throughout the country, and I do hope that the House will be guided by the advice which it has received from the two Committees and by the fact that the country generally has accepted the scale that we have proposed. I deprecate most earnestly any tampering with the scale at this time. I hope that the House will reject this amendment.

The motion was negatived:

Mr. N. M. Joshi: Sir, I move the following amendment which stands in my name:

"In sub-clause A (i) of clause 4 (1) after the word 'or' insert the words 'the sum of five hundred rupees whichever of these sums is the larger but not exceeding in any case' and omit the words 'whichever is less'."

The object of this amendment is to put down the minimum limit of Rs. 500 as compensation in a case of accident where the workman will be killed. Sir, Schedule IV of this Bill lays down the minimum compensation of Rs. 240. It sets down Rs. 8 as the lowest assumed wage, so that 30 months' wages come to Rs. 240. I consider that this minimum wage is too little taking into consideration the wages in India as well as the prices in India. In the English Act—I am very sorry to refer to the English Act again and again—the minimum compensation provided for is £150 which comes to Rs. 2,250. After all, the prices in India are not ten times as low as in England and the wages in India are not also ten times as low as in England. I therefore think that in placing the minimum at Rs. 240 we are really giving too little for the lower paid workman who may be killed on account of an accident. The sum of Rs. 240 as compensation for death to the wife and children of the workman I think will be considered by the House as too low. The minimum limit that I have proposed is only Rs. 500, about one-fourth of the minimum limit proposed in the English law. I have not proposed a very exorbitant limit at all. It only assumes that the minimum wage taken should be about Rs. 16 or 17. I therefore hope that the amendment proposed by me will be accepted by the House.

The Honourable Mr. C. A. Innes: Sir, I am afraid that I must again oppose this amendment. It is perfectly true that our lowest assumed wage for the purpose of Schedule IV is Rs. 8 a month, and therefore the actual minimum amount of compensation which is payable for death is Rs. 240. But for the individual workman the minimum compensation which he is going to get depends upon the amount of wage that he was drawing. If a man was drawing Rs. 30 a month, his minimum compensation will be Rs. 900. Mr. Joshi has drawn attention to the fact that £150 is the minimum compensation payable in England. That remark is not strictly accurate, if Mr. Joshi will permit me to say so, for the English law makes provision for a case where the workman leaves only partial dependants and in that case £150 has not got to be paid but such amount as may be considered reasonable. But taking £150 as the minimum compensation payable under the English Act, let us compare that with the minimum compensation we pay. What does £150 really represent in England. The average wage of a workman in England may be taken to be £2 and therefore £150 merely means 75 weeks' wages or say 18 months' wages. Our minimum compensation is based throughout on 30 months' wages and I say that having regard to our conditions in India our scale is already adequate and liberal and I oppose the amendment.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: I beg to move:

"That in clause 4 (1) in sub-clause A (ii) the word 'five' be substituted for the word 'two'."

In this Bill we have provided that compensation in the case of the death of a minor shall be Rs. 200 only which I consider to be very low and

I propose that Rs. 500 instead of Rs. 200 would be a very reasonable amount. The death of a minor is as valuable as the death of an adult member, if not more. There are minors who have dependants and in such cases the award of Rs. 200 will be absurdly small. Moreover if the minor were alive, his dependants would enjoy the benefit of his work for a longer period which they lose by his death. I move therefore that Rs. 500 be substituted for Rs. 200 which is very low. With these words I move my amendment.

Mr. B. C. Allen (Assam : Nominated Official): Sir, I hope that the House will throw out the amendment of Mr. Agnihotri. If it were carried my own amendment would be killed before it was born, a fact which as the prospective parent I cannot contemplate without horror. I oppose the amendment mainly on the ground that it cuts across the whole principle of the Bill. If you look at the Statement of Objects and Reasons you will see that the Bill is intended to remove the hardship caused by the death of a workman. There is no question whatever of penalising the employer or of offering a solatium to the wounded feelings of the parents. Mr. Agnihotri has stated that the death of a minor is as "valuable" as the death of an adult. He suggested that minors had dependants. I think he has overlooked the fact that a minor under the Act is less than 15 years old, and although there may be husbands of the age of 14, I imagine that the number of fathers at that age is very small. Even if there is an occasional father of 14, the chances of his being killed are almost infinitesimal. There is another perhaps even more important principle which Mr. Agnihotri's amendment ignores. I feel some diffidence in referring to the English Act, but if you turn to that Act you will find that in the case of persons who have no dependants the compensation is limited to £10, or rather to the cost of medical attendance and funeral expenses not exceeding £10. You will also find if you turn to the English law that it has thought it necessary to prevent parents from benefiting from the death of their children. Under the various English Acts a father as such has no insurable interest in his child. The Friendly Societies Act also limits the payment made on account of the death of a child to £10. Now, if these precautions are necessary in England I imagine that they are also necessary in India. I do not for a moment mean to suggest that Indian parents are not very fond of their children. In my experience it is one of the most pronounced characteristics of Indian families. But English parents are fond of their children also, and I cannot feel that the House will be acting wisely in disregarding a precaution which has been found necessary in the mother-country.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. B. C. Allen: Sir, as Captain Sassoon has withdrawn his amendment and as Mr. Agnihotri's amendment has not been carried, perhaps the House will accept the amendment which I have to move without further debate. (*Cries of "No."*) I understand that they do not agree. I move, Sir:

"That in clause 4 (1), sub-clause A (ii), the word 'one' be substituted for the word 'two'."

I only have to emphasise the points to which I have already called attention when speaking to Mr. Agnihotri's amendment. The draft Bill is departing from the principle of the English Act: is departing from the principle of the Bill that was originally laid before us: it is introducing a

[Mr. B. C. Allen.]

new and in my opinion unsound principle. There is a further aspect of the case. Honourable Members will perhaps say, "why on earth should this compensation be reduced when the representative of the Millowners is willing to raise it"? I must confess that when I first read his amendment, I felt that I was being smitten by one in my own house. Various explanations came across my mind. I thought of Tennyson's "wealthy men who care not how they give" and the danger such wealthy men may be to the body politic. Then I thought of that horrid tag of Virgil's— "Timeo Danaos," which might I suppose be translated "you must look even a gift horse in the mouth if the giver is a Greek". But my Honourable friend has since cleared away all my doubts. When he addressed us on the introduction of the Bill he explained with a frankness and freedom which I have always associated with the late President Wilson, that though the millowners would disburse this money they would subsequently recover it from us the consumers. And this is a point which I want the House to bear in mind, because previous experience has, I believe, almost invariably shown that when you put a cess upon an industry and that industry can and does proceed to recover that impost, it generally recovers a good deal more. In fact in this particular case it would probably be unavoidable. You could not divide the small sum payable over each individual *dhoti*, *chaddar* or whatever it is produced in these mills, and the price of each article would have to rise probably by at least one anna. Now, I have no doubt that the cotton mill industry could recover this sum. They are a highly organized industry, and it seems not unlikely that at no distant date they will be protected and will be able to recover the money. But we all know that all industries are not in that position. What about the rubber industry which some time ago was not able to extract from the consumers even so much as the cost of production? I fancy that there will be a considerable number of small Indian industries in this country which will not be in the position of wealthy industries like the mill industry. I think that we should remember what The Honourable Mr. Innes said when introducing the Bill. It is very important to consider the small industries and to carry the manufacturer with us, to make him feel that he has been fairly and justly treated. Now, what is the reason, what is the excuse offered by the Select Committee for raising the rate originally laid down in the Bill when it was submitted to the House? They say that they have to impose this charge upon the industry, not because it is a good charge, or a right charge, not because it is the just or proper thing to do, but because it "meets the views of those who were of opinion that the original provision appeared to hold somewhat cynically cheap the life of a minor." Now, I ask this House, is that a sufficient reason? Are we to do what we do not think right simply because somebody may say that we held the life of a minor cynically cheap? Is there any rule of guidance for this House except that it should do what it thinks right? Are we to do a thing which we do not approve, simply because somebody may say something? I suggest that rather than do that, we had better close our doors and retire from the work of legislation altogether.

Mr. N. M. Joshi: Sir, the argument of my Honourable friend Mr. Allen seems to be that small industries will be ruined. Again, Sir, I want to know whether there are any small industries such as coffee where accidents take place in large numbers. If accidents do not take place in large numbers, a sum of Rs. 200 is not going to ruin the industry. I think, therefore, the amendment is not acceptable to any Member in this House.

Captain E. V. Sassoon: Sir, I would like to point out to the Honourable Mover of the last amendment that even the mill industry is not always in a prosperous condition and we fully appreciate that there may be times when anything that raises our cost of production would have to be very carefully reviewed. I have pointed out to this House already that it is true that any increase in the cost of production does perhaps in part fall on the consumer, and it is so in the long run; but as far as these particular charges are concerned, my own view is that whether Rs. 100 or Rs. 300 is paid as compensation for the death of a minor, the insurance premium in this case would not differ very much. All these matters come back to the amount of the insurance premium. Now, Sir, the reason why I did not move my previous amendment was not perhaps so much due to Mr. Allen's remarks on Mr. Agnihotri's amendment, as those of the Honourable Mr. Innes when speaking on the amendment moved by Mr. Joshi. It seems to me that if an adult might receive Rs. 240 or Rs. 260 as compensation, it would not be logical for me to suggest that the amount of a minor should be raised from Rs. 200 to Rs. 300. But I would like to defend the Rs. 200 as supported by the Select Committee. The point I take is that though it may be perfectly true that the minor of 14 or 15 has no dependants; at the same time his parents or grand-parents have been to some expense and trouble in bringing him up and may well hope for some return in their old age when he is in his prime of life. His death therefore in a way removes their old age pension, and I think it only fair that they should get, if I may use an insurance analogy, their premium back. For this reason, I hope that the House will not agree to Mr. Allen's amendment and will keep the Rs. 200 as supported by the Joint Committee.

The motion was negatived.

Rai Bahadur L. P. Sinha (Gaya cum Monghyr: Non-Muhammadan): Sir, I beg to move—

"That at the end of sub-clause A (i) of clause 4 (1) add the following:

'Provided he has no invalid dependants solely depending for their livelihood on the income of the deceased minor.

'(iii) In the case of a minor having invalid dependants solely depending for their livelihood on the income of the minor, thirty months' wages or Rs. 350, whichever is more.'

Sir, we generally find that amongst the working classes a minor son or daughter of a wage-earner, who has become invalid or infirm, either through natural causes or by accident, maintains the parents or dependants through his or her own earnings. Moreover, the sons or daughters of day labourers begin to work from practically their childhood because they cannot afford to do otherwise. So in the circumstances, I think Honourable Members will agree with me that blind or invalid parents or dependants solely depending on the income of deceased minors for their livelihood should not be thrown into a miserable plight because the minor in his daily duties has got injured and died.

Sir, with these few words I move my amendment.

The Honourable Mr. C. A. Innes: Sir, I do not think that the House will expect me to say very much on this amendment. I think the House would be well advised to do as has been done hitherto and stick to the figure suggested by the Joint Committee.

The motion was negatived.

Mr. B. N. Misra: Sir, if I am not mistaken, probably many of the Honourable Members want it to rain copious showers over the middle of the ocean but they do not want even a drizzle over the scorched and dry land. Their attitude has been always to support the man of wealth. I have already submitted my arguments in my last speech and I do not wish to say anything more here. I respectfully submit to the House my amendment:

"That in sub-clause B (i) of clause 4 (1) for the words 'forty-two' the words 'eighty-four' be substituted."

The motion was negatived.

Dr. Nand Lal: Sir, in face of the fact that amendment No. 31 which was moved by Mr. Joshi has been rejected and the same principle for all intents and purposes is involved in amendment No. 40,* I do not propose to move it.

Mr. W. S. J. Willson (Bengal: European): Sir, I rise to move the following amendment:

"After sub-clause B (ii) of clause 4 (1) add the following:

'Provided that where a workman, who from previous injury suffers permanent partial disablement, meets with an accident which in conjunction with the previous injury results in total disablement the compensation shall be fifty per cent. of the compensation provided under clauses (i) and (ii).'"

Sir, I move this amendment in the belief that I am proposing something not only perfectly fair to the workman and fair to the employer, but of positive advantage to the workman. I have no desire to cut down what is paid to the unfortunate individual who is damaged in his work but if you take the case of a man who has, either before the passing of this Act when he may not have received compensation or after the passing of this Act when he will have received compensation, lost, say, one arm. He would under the Act, if it were his right arm, get 70 per cent. under Schedule I; and then if he loses, in the course of further employment, the other arm, which would be the left arm, he would get 60 per cent., making a total of 130 per cent. of the compensation. Now, I do not think the House will consider that although a man suffers two injuries and suffers twice, he should necessarily get more than the total which he would get if he were totally disabled. Apart from that, if he has already drawn the percentage for the first accident, it seems to me that it would be positively against the interests of a subsequent employer to take him on, if the subsequent employer, by removing only one other arm in the course of an accident, renders himself liable to pay for a total disablement. We will say the first employer pays 70 per cent., the second employer who has the misfortune to lose the man's other arm has to pay 42 months' pay as for total disablement. It may be said and it has been said to me in private conversation that the argument against the amendment is that the poor man who has only one arm will be very much less likely to get a job. But, Sir, I do not think we all take that unkind view. I think there is a good deal of humanity in the world, and I think a great many employers are only too pleased if they can see their way to employ a man who has suffered from some physical disability. We have all, I have no doubt, seen damaged workmen at

* "That in sub-clause B (i) of clause 4 (1) after the word 'or' insert the words 'the sum of rupees two thousand whichever of these sums is the larger but not exceeding in any case' and omit the words 'whichever is less'."

work in Railways and public services. There is no earthly reason why a man with one arm or one leg cannot make a perfectly good gate-keeper on any railway; but if he happens not to be looking when a train came up he certainly would be under a disability in running away and he might lose the other leg. Is the employer to be afraid of that and not employ that man? There are various machines in industries which can perfectly well be worked by a man with one arm or a man with one leg. I need not particularise them; those who are acquainted with industries and machinery will be well aware that what I say is correct. I think, Sir, that no further words should be necessary from me to emphasise the justice of what I say, that my amendment will prove in effect to be perfectly fair and positively beneficial to workmen in certain conditions, and fair to employers in any case.

Mr. A. G. Clow: Sir, this raises a somewhat intricate question, but I think the Honourable Member was really arguing on a fallacy, the fallacy being that the wages of a workman after an injury were the same as his wages before the injury. If he will look at the top of Schedule I, at the head of the column giving the percentage, he will see the phrase "percentage of loss of earning capacity." In other words, what we say is that in the normal case the man who has lost his right arm above the elbow has lost 70 per cent. of his earning capacity, and the wage which he might expect to receive after the injury will, on the average, be only 30 per cent. of the wage he was getting before. Consequently, when he is permanently disabled,—let us take the case of a man on Rs. 30 a month—we estimate that his average wage after the injury will be only Rs. 9. So that when finally he is completely disabled he will get 9 times 42 rupees. If the Honourable Member will take the trouble to work this out, I think he will find it comes to the difference between the compensation he originally got and the compensation he would have got had he been completely disabled.

Now that deals only with one side of the question which is the case of injuries under the Schedule. But as the House is aware, there are other permanent injuries. The Honourable Member's amendment refers not only to sub-clause (i) but to sub-clause (ii) also, and he was careful to make no reference to sub-clause (ii) in the course of his speech. "In the case of an injury", I shall read the sub-clause, "In the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury." In other words, what the Commissioner has to decide is, how much was this man earning before and how much he could earn now? If the Honourable Member can persuade the Commissioner that the workman is now able to earn exactly the same wage as he used to before the injury, obviously no compensation will be payable at all. I hope that this meets the Honourable Member's point.

The motion was negatived.

Mr. K. B. L. Agnihotri: I gave notice of an amendment to sub-clause B (ii) of clause 4 (1) to substitute a clause for the existing one, but with your permission, Sir, I now wish to move an amendment to substitute 'greater' for 'less' instead of the amendment of which I gave notice. Sir, the compensation which we allow in this case is Rs. 15 or a sum equal to one-fourth of his monthly wages, whichever is less. By my amendment

[Mr. K. B. L. Agnihotri.]

it will come to Rs. 15 or $\frac{1}{4}$ th of his monthly wages whichever is greater. There may be cases in which a workman may be drawing, say Rs. 100 or 200 or Rs. 250, and if he gets a partial injury and is unable to work for the time being, he will be entitled to get only Rs. 15 or $\frac{1}{4}$ th or whichever be the less. That means Rs. 15 and this sum for a fortnight will be quite insufficient and inadequate for his own and his family's maintenance. Therefore, Sir, I propose that instead of Rs. 15 it should be Rs. 15 or $\frac{1}{4}$ th of the pay whichever be greater. If we take the analogy of Government servants, who when they are injured generally get half their pay for the month, we find a support to my amendment and the same analogy should

5 P.M. apply in the case of workers who should also be allowed to get the half pay for the month and therefore, Sir, I move my amendment to substitute "greater" for "less."

The Honourable Mr. C. A. Innes: I need only say in respect of this amendment, Sir, that the effect of it will be that, if a workman on Rs. 10 a month gets temporarily disabled, under Mr. Agnihotri's proposal he will get compensation in half-monthly payments of Rs. 15 each half month. That is to say, a workman on Rs. 10 a month will have his pay raised to Rs. 30 a month while he is temporarily disabled. It seems to me, Sir, that the amendment is on the face of it absurd.

The motion was negatived.

Clause 4 was added to the Bill.

Rai Bahadur L. P. Sinha: Sir, I beg to move:

"To sub-clause (a) of clause 5, at the end the following be added:

'Provided the workman was not on leave without pay or under suspension for any period during the preceding twelve months from the date of accident; but in such cases monthly wages shall be calculated at twelve times the rate of monthly salary which he was drawing on the day of accident divided by twelve.'

I beg to move this amendment because there may be cases arising very often that the workman joins his work after remaining for a long time under suspension or on leave without pay. Now, Sir, in these cases, if monthly wages are calculated according to clause 5, sub-clause (a), then the workman will I think lose a great amount of money which he would have received otherwise by way of compensation. As, for example, a workman gets an accident or injury on the 15th of a month: he rejoined his work on the first of the month after six months' leave without pay or remaining under suspension for the same period. Now, taking it for granted that he was at the time of the accident drawing a monthly rate of pay of Rs. 60; if his monthly wage is calculated according to the present clause which is not so very clear on the point I think his pay of six months' active service will only be taken into account whereas if the amendment which I have proposed is accepted, I don't think the workman is expected to lose anything neither will the employer be giving anything more than what the workman's real dues would have been.

With these remarks I move my amendment.

Mr. A. G. Glow: I admit, Sir, that this is an extremely complicated clause. I observe that the Honourable Member has been so impressed by its complications that he has introduced in his own amendment a quite unnecessary complication where he says we should first multiply and then divide by 12. I suggest that the result of that mathematical calculation would be to

bring us back to where we started from. If he agrees with us so far, the latter part of his amendment will read :

" But in such cases monthly wages shall be calculated at the rate of monthly salary which he was drawing on the day of the accident."

Now, Sir, if the thing was as simple as all that, there would be no need for this clause at all. Why should not we calculate every one's wages at the rate of the monthly salary he was drawing on the day of the accident? The real fact is that there are a great many difficulties in calculating salaries. Some men are paid daily, some weekly, some fortnightly. They get bonuses, they get their food, they get other concessions. All these things have to be taken into account. I hope, Sir, that I have demonstrated that if there is any difficulty in the clause, this amendment will not remove it.

But I do not think that I ought to sit down till I have answered the difficulty raised by the Honourable Member at the end, when he said that a man who had been away for six months on leave without pay or under suspension would be compensated at only half the scale he ought to get. That, Sir, is not the case. If the House will look at the Explanation, they will see that " a period of service shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding 14 days." The effect of that in this case is that it is only the last continuous period of service that the workman has rendered that counts. In other words, the workman instanced by the Honourable Member would have his wages calculated under sub-clause (b) and not under sub-clause (a) at all, and this sub-clause, although it does, I admit, look extremely intricate, is a very simple one. You divide the remuneration he has got during the period by the number of days during which he has worked. That gives you the average daily wage that he has received during his period of work. You then multiply—I am inverting the order to make it simpler,—you then multiply by 30, which gives you the average monthly wage.

I ask the House to reject the amendment.

The motion was negatived.

Clause 5 was added to the Bill.

Mr. President: The question is that clause 6 stand part of the Bill.

Mr. N. M. Joshi: Sir, while on this clause, I should like to get some information from the Honourable Mover of this Bill. Only a short time ago he referred to this clause as covering the cases of workmen who will be cheated into accepting small monthly instalments by dishonest employers. Sir, clause 6, sub-clauses (1) and (2) provide for the review of half-monthly payments payable for compensation. Clause 6 (1) makes it very clear that this review can be obtained if the workman can show a change in his condition. " Condition " means condition of health, because there is a reference to the certificate from the medical practitioner. If the review could be obtained only for the reason of a change in the condition of the workman, I do not believe this section will cover the case of a man who is cheated into receiving small payments by agreements. In the same way, the word " review " is found in sub-clause (2) of this clause. I think the word " review " here also means the same thing as in sub-clause (1) of clause 6. Therefore, a review can be obtained only if the workman can show a change in his condition either by a certificate or without a certificate. But I do not think this clause gives the right to a workman to ask for a review if he is cheated by a dishonest employer.

The Honourable Mr. C. A. Innes: Sir, I will have the point raised by Mr. Joshi examined by the Department. I understand that what I said before was correct, but I will have the point re-examined, and if necessary, will consider it further with reference to action elsewhere.

Mr. President: The question is that clause 6 stand part of the Bill.
The motion was adopted.

Mr. President: The question is that clause 7 stand part of the Bill.
The motion was adopted.

Sir Montagu Webb: Sir, I beg to move that:

“ To clause 8 (4) add the following:

‘ The Commissioner shall on application by the employer submit a statement showing in detail all disbursements made ’.”

The amendment is self-explanatory. If an accident has taken place and the employer has paid the necessary compensation to the Commissioner, and the Commissioner has distributed the same to the dependants of the deceased, it is not unreasonable that the Commissioner should on application supply to the employer a statement showing how the money has been disbursed. With these words, Sir, I move the amendment.

Rao Bahadur T. Rangachariar: Sir, I do not know if the Honourable Member would substitute any other word for the word “ submit ”. Already there is a fear in the minds of the people in this country that this Commissioner who is going to be appointed under the Act will be at the beck and call of the employers. If the Legislature says that the Commissioner shall, on application by the employer, submit a statement showing in detail all disbursements made, we make him a submissive individual to the employer and he will be quite useless to the employee (servants). I hope Sir Montagu Webb was not led away by his inner consciousness or prevision in using that word “ submit ”. I hope that that is not going to be the result of this Act.

The Honourable Mr. C. A. Innes: Of course, it seems perfectly reasonable that an employer who pays compensation to the Commissioner should be allowed to know how that compensation has been distributed. At the same time, I wish to point out that if the employer has paid compensation and if there are dependants, the employer in no circumstances will get back any part of that compensation. He only gets back the compensation if the Commissioner on enquiry finds that there are no dependants. In that case, he gets back all except, say, Rs. 50 for funeral expenses. Therefore from that point of view, it does not matter very much to the employer how the compensation is distributed. My fear is that if we impose upon the Commissioner the burden of submitting—to use the word objected to by Mr. Rangachariar—this statement, we may impose rather a lot of unnecessary work upon him. At the same time, if an employer does want a statement of this kind, it seems only reasonable that he should have it, and I am quite prepared to leave the amendment to the judgment of the House.

Sir Montagu Webb: May I say I am quite prepared to accept the word ‘ furnish ’ for “ submit ”.

Mr. President: Further amendment moved:

“ To substitute the word ‘ furnish ’ for the word ‘ submit ’ in the original amendment.”

The question is that that amendment be made.

The motion was adopted.

Mr. President: Amendment moved:

"To clause 8 (4) add the following:

"The Commissioner shall on application by the employer furnish a statement showing in detail all disbursements made."

The question is that that amendment be made.

The motion was adopted.

Mr. N. M. Joshi: My amendment is:

"In clause 8 omit sub-clause (7)."

I shall very briefly explain the circumstances under which the case contemplated by this sub-clause will arise. Let us take an adult workman. He meets with an accident, a very serious accident causing permanent total disability. The minimum compensation for such an accident is Rs. 316. The employer is willing to give that compensation and that amount is deposited with the Commissioner. Then the Commissioner finds that the man is in the hospital and he has got very severe injuries. The Commissioner may think that the man may die within six months. If the man had died instantaneously he would have got only Rs. 240. So, the Commissioner may think that if the man had died he was entitled to only Rs. 240 and he ought not to get the benefit of the remaining Rs. 96. Therefore this sub-clause gives a discretion to the Commissioner to withhold this sum of Rs. 96 or any part of the total compensation. I am against this sub-clause altogether, because, in the first place, when we settle the compensation for total permanent disability we do not provide for the life of the man which is really necessary. If a man is totally disabled in an industrial undertaking, it is but reasonable that he should be maintained by the industry till the end of his life. Instead of that, he is given only 42 months' wages. Suppose that this man who is totally disabled lives for more than seven years. Who is going to maintain him? The industry does not take the responsibility. But as soon as the Compensation Commissioner finds that the man is likely to die early he wants to take advantage of the possibility of his early death. Sir, I think this proposal is, for this reason, very mean, because, in the first place, if you provide for the end of his life, then certainly I can understand your saying that if he does not live we should get back the money. But if he lives longer, you say, "Go on the streets," but if there is a possibility of his dying earlier, you say, "Give us the benefit." Moreover, it is not only mean. In some cases this proposal is likely to be very inhuman. A man who suffers from an injury causing permanent disablement requires money for his treatment. If he gets money he can go to a doctor but when the Commissioner finds that the man is likely to die he says: "No. You are likely to die. I shall not give you the whole amount. If you want treatment, I do not think with this treatment you will get better. Therefore I would not give you the money. I will keep the money and see whether you die or not." Sir, this is very inhuman and from my point of view the Government by putting in this clause puts the Workmen's Compensation Commissioner in a very wrong position altogether. What will be the position if a certificate is brought from the doctor that the workman died for want of treatment for which he could not afford the money. The Workmen's Compensation Commissioner will say

[Mr. N. M. Joshi.]

that he thought the man would not die but the doctor will say that the man died because he did not get the money. I therefore hope that the Government will see the wisdom of accepting my amendment.

The Honourable Mr. C. A. Innes: I wish to explain what the position of the Government is in regard to this amendment. I am quite free to admit that the clause in its original form was put in by myself and my friend on my right. We were not advised to put it in by the July Committee. The reason of course is that Mr. Clow and myself come from the north of the Tweed and there is not much sentiment in our composition. We rather pride ourselves on trying to be logical. Now, when we were considering this Bill, the drafting of it, we were rather impressed by the difficulty arising out of the discrepancy between the lump sum payment due in the case of the death of a minor and the lump sum payment due in the case of a permanent disablement of the minor. I take that extreme case. If the minor gets killed, the compensation due is Rs. 200. If a minor is permanently disabled the compensation may be as much as Rs. 3,500. Now, Sir, the House will see that this discrepancy is a very serious thing for an employer. It is a difference between Rs. 200 and Rs. 3,500, and therefore we gave the Commissioner discretion. If a minor was very seriously disabled we gave the Commissioner discretion to hold over the payment of the lump sum up to six months in order that he might see what was going to happen. That seemed only fair to the employer. But in the course of the Joint Committee I must confess that I personally was impressed by one argument which Mr. Joshi brought forward. He pointed out that this difficulty which I have just brought to the notice of the House is incidental to the system of lump sum payments, and definitely we have elected for lump sum payments on account of the conditions in this country. This difficulty is incidental to that system and he put it to us that we could not have it both ways. If you accept the lump sum payment system, you have got to accept the disabilities of that system. I have been personally myself impressed by that argument and as far as the Government are concerned we are quite prepared to leave this point which Mr. Joshi has raised to the judgment of the House. I have tried to explain why we put the clause in and after hearing Mr. Joshi's main argument against the clause I am willing to leave it to the judgment of this House to decide whether the clause be omitted or retained in the Bill.

Mr. President: The question is that sub-clause (7) of clause 8 be omitted.

The motion was adopted.

Mr. President: The question is that clause 8, as amended, do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 9 and 10 do stand part of the Bill.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 6th February, 1923.

LEGISLATIVE ASSEMBLY.

Tuesday, 6th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

WIRELESS INSTALLATION IN INDIA.

332. ***Sir Montagu de P. Webb:** (a) Have Government received from the Associated Chambers of Commerce of India and Ceylon a representation urging the immediate provision through the agency of private enterprise if State funds be unavailable, of a Wireless Installation in India capable of transmitting messages at high speed and of communicating direct with any part of the world?

(b) If so, will Government be pleased to say what steps have been taken to meet this demand and forestall the possible foreign competition of similar world-wireless installations in Pondicherry and Java?

Colonel Sir Sydney Crookshank: (a) and (b) Government received on January 29th the representation referred to, but are not yet in a position to make any announcement as to the extent to which they are prepared to meet the specific demand which it contains.

ROYAL COMMISSION ON THE INDIAN CIVIL SERVICE.

333. ***Mr. B. N. Misra:** (1) Will the Government be pleased to state whether Britain or India is going to meet the costs of the Royal Commission appointed to enquire into the grievances of the Indian Civil Service?

(2) Will there be any Indians in the said Commission?

(3) If so, what is the proportion of the Indians to Englishmen in the said Commission?

(4) Will there be any members of the Indian Legislature on the said Commission?

The Honourable Sir Malcolm Halley: Government have as yet no information.

UNSTARRED QUESTIONS AND ANSWERS.

OFFICIAL REPORTS.

149. **Mr. Mahomed Hajeebhoy:** Will Government be pleased to state the reasons for the increasing delay in publishing official reports such as the Annual Review of the trade of India?

The Honourable Mr. O. A. Innes: The Government do not know what foundation the Honourable Member has for his general statement that there is increasing delay in the issue of official reports. As regards the Annual Review of the Trade of India, I understand that the proof of this is now

ready. The delay in the issue of the Report was due to pressure of work arising out of the necessity of examining whether and in what directions the activity of the Commercial Intelligence Department could be curtailed, this pressure coinciding with a reduction in the number of officers.

TRANSFER OF ADEN.

150. **Mr. Mahomed Hajeeshoy:** (a) Will Government be pleased to state whether the proposed transfer of Aden is still under consideration; and,

(b) If the answer to the above question should be negative, to lay the papers relating to that proposal on the table?

Mr. Denys Bray: (a) Yes.

(b) Does not arise.

INTRODUCTION OF TARIFF VALUATIONS.

151. **Mr. Mahomed Hajeeshoy:** Will Government be pleased to state what, if any, protests have been received against the new tariff valuations introduced with effect from January 1st, 1923, into the Import Tariff Schedule 2, and what action, if any, has been taken in regard to such protests?

The Honourable Mr. C. A. Innes: The tariff valuations are revised every year after taking into consideration the prices prevailing during the preceding year, and after consulting the principal Chambers of Commerce. The only protest so far received against the tariff valuations introduced with effect from January last is in regard to paper and the representation on the subject is under consideration.

REPORT OF CHIEF INSPECTOR OF MINES.

152. **Mr. Mahomed Hajeeshoy:** (a) Will Government be pleased to state what, if any, actions have been taken on the latest report of the Chief Inspector of Mines in India? and

(b) Whether further action is contemplated to minimise the possibility of fatal accidents in mines?

Mr. A. H. Ley: Government is considering in consultation with the Chief Inspector of Mines the action to be taken on his latest report with the object of framing rules to adopt the existing rules to modern mining practice, and of factories such steps as are possible to minimise the danger of fatal accidents.

TOMBS AND MOSQUES IN DELHI.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, may I ask the Honourable the Home Member whether his attention has been drawn to an article in the 'Muslim' dated the 4th February 1923 in which allegations are made against the demolition of tombs and mosques in Delhi, and whether the Home Member is prepared to make a statement in regard to that matter?

The Honourable Sir Malcolm Hailey (Home Member): I have obtained a copy of the 'Muslim' dated the 4th February 1923 and read it. The article in question refers to a large number of buildings, some 14 in all,

but in no case is it alleged that a mosque has been demolished by Government. In reading the list of buildings, with its reference to mosques lying in ruins, etc., a somewhat mistaken impression might be gained; for very many of these buildings are old ruins which have been abandoned for a very considerable time, the remains of former suburbs and villages, and have suffered from natural decay.

Though it is not stated that any mosque has been demolished, it is stated that some are in danger of destruction. As far as any action of Government is concerned, however, this is not the case. I may note that in one case in particular the mosque at Kalali Bagh, considerable local feeling was created by the fact that a mark, supposed to be a demolition mark, was placed on the compound wall of the mosque. This, however, was not a demolition but a survey mark, and the road which would otherwise have cut off part of the mosque compound was actually diverted.

I am fully satisfied, from my personal knowledge of the facts, that the Chief Commissioner is showing scrupulous care to see that nothing is done to injure any building which can be recognized as religious, and he is fully alive to the necessity of taking local opinion with him in regard to the treatment not only of mosques actually in use in the large area occupied by new Delhi, but of the numerous ruins in this area. I have seen letters on the subject addressed to the Juma Masjid and Fatehpuri Masjid Committees, and those who are acquainted with Raisina will realize that so far from attempting to destroy religious buildings wholesale, we have spent considerable sums of money in conserving them and their surroundings. The Muslim public may, I think, be assured that the local authority is doing its best to prevent any kind of incident likely to cause offence to genuine religious feeling regarding buildings in the New Delhi area.

THE WORKMEN'S COMPENSATION BILL.

Mr. President: The House will now resume consideration of the Report of the Joint Committee on the Bill to define the liability of employers in certain cases of suits for damages brought against them by workmen, and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

Clause 11, Captain Sassoon.

Captain E. V. Sassoon (Bombay Millowners' Association: Indian Commerce): Sir, whatever views Honourable Members may have about the clauses of this Bill, I feel sure that there will be no disagreement in desiring to minimise fraudulent claims and malingering, and I believe the vast majority, including Mr. Joshi, would also like to see the principle of free medical treatment now supplied by individual firms extended. I am therefore optimistic of getting the support of this House on the amendment to sub-clause (1) of clause 11, which stands in my name:

"That in clause 11 in sub-clause (1) for the words "he shall if the employer within three days offers to have him examined free of charge by a qualified medical practitioner" the following be substituted, namely:—

"he shall remain in the vicinity of his place of employment for not less than three working days from the date on which service of the notice has been effected on the employer and during such period he shall hold himself available for medical examination and if the employer offers such medical examination by a qualified medical practitioner free of charge within such period he shall".

[Captain E. V. Sassoon.]

The purpose of this amendment is to require the workman to stay in the vicinity of his work, that is to say where he may happen to be living during the course of his employment or near by, and that he should give every facility to the employer to have him medically examined, so that not only may the degree of his injury be ascertained, but that he may also have the opportunity of availing himself of any free medical treatment that the employer may offer him. I need hardly tell the House that timely medical treatment would often ward off serious complications which would have ensued had the injuries been neglected. This amendment will therefore benefit the workman. It will also be fair to the employer who, no one can deny, should have the right of establishing the extent of the injury for which he will have to pay compensation. It may be thought that the period of three working days after notice has been effected is rather long, and that when two holidays intervene, this would mean five days in all. As far as large towns like Bombay are concerned, this maximum would never be reached, but we must consider places where the workman is sent out by his employer to carry out some work on a day before a holiday. He has an accident, sends his notice into the office, two days may elapse before the employer is aware of the accident. The district doctor may be away or he may be ill, and it may be a couple of days more before a suitable doctor can be brought to the spot. But whatever period we allow, we always have one big safeguard. And that is that it is to the interest of the employer to have the man attended to as soon as possible. The sooner he is examined, and if possible treated, the more chances there are of his speedy recovery and the less of dangerous complications, and it must not be lost sight of that the worse the man gets the larger may be the compensation the employer would be liable to pay. Now, let us take the position of the workman. It is true that he must not go away for these few days. But he is in his temporary home or with friends near by; generally he has a relative with him and certainly friends and fellow-workmen near; and he is quite free to make his own arrangements and, should he desire, to call any of the efficient, if unqualified, medical attendants of whom this House has heard so much. Now, if the employer fails to take advantage of this right of examination he leaves himself open to some very large risks. To begin with, there is always the risk of the man who receives a minor injury such as a cut or a gash and not looking after it and developing blood poison or even gangrene and the employer may become responsible for paying compensation for the loss of limb or even death. Then, again, the man may go up-country and he may be persuaded that the loss of a finger or even an arm would mean a large lump sum which would be very useful to pay off the demands of an insistent money-lender. It might be pointed out to him that this would not make much difference to him because he could remain behind and work on the land and another member of the family could go into the factory. I hope, therefore, Sir, that the House would appreciate the fairness of the amendment and that the Government will be prepared to accept it.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I rise to oppose this amendment. Captain Sassoon said that this amendment is fair both to the employers and to the employees. My view is quite otherwise. I consider this amendment as being quite iniquitous to the employees. What does it do? It compels the workman to live in the vicinity of the place of employment, but it does not compel the employer to give him medical

treatment. Captain Sassoon said that I should be in favour of the extension of medical relief. I am in favour of extension of medical relief. But I do not see here in the amendment any proposal for the extension of medical relief. If Captain Sassoon had provided that the man shall remain there and the employer shall give medical treatment, there would have been some fairplay. As the amendment stands there is hardly any fairplay here. All the advantages are on one side and the disadvantages on the other. Sir, there will be great difficulty for the working class people who may suffer from accidents, if this proposal is accepted. In the first place, take the case of a man who receives not a small injury, but a very large injury. He loses his two hands or loses one of his feet or legs. There is no hospital near the factory. What is the man to do? He must stay near the factory; he cannot take advantage of the hospital. Is it really right that the man should be compelled to stay near the factory although there may not be sufficient hospital accommodation near about the factory? My friend will say he has given some power to the Commissioner to make exceptions. I do not know whether he has given it or not. But he may say that he has given the power to the Commissioner to overlook such lapses. But is it right, in the first place, to deprive the workman of his natural right to go to any place he likes after such a severe accident and take whatever treatment he likes? Is it right to take away that right and to compel him to stay at a place where he may not get assistance, where he may not have his relatives near by where he may not get any nursing, where even he may not get any food? Take the case of a man, a miner as my Honourable friend Mr. Sircar would have it, who goes to the mine after walking 8 or 10 miles every day. That man has not got any arrangement for food near about his place of employment. There is no lodging compulsory upon the employer, there is no provision of food compulsory upon the employer. If that is not compulsory upon the employer, what right have you to compel the workman to stay near his place of employment? Sir, if my Honourable friend had made compulsory provision for residence, compulsory provision for nursing, compulsory provision for food, compulsory provision for hospital, I could have understood his proposal being a fair one. But as the proposal stands, it gives unfair advantage to the employer and places the workman at a great disadvantage. I hope the House will throw out his amendment.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I am in the singularly happy position of concurring with my Honourable friend Mr. Joshi in this amendment. Captain Sassoon has not realised what the exact meaning of the phrase 'vicinity of his employment' would be in different cases. My friend, Mr. Joshi, has pointed out a few cases. I will add one more. Take railway accidents. Supposing an employee of a railway, a gangman working on the line, suffers an accident. That place of accident is midway between two stations. Captain Sassoon desires that the man should be in the vicinity of his employment. The workman lives away from the railway line, say 5 or 6 miles away, where he has got his friends and relations. Now, in the vicinity of the employment, that is to say on the main line between two stations, there is neither shelter, nor a friend, nor a relation, nor a hospital. How is that workman to remain in the vicinity of his employment? He will either die there for want of shelter or for want of food. What Captain Sassoon means is this. The man living in his *bustee*, in his residence, should not leave that *bustee* or the place of residence and should not bolt away. That is perfectly logical. But as the amendment is drafted, the phrase 'vicinity

[Mr. B. S. Kamat.]

of employment' places a handicap on the workman without giving any facility whatsoever in the different sorts of cases to the employer to treat the man. I am not, therefore, in favour of Captain Sassoon's amendment as drafted by him.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I should like to explain the position that Government propose to take up in regard to this amendment. The position, as the Bill before the House presents it, is as follows. Clause 10 prescribes that notice of the accident must be given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured. This notice may be delivered by registered post or by hand. Clause 11 then proceeds to say that:

"where a workman has given notice of an accident, he shall, if the employer within three days offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination."

And if he refuses so to submit himself his right to compensation is suspended until he does so submit himself. These provisions, as we have got them now, follow almost exactly the English law. But in the Joint Committee I felt that we had not got the matter quite right, and, though I did not record any note to that effect, I told the Joint Committee that I would have the matter re-examined and, if necessary, would reserve the right to move an amendment in this House.

My difficulties are two. In the first place, in clause 11 we have left it obscure where the medical examination is to be held, and, in the second place, clause 11 leaves it obscure from what date the period of three days specified in that clause is to begin. It was, I think, clearly the intention of the Joint Committee that the workman should not go off to his village which might be a very long way away before submitting himself to examination. I do not think the clause as now drafted brings that fact out clearly enough. That is the reason why I have given notice of certain amendments. I wish to make it quite clear that ordinarily the workman must remain in the vicinity of his employment for a period of three working days after notice of the accident has been received, in order that the employer may have a fair chance of exercising his right to offer the workman free medical attendance; and my amendment suggests that if the workman voluntarily leaves the vicinity before the period specified his right to compensation shall be suspended until he returns and offers himself for this examination. Captain Sassoon's amendment goes further. He proposes that the workman must remain in the vicinity of his employment for at least three days in order that the employer may offer him free medical attendance; and he suggests that if the workman does not remain for those three days all right to compensation shall disappear. That is to say, he proposes a more drastic remedy. Now the point seems to me rather evenly balanced. On the one hand, it seems to me essential that we must let the employer be in a position of satisfying himself that any workman who has been injured by accident in his employment has really been injured. It seems to me essential that the employer should have confidence in the legislation we propose to introduce. I do not think there is anything in the point which has been raised by Mr. Kamat about vicinity. Vicinity is obviously a comparative term, and I have not the least doubt that the Commissioner will put a reasonable interpretation upon that term. Nor do I think that there is anything in Mr. Joshi's point, that this is unfair

to the workman. After all, in this Bill we are doing a great deal for the workman. We are giving him this right to compensation, liberal compensation; we are not imposing upon him at all the burden of proving negligence. Surely in his turn the workman must do something for the employer; and looking at the matter as a whole, I personally think it is reasonable that the workman should be required to stay in the vicinity of his employment in order that the employer may offer him free medical attendance.

I am aware that the English law is different in this matter; but we have in this matter to take into account the different conditions in England and in India. In England you have innumerable medical practitioners. You have innumerable towns; and it is perfectly easy, even if a man does go away from his place of employment, it is perfectly easy for an employer to satisfy himself that he has been examined by a qualified medical practitioner in a neighbouring town. But in India, where we have these enormous distances and where duly qualified medical practitioners are not so numerous, the conditions are different. Take the case of Burma. As everybody knows, Indian labour is very largely employed in Burma. A man gets injured in Burma. Are we to allow to go racing off to say Madras, and are we to suppose that the employer would be content if he gets some sort of certificate from a village in Madras to say that this man has been injured? Surely that employer has a right to say "I want the man examined by my own duly qualified medical practitioner; and if I cannot exercise that right I shall have no confidence that I am fairly called upon to pay compensation." That is why I have put in my amendment. I think it is a reasonable amendment. Whether we should go further and put the severer penalty proposed by Captain Sassoon seems to me a delicate question. As far as the Government are concerned, I am perfectly prepared to leave it to the judgment of the House. I myself and the Government Members, the Members on the Government Bench, will remain neutral in the matter and as far as we are concerned, we shall leave it to the House to decide the point.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, the Honourable Mr. Innes has exploded the fallacies which Mr. Joshi and Mr. Kamat started. The point in clause 11, sub-clause (2), is that if a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding relating to compensation shall be suspended; and in order that the workman may not be mulcted in the way in which the Bill proposes to do, and to remove the defects of drafting which clause (1) contains at present, Captain Sassoon has put forward this amendment. The objections to the amendment disappear when you have in view the proviso which he proposes in another amendment to sub-clause (2), which says:

"Provided further that the Commissioner may for sufficient cause admit a claim for compensation notwithstanding the failure of the workman to remain in the vicinity as required by sub-section (1)."

Captain Sassoon takes into consideration the fact that it may be that there may be sufficient cause for the workman to be removed from the place far away so that he may not be available in the vicinity. Well, he must be in the vicinity in the first place, in order that the employer may have a fair chance of seeing what the nature of his injury is and of giving

[Mr. N. M. Samarth.]

him such medical assistance as may be needed in order that the original injury may not develop into anything serious if neglected.

Mr. N. M. Joshi: There is no question of medical assistance here.

Mr. N. M. Samarth: Yes, given free of charge.

Mr. President: Order, order.

Mr. N. M. Samarth: What is the meaning of his remaining in the vicinity? In order that he may be examined by a qualified medical practitioner and apparently in order that he may be treated. It is surely in the interests of the employer that the injury should be cared for by a qualified medical practitioner, for if it were neglected he would have to pay heavier compensation than he would otherwise have to do. Therefore I say it is in the interests of the employer to see that everything that is needed is done for the injured workman. All the objections as to the necessity of his removal to a distant place or to a hospital, are taken away by the proviso which Captain Sassoon proposes, namely, that if the Commissioner finds that there was sufficient cause for the workman not to remain in the vicinity, then, in spite of the fact that he was not in the vicinity, he will get the compensation which the Commissioner thinks proper in the circumstances of the case. I think, therefore, there is a great deal in Captain Sassoon's amendment which deserves support and I trust the House will accept it.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban): Sir, the House knows very well that Mr. Joshi is a very practical man, and as a practical man he always advances arguments which, however much we may differ from him, appeal to reason. Only in this instance I was rather surprised to find Mr. Joshi resorting rather to heat, to passion—which is not his weakness at any rate—than to argument, in trying to oppose the amendment put forward by my Honourable friend, Captain Sassoon.

Of course Mr. Joshi has his own views and he is entirely welcome to them, one thing can be said about him, it is this that he always says what he thinks is right. But I think if Mr. Joshi will go a little deeply into himself he will find that it is rather a suspicion. (Mr. N. M. Joshi: "Quite natural.") It may be natural I do not know—but it is rather a suspicion of the source from which the amendment comes that is responsible for his opposition. I want Mr. Joshi to come down to the plane of practical politics and remove his prejudice for the time being and not consider the source from which the amendment is coming but to discuss it on its own merits; I want him then to say whether he honestly believes that there is anything in the amendment which is likely to prove detrimental to the interests of the working classes, or on the other hand there is not anything in the amendment which, if carried, is likely to prove of immense advantage to the working man. I want to ask a few questions of Mr. Joshi. I must say at once that I hope Mr. Joshi will not suspect me, as I am afraid he suspects others. (Mr. N. M. Joshi: "I am not quite sure.") I want to ask him a few questions. Let us come down to the plane of practical politics. Take the case of Bombay itself where you find more instances of people being in factory life than elsewhere perhaps. Take a case where a man in a mill meets with a serious accident. Suppose this clause as proposed by Captain Sassoon is not provided; what would be the result?

You have to consider it from that point of view. Mr. Joshi knows as well as I do that there is unfortunately a kind of superstition prevailing among these men that as soon as an accident takes place, which may not be at all of a fatal or even of a serious character, the workman begins to feel that he is going to die or that he is going to be permanently disabled, and the one thing that he wants and says is "Let me go away from here to my people, to my village and die there." That is a very admirable feeling, I admit; but I do not think it ought to be encouraged. (*An Honourable Member: "Why not?"*) Because by encouraging that feeling you are hastening the death of that man, which probably would never have occurred otherwise if you had made it possible for ordinary medical assistance to reach him in time. (*Cries of "No, no" and interruption*). I hope I shall not be interrupted like this; I think it is a practice which ought to be condemned that Members should interrupt another Member when he is speaking, especially when the interruptions are not relevant—I am sorry to digress, Sir—but there is too much interruption, I think. How far are these villages from Bombay? These Bombay workmen come from Konkan or the Ratnagiri district; it takes two or three days to go from Bombay to any places in Ratnagiri district; you know that the journey is not a very pleasant one; you have got to go in a steamer where comforts are very few as Mr. Joshi very well knows. Now, if you encourage that superstition in the man and if he goes away refusing medical aid, being certain that he will get compensation or that his family will get compensation, he goes as it were to die in the midst of the members of his family in a far-off village, the journey to which is very difficult and is sure at any rate either to make his injury more serious or even to make it prove fatal. Now, I think that this amendment proposed by Captain Sassoon aims at protecting the workman against himself; and in India you cannot help it. The one thing that you have got to do is to protect these ignorant workmen against themselves. What does this amendment want? That the man will live in the vicinity of the place of his work. Now, is there anything unreasonable in that? Take the example of a man working in a Bombay factory; he is working for instance in one of the Parel mills; he is not forced to live in the mill itself; he is asked to go and live in a chawl, and I am sure Mr. Joshi will agree with me that if he lives in a chawl for three days, he will have a better chance, a much better chance, a surer chance of being looked after well than if he went to the village where he would be neglected altogether. But Mr. Joshi's argument is this: "I have no objection to this amendment if you make it compulsory on the employer to offer medical assistance to the workman." I take it that I am right in thus interpreting Mr. Joshi's argument. Now, I know that the clause does not make it compulsory on the employer, nor does the Bill do it; even if this amendment is not carried it would not make it compulsory on the employer to give free medical assistance to the man. But what does it amount to in practice? As a matter of fact Mr. Joshi very well knows—I need not tell him here—but I may inform the other Members that in Bombay there is not a single large group of mill agents which does not provide for free medical examination for their workmen.

Mr. B. S. Kamat: But you are taking only the Bombay example.

Mr. Jamnadas Dwarkadas: I am speaking from the practical standpoint; I am speaking of what is done by large employers of labour and if you are not going to act in accordance with that from the point of view of the men who are employed largely in large factories, well, I do not

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know what this House is going to be guided by. Therefore as I say in Bombay you have the example of the workmen being given free medical assistance, day in and day out, by mill agents. As soon as a man meets with an accident he gives three days' notice—that is provided for in the Bill itself. Here Captain Sassoon rightly suggests three working days; as a matter of fact my Honourable friend, Mr. Innes, proposes to move an amendment* on the point; that is reasonable, otherwise the notice will not reach the employer at all. Now what happens in these three days? If the employer offers medical assistance—at all events he is bound to offer and speaking about Bombay I know that he is bound to offer medical assistance to the man—if he offers that the man should be medically examined the man should not refuse it. Now, do you want him to refuse it? There again a prejudice obtains among these ignorant workmen that the moment they feel that they have met with a serious accident they do not want to be examined by any medical officer; they want to be examined for instance by some quack, or they want to resort to all kinds of superstitious methods of curing themselves. Now, I think that if we acquiesce in encouraging this kind of practice we are doing, in the name of service to the labouring classes, serious injury to the cause of labour itself, serious injury to the cause of humanity itself. Let us not carry our ideals too far so as to narrow our vision and to blind ourselves to all the good that could come out of a reasonable arrangement like this. Again, is not the employer doing only a reasonable thing in saying that if he has to pay compensation to the workman for the injuries that he suffers from, at least he has a right to be told three working days before the man leaves the place that he has met with a serious accident, that the employer must also have a chance of giving him free medical examination so that the patient may have a chance of being cured by the treatment of an efficient medical practitioner? Now, I say that it would amount to the employer giving free medical assistance to the workman. Would it be anything else than that? Is it not in the interests of the employer to see that the workman is neither totally disabled nor that he meets with death? It is in the interests of the employer to see that the workman is cured as soon as possible so that he may be saved the burden of giving compensation either to the workman if he is totally disabled or to his family if the man happens to die. So, looking at it from the practical point of view, it seems to me that it is an equitable arrangement, it is a fair arrangement; it is in the interests of the employer by all means, but I say it is more in the interests of the workman himself that he should be offered an opportunity of being treated by a qualified medical practitioner. I therefore think that the House would do well in not taking a prejudiced view on this question and to support the amendment, for it really aims at bringing about better results than the clause in the original Bill itself.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, it seems to me that the objection on the part of my Honourable friend, Mr. Joshi, is more on account of the clause as suggested by my Honourable friend, Captain Sassoon, there being no provision in it to compel the employer to offer free medical treatment to his employee and I understood Mr. Joshi to say that if there was any clause of that kind to compel the employer to offer medical treatment free of charge to the employee he would have no objection to the clause as proposed. If that be his objection, and if I

*See later motion by the Honourable Mr. Innes.

understood him aright, I would suggest to the Honourable Mover of this amendment as well as to Government the addition of the words 'and treatment' after the word 'examination' in the first instance, and also after the word 'examination' in the second instance; that is to say; the employer would offer medical examination and treatment to the employee, free of charge.

Mr. N. M. Joshi: Free board and lodging.

Mr. W. M. Hussanally: I do not know, Sir, whether it is at all necessary to give free board and lodging; because ordinarily he will have his own lodging and board also. It is only in exceptional cases and where the workman meets with an accident at a place which is far distant from his own place, free board and lodging will be necessary. But in such cases, as the Honourable Mr. Innes pointed out, the word 'vicinity' is too flexible a term, and it will be interpreted by the Commissioner as well as by the employer more liberally than what Mr. Joshi thinks it is liable to, and I believe that if the two words that I suggest are added, all reasonable objections will be met. Therefore, I commend the addition of these two words to the Honourable Captain Sassoon as well as to Government.

Mr. President: Has the Honourable Member moved that amendment?

Mr. W. M. Hussanally: Yes, Sir.

Mr. President: Further amendment moved:

"After the word 'examination' where it first occurs in the amendment standing in the name of Captain Sassoon, to add the words 'and treatment,' and similarly in the following line after the word 'examination,' to add the words 'and treatment'."

Captain E. V. Sassoon: Sir, as far as I am concerned, I have no objection to the doctor who examines the injured workman giving him treatment also. I take it that Mr. Joshi does not necessarily insist that the treatment should last as long as the workman might want it, but would give more or less first aid treatment which would be to the greatest advantage of the workman as well as the employer. I should like, however, to point out to Mr. Joshi that there has been a great deal of opposition from workmen against forcing any treatment on them if they did not want it. They may prefer to have one of their own doctors to look after them, and that is the reason why I only suggested in my amendment that the examination should be compulsory, and only the examination. If Mr. Joshi wants the treatment also to be compulsory, I am prepared to accept it.

Mr. B. Venkatapatiraju (Ganjam cum Vizagapatam: Non-Muhammadian Rural): Sir, a greater responsibility is thrown on the Members of this House by their not knowing whether Government would support or oppose this amendment. In such matters, Government should make up its mind either to support or oppose it, but unfortunately they have not made up their minds. In this case, Sir, Mr. Joshi rightly asked 'what about the provision for free board and lodging of the injured workman' if he stops in the vicinity, which was suggested by Captain Sassoon. I may mention, Sir, that in the Perambore Mills, the Act applies not to Bombay alone—about three-fourths of the labourers live 5, 6 and even 10 miles away from the place of employment. Does Captain Sassoon want that these people should live near Perambore Mills where they work? I may also state that a necessary anxiety is shown by some of my Bombay friends that some men may court death in order to secure compensation for their dependants, which, to my mind, is against human nature. (A Voice: 'No.') I may

[Mr. B. Venkatapatiraju.]

point out that, if Honourable Members will refer to clause 4 in the section itself, they will find that there it is clearly provided that the workman is bound, if the employer offers him medical treatment, to accept such treatment, otherwise his compensation would be reduced. Therefore, there is no difficulty about attendance because it is provided in clause 4 of this very Act. In England, Sir, excepting giving notice of injury, even medical examination is not at all necessary. They say: "The want of notice in the case of death is no bar to the maintenance of action if the Judge is of opinion that there was reasonable excuse for such want of notice". Sir, the object of introducing the amendment, without any provision being made for board and lodging, or even to compel the employer to provide medical treatment, is, that the injured man must stop for three working days near the place of employment, and then he will have the right to claim compensation, otherwise he would forego that right to claim compensation. Then about the examination, the injured man is bound to be examined and he is prepared to be examined, and lastly he is entitled to be treated and he is prepared to be treated, and he cannot avoid being treated by some one engaged by the employer. Supposing there is no house or accommodation available, he lives in the place in which he usually lives. What is the objection? If the employer is so anxious to avoid heavy compensation, he should depute a medical officer to look after the injured person and treat him properly at his residence, because if the injured person avoids medical treatment, he will suffer the consequences. When such is the case, I do not see without sufficient safeguards as suggested by Mr. Joshi and Mr. Kamat, how Captain Sassoon's proposition can be accepted, unless Government will accept the responsibility themselves.

The Honourable Mr. C. A. Innes: I am afraid, Sir, I must oppose the amendment suggested by Mr. Wali Mahommmed Hussanally without any notice at all, and I am very reluctant to introduce into this Bill words and phrases, the effect of which I am not certain. Also I do not myself think that the actual insertion of the words is necessary. I am perfectly satisfied in my own mind that if any doctor, and I am sure Colonel Gidney will support me

Mr. President to Mr. N. M. Joshi: I must ask the Honourable Members from Bombay to desist from their conversation.

The Honourable Mr. C. A. Innes: I am sure that Colonel Gidney will support me in this that if any qualified medical practitioner examines an injured workman, he will give him first-aid treatment without being required to do so by any law. I would also point out that clause 4 of the Bill actually presupposes that such treatment will be given. On the whole, I do not think it safe to accept this amendment as I am not fully certain what the effect of the insertion of the suggested words will be. Therefore, I am afraid I must object the proposal to insert the words ' and treatment '.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, this question gave considerable difficulty to us in the Joint Committee, and we thought that it is not easy to provide for all cases which are likely to come up. Mr. Jamnadas has been speaking of Bombay city conditions. My friend Mr. Venkatapatiraju spoke of Madras conditions. But let us remember that this Act applies not only to big concerns but also to small concerns, to factories within the meaning of the Factories Act. I think it is to these cases we have to look. Many of them would not have

qualified medical practitioners in their factories, many of the employers running these factories are poor themselves. They would have to search for medical practitioners in order to have the examination that will take them some little time. Therefore, we thought it best to provide for these cases by rules to be made under the proviso, as Honourable Members will see:

"Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act."

The rules will have to be made, having regard to local conditions and we thought that these cases could well be provided for by rules. At the same time, let us remember what is the object of this examination by the employer. The employer wants to get evidence. That is the whole object of it. His object is to get evidence beforehand, as soon as the accident occurs, so that the workman may not exaggerate the injuries, may not aggravate the injuries by bad treatment and all that. So we give an opportunity by this clause to the employer to procure early evidence and his own doctor to examine the employee. Now, if an accident occurs in a factory or in a place where a workman is employed, I think the employer is as much likely to know of it as the workman himself. Because the employer is sure to have a manager on the spot who would know about the accident and therefore, if he wants to have evidence (he is not bound to). But if he wants to arm himself with evidence he will take care to have his doctor ready to examine the man. On the other hand, let us see the point of view of the poor workman. My Honourable friend, Mr. Jammadas Dwarkadas, has spoken of the superstition—but it is not a superstition, it is a sentiment—prevailing among my countrymen. I do not think you can call it a superstition if they want to die in their own homes. I think we ought all to encourage and not discourage it. I do not see the harm, if I like to die in my own house where I was born and among my kith and kin. Why is it a superstition? I think it is a sentiment we ought to honour and respect. And, therefore, Sir, when we have regard to the main object of the provision, namely, to give an opportunity to the employer to secure evidence, I do not see why we should give more facilities than the section as it stands provides. I think Captain Sassoon has forgotten his usual generous sentiments when he came forward with this amendment. He knows he has got three days within which to do that and I am sure in cities like Bombay the rules may provide for examination on the spot and probably there so much time will not be needed. You can have it done in three hours in a city like Bombay. The man is injured and a medical man will be on the spot and probably on the premises and the whole examination could be done in three hours and I therefore submit, Sir, it is unnecessary to interfere with the section as it has been framed by the Joint Committee, which I assure you we took quite a long time in considering, and we left it to the rules to provide for cases and cases. I am rather surprised at the attitude that Mr. Innes has taken to-day in this Chamber. He, as a member of the Joint Committee, instead of pledging the Government to support the Joint Committee's amendment, says the Government are neutral in this matter. If this is the attitude of Government, we should have taken a different line altogether in the Joint Committee. I am supporting the amendment as it was framed in the Joint Committee and I know no reason why the Honourable Mr. Innes should depart from the attitude which he took up there. I oppose Captain Sassoon's amendment and support the clause as it stands.

Lieut.-Col. H. A. J. Gidney (Nominated: Anglo-Indian): Sir, in reference to what the Honourable Mr. Innes has just said, I do give him my support in its entirety. He conceded the principle, and I believe there is nothing further to say on it. As being one who took a considerable part in the deliberations of the Joint Committee when this matter was discussed, I rise to oppose Captain Sassoon's amendment. This House can readily picture a mofussil station where an employee is injured. It has say a small factory which employs a sub-assistant surgeon—a very eminent man in his own way but of mediocre talents so far as emergency surgical operations are concerned. Or it may be the first aid required from this mediocre doctor is not sufficient to render complete aid, or might be the cause of making a mild injury a very serious one. I see no reason why the patient or the employee should not have a free choice as to the medical practitioner he wants. But to insist on that injured man remaining three days in the place of his employment is, I say, a most unjustifiable restriction. I therefore oppose the amendment.

Mr. R. A. Spence (Bombay: European): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The original question was :

"That in clause 11 in sub-clause (1) for the words 'he shall if the employer within three days offers to have him examined free of charge by a qualified medical practitioner' the following be substituted, namely :

'he shall remain in the vicinity of his place of employment for not less than three working days from the date on which service of the notice has been effected on the employer and during such period he shall hold himself available for medical examination and if the employer offers such medical examination by a qualified medical practitioner free of charge within such period he shall '."

Since which an amendment has been moved :

"After the word 'examination' insert the words 'and treatment' in both places where the word 'examination' occurs."

The question I have to put is that that amendment be made.

The amendment was negatived.

Mr. President: The question is that the original amendment
12 Noor. be made.

The Assembly then divided as follows :

AYES—23.

Ahsan Khan, Mr. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bradley-Birt, Mr. F. B.
Cotelingam, Mr. J. P.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Haigh, Mr. P. B.
Holme, Mr. H. E.
Hussanally, Mr. W. M.
Jannadas Dwarkadas, Mr.
Misra, Mr. B. N.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.

Nayar, Mr. K. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Reddi, Mr. M. K.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Sassoon, Capt. E. V.
Spence, Mr. R. A.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

NOES—34.

Abdul Rahim Khan, Mr.
 Abdulla, Mr. S. M.
 Agnihotri, Mr. K. B. L.
 Ahmed, Mr. K.
 Ahmed, Balish, Mr.
 Asjad-ul-lah, Maulvi Miyan.
 Ayyar, Mr. T. V. Seshagiri.
 Bagde, Mr. K. G.
 Bajpai, Mr. S. P.
 Burdon, Mr. E.
 Chaudhuri, Mr. J.
 Faiyaz Khan, Mr. M.
 Gidney, Lieut. Col. H. A. J.
 Ginnwala, Mr. P. P.
 Gour, Dr. H. S.
 Ikramullah Khan, Raja Mohd.
 Iswar Saran, Munshi.

Jatkar, Mr. B. H. B.
 Joshi, Mr. N. M.
 Kamat, Mr. B. S.
 Ley, Mr. A. H.
 Mahadeo Prasad, Munshi.
 Mitter, Mr. K. N.
 Muhammad Hussain, Mr. T.
 Nag, Mr. G. C.
 Nand Lal, Dr.
 Neogy, Mr. K. C.
 Pyari Lal, Mr.
 Rangachariar, Mr. T.
 Singh, Mr. S. N.
 Srinivasa Rao, Mr. P. V.
 Subrahmanayam, Mr. C. S.
 Tulshan, Mr. Sheopershad.
 Venkatapatiraju, Mr. B.

The motion was negatived.

The Honourable Mr. O. A. Innes: Sir, I beg to move:

"That in clause 11 in sub clause (1) for the words 'within three days' the following words be substituted, namely:

'before the expiry of three working days from the time at which service of the notice has been effected'."

Sir, in speaking on the last amendment I explained fully to the House the reason why I have given notice of these amendments which stand in my name to clause 11, and I do not think that there is any necessity for me to waste the time of the House by repeating what I then said. I explained that my object was to clear up a vagueness and obscurity in the section as it stands at present. Mr. Rangachariar in his speech said that the Joint Committee had discussed this question at great length and he suggested that I ought to have been content with the solution arrived at by the Joint Committee. But, as I explained in my previous speech, I never was content with the solution at which the Joint Committee had arrived and I told the Joint Committee, though I did not make any note to that effect in the Joint Committee's report that I would like to have the matter re-examined with the object of moving, if necessary, an amendment in this House.

Rao Bahadur T. Rangachariar: Why do you want "working days"?

The Honourable Mr. O. A. Innes: Mr. Rangachariar says that the proviso to sub-clause (1) of clause 11 meets the point.

That proviso says:

"Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act."

But I am advised that that proviso does not meet the point and that the Local Government could not provide by rules under the Act that the workman must not leave the vicinity of his employment before submitting himself to free medical examination offered to him. That is the very reason why I have put in this amendment. Mr. Rangachariar asks me why I have put in "three working days." The reason is that a notice might be delivered at a factory or a mill on a day when that mill or factory was closed, and it seems to me that if we do give a period to the employer in which he may offer free medical examination, we should make the period a

[Mr. C. A. Innes.]

proper period and that we should not include in that period days when the mill or factory is closed. I commend, Sir, my amendment to the House.

Mr. President: Amendment moved:

"That in clause 11 in sub-clause (1), for the words 'within three days' the following words be substituted, namely:

'before the expiry of three working days from the time at which service of the notice has been effected'."

Mr. N. M. Joshi: Sir, I wish to move a small amendment to the amendment proposed by the Honourable Mr. Innes, and that amendment is:

To omit the word "working".

I have given notice of my amendment to the Honourable Member. Sir, we have been told here that the employers are a very kind-hearted class. Sir, I wish I could believe all that about them. I want to believe that. But, Sir, if the employers are really kind-hearted, why should they not be ready to act on a notice received on a Sunday? If there is notice of an accident on a Sunday, a kind-hearted employer will surely at once move to send a doctor to the employee, and even the doctor, under the rules of his profession, will not grudge sacrificing his Sunday's rest for the sake of an injured workman. I therefore feel that there is no necessity for putting in this word "working" at all. Notice of an accident, at least of a serious accident, on a Sunday ought to be taken as effective notice to the employer. As soon as he sees that there is an accident he must take steps to send a doctor. I am not a lawyer, and not being a lawyer, I do not understand the meaning of the words "service of the notice has been effected". I therefore feel that this word "working" is not necessary at all and that therefore it should be deleted.

Mr. President: Further amendment moved:

"To omit the word 'working' in the amendment moved by the Honourable Mr. Innes."

The question is that that amendment be made.

The motion was adopted.

Mr. President: The question is that the amendment, amended as follows, be made:—

"That in clause 11 in sub-clause (1) for the words 'within three days' the following words be substituted, namely:

'before the expiry of three days from the time at which service of the notice has been effected'."

The motion was adopted.

Rai Bahadur L. P. Sinha (Gaya cum Monghyr: Non-Muhammadan): I beg to move:

"In clause 11 (1) between the words 'to have him examined' and the words 'free of charge' insert the following:

'at his place of residence where he lives during his term of employment'."

I am moving this amendment only as a safeguard against the cases which may arise. Take for example a labourer gets some injury by accident arising out of his daily duties and he has given notice of that accident to his employer who according to the proposed clause will only be compelled to have the workman examined within 3 days free of charge but

we don't know where the workman is expected to be examined. It may be that the doctor on receipt of information of the accident from the employer may in his turn send a notice to the workman asking him to present himself for examination at a certain place which may be far away from the workman's usual place of residence; moreover the injured man might not be in a position to attend at the doctor's place owing to his injury being of a more or less serious nature. Now the employer may in certain cases take advantage of this section not to grant him any compensation on the ground that the workman did not submit himself to medical examination which was offered to him by the employer. It is therefore only fair that medical examination should be offered to him at his usual place of residence where he generally lives and where he is employed.

The Honourable Mr. C. A. Innes: I do not think that the amendment should be accepted and that for two reasons. In the first place, I do not think that we ought to tie down the medical examination to the workman's place of residence. Quite conveniently it may take place, at any rate, in the case of slightly injured persons, at hospitals or dispensaries attached to the factory. In the second place, we have got a proviso here which I think covers the point.

The motion was negatived.

Captain E. V. Sassoon: Instead of moving this amendment now, I prefer, with the leave of the House, to move the amendment as an amendment to the following amendment of the Honourable Mr. Innes.

Mr. President: Does the Honourable Member mean that he wants to move the amendment after the Honourable Mr. Innes has moved the next?

Captain E. V. Sassoon: Yes, Sir.

The Honourable Mr. C. A. Innes: I beg to move:

"That in clause 11 in sub clause (2) for the words 'and to take or prosecute any proceedings in relation to compensation or in the case of a workman in receipt of half-monthly payments his right to receive half-monthly payments shall be suspended until such examination has taken place' the following words be substituted, namely: 'shall be suspended during the continuance of such refusal or obstruction'."

This amendment, Sir, is not an amendment of any importance. It is a drafting amendment which has been suggested to us by the Legislative Department. It does not affect the merits of the case at all.

Captain E. V. Sassoon: I would like with the permission of the House to move an amendment to this amendment as follows:

"That after the word 'obstruction' at the end of the amendment, the following be added:

'Except in the case of the first examination after notice of accident in which case the employer shall not be liable to pay compensation to the workman in respect of the accident:

Provided that the Commissioner may for sufficient cause admit a claim for compensation notwithstanding failure to comply with the requirements of the clause."

Sir, I would like to point out to the House that as the amendment now stands, should a workman not wait after having given notice and answer, the penalty will be suspension. But the clause the workman at a mentioned in my previous motion, would be a case of a workman.

[Captain E. V. Sassoon.]

injury, and go away without any treatment or examination, this injury would become a more serious one meaning the loss of a limb. He would come back and under the provisions of this Bill, at any time within six months of the notice he would be allowed to make a claim. The claim for a permanent injury would be a lump sum and therefore suspension would really be no penalty at all. The workman therefore will be able to take no notice of these instructions. He can send in his notice, leave, and at any time within six months can come in and say, "I have in consequence of the cut in my arm, lost my arm, and therefore I am entitled to the full benefits under the Bill." Therefore I suggest to obviate any possible, I will not say probable, any possible fraudulent claim it would be only fair that in the event of his leaving within the three days, which are not working days now, and without having been medically examined he should not benefit under the provisions of this Bill, unless, of course, he is able to persuade the Commissioner that his reason for leaving without being examined was a sufficiently strong one to justify the Commissioner admitting his claim.

Mr. President: Is the Honourable Member's amendment the same as that of which he gave notice on the 3rd February?

Captain E. V. Sassoon: With slightly verbal alterations, to the same effect.

The Honourable Mr. C. A. Innes: I think the amendment now moved by Captain Sassoon is in substance the same as amendment No. 50* and No. 53.* Those two amendments have already been fully discussed by the House and the House has voted against them and that being so I think the House should maintain the same attitude and reject this amendment.

Lieut.-Colonel H. A. J. Gidney: I think Captain Sassoon has suggested a very correct precautionary measure because as a medical man I can put before you an instance of a slight injury to the forearm, involving the destruction of one of the important nerves. It is not apparent to the layman. It is not apparent to the injured person who may come to realise it after some months and he then claims this lump sum for permanent disablement and I think the provision here although it introduces a layman to decide on a professional matter is better than allowing a man to take unfair advantage of this period of detention.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that the original amendment be made.

The motion was adopted.

The Honourable Mr. C. A. Innes: Sir, I beg to move:

"That in clause 11 after sub-clause (2) the following sub-clause be inserted, namely:

(3) If a workman before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination voluntarily leaves the vicinity of the place in which he was employed his right to compensation shall be suspended until he returns and offers himself for such examination."

* On List of Business.

I have already explained the reason for this amendment. The House will see that it is a far more modest proposal than that suggested by Captain Sassoon. All we do is that we say that if a workman leaves the vicinity of the place before submitting himself to such examination his right to compensation should be suspended until he returns and so submits himself. I hope the House will accept this amendment.

Mr. N. M. Joshi: I propose to move a small amendment to the amendment moved by the Honourable Mr. Innes and that amendment is "Omit the words 'returns and' in lines 6 and 7 of his amendment. The effect of the amendment will be that the man must offer himself for examination but it is not necessary that he should return to the place. The reason of my amendment is quite obvious. There will be some cases in which it will be very difficult indeed for a man to return but if the injury is very small, then the man should return but this will be provided by the fact that these medical examinations are going to be according to some rules and it is quite possible to frame rules for the medical examination under the Act to provide that in the case of small injuries causing a particular percentage of disablement the man must return but in other cases the man need not return. The whole thing is provided for by simply saying that the man must offer himself for examination and the interpretation of the word 'offer' will be made according to the rules that will be framed by Government for medical examination. Therefore I think the words 'returns and' ought not to be there. If the injury is small, the rules will provide that the man must return. If the injury prevents a man from returning, then the man will be allowed by the rules not to return but the employer will be asked to examine the man at his place of residence. I think my amendment is quite reasonable and will be accepted by the Government.

Mr. President: Further amendment moved that in lines 6 and 7 of the Honourable Mr. Innes' amendment the words 'returns and' be omitted.

The Honourable Mr. C. A. Innes: I must oppose this amendment. I think it would have been better if Mr. Joshi had opposed the whole of my amendment from the beginning, for by missing out the words 'returns and' he destroys the whole value of the amendment which I propose to make to this clause.

Rao Bahadur T. Rangachariar: Sir, I oppose the amendment and I also oppose Mr. Joshi's amendment. It appears to me quite unreasonable to ask the workman not to leave the vicinity of the place of his employment. That is the object of this clause also. That was the objection to Captain Sassoon's amendment. That is also the objection to Mr. Innes' amendment. As I said, these matters should be decided by rules to be made. There may be cases where it will be quite just to call upon the man to stay in his place of employment for medical examination. There may be cases where he should be allowed to go away to his own home and offer himself for medical examination at or near his place of residence. There are cases and cases which it is difficult to provide for. As the amendment now suggested runs, in every case, whether the injury is one which results in death or whether it be an injury which does not result in death, the workman cannot leave the vicinity of the place. That is what this amendment aims at. I think it is a cruel thing to do that. I think these cases must be provided for by rules. We have passed clause 10. Clause 10 provides that the workman must give notice as soon as

[Rao Bahadur T. Rangachariar.]

practicable after the happening of the accident and before he has voluntarily left the employment in which he was injured. Having done that, to make a provision that he should not only give notice but should also stay in the place, is not a right amendment and I oppose it.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): I think, Sir, to carry this amendment as proposed by the Honourable Mr. Innes would be in other words accepting the amendment of the Honourable Captain Sassoon. The whole question turns upon as to whether the workman should or should not leave the vicinity of the place where the accident occurred. The House has decided it and he is not prevented from leaving it but this amendment introduces the same thing again—that he must remain in the vicinity and he must return to the place for medical examination. I think it is very hard indeed on the poor workman. We have to consider the humane element of the thing also. To ask a man who is suffering from a severe pain to return to the place of employment for medical examination is very hard indeed and I think the House has already recorded its opinion on that point and this amendment should be accordingly rejected.

Lieut.-Colonel H. A. J. Gidney: Sir, I rise to oppose the Honourable Mr. Innes' amendment as also the amendment suggested by my Honourable friend, Mr. Joshi. The House has just now rejected Captain Sassoon's amendment although he showed that there was a crying necessity for making some provision against fraudulent claims on the part of employees. The only advantage I can see in the Honourable Mr. Innes' amendment is that something is better than nothing. It demands from the injured employee an examination within three days in the vicinity of his employment. Now I say that it is no safeguard whatever. Whereas if on the one hand, the House has rejected the safeguards suggested by the Honourable Captain Sassoon, it now asks us to accept the Honourable Mr. Innes' amendment, it will certainly be going "from the frying pan into the fire." Let us pause and ask ourselves what does this amendment demand from the injured employee. It is going to insist on an injured workman remaining in the vicinity of his employment to receive treatment for three days. There may be no doctor there: how can you expect an injured workman to remain in the vicinity for three days, and prevent him from going to another place for medical relief,—to his own house probably. I say, Sir, that it is not rational, nor correct; I think it is going "from the frying pan into the fire."

Mr. N. M. Joshi: Sir, I must make my position on this amendment clear

Mr. President: The Honourable Member has already spoken.

Mr. N. M. Joshi: I would like to speak on the amendment as a whole.

Mr. President: The Honourable Member did speak on the amendment as a whole.

The question is:

"That the words 'returns and' be omitted."

Mr. N. M. Joshi: I withdraw my amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Amendment moved:

"That in clause 11 after sub-clause (2) the following sub-clause be inserted, namely:

(3) If a workman before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination voluntarily leaves the vicinity of the place in which he was employed his right to compensation shall be suspended until he returns and offers himself for such examination."

The question I have to put is that that amendment be made.

The Assembly then divided as follows:

AYES—44.

Ahsan Khan, Mr. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Ikramullah Khan, Raja Mohd.

Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Mitter, Mr. K. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nand Lal, Dr.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Rhodes, Sir Campbell.
Somarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sasseon, Capt. E. V.
Singh, Mr. S. N.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

NOES—29.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahmed Baksh, Mr.
Akram Hussain, Prince A. M. M.
Asad Ali, Mir.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Chaudhuri, Mr. J.
Faiyaz Khan, Mr. M.
Gidney, Lieut.-Col. H. A. J.
Gidwala, Mr. P. P.

Gour, Dr. H. S.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Mahadeo Prasad, Munshi.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sinha, Babu L. P.
Venkateswaraiah, Mr. B.

The motion was adopted.

The Honourable Mr. C. A. Innes: Sir, I beg to move:

"That in clause 11, sub-clauses (3) and (4) be renumbered (4) and (5) respectively, and that for sub-clause (4) as so renumbered, the following sub-clause be substituted, namely:

(4) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension and if the period of suspension commences before the expiry of the waiting period referred to in clause (D) of sub-section (1) of section 4, the waiting period shall be increased by the period during which such suspension continues."

This amendment, Sir, is purely consequential—a drafting amendment. I need say no more.

Mr. N. M. Joshi: I think, Sir, the amendment is not a consequential one. It is a serious amendment. I would draw the attention of my Honourable friend, Mr. Innes, to the last words of sub-section (2) of section 11: "*unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.*"

Sir, it is provided that when a man has got sufficient cause not to submit himself for examination during the period of suspension, he shall be paid his compensation; and I therefore think this amendment is absolutely inconsistent with that clause. I hope the House will not accept such an amendment, which is absolutely wrong even in drafting.

The motion was adopted.

Mr. N. M. Joshi: Sir, I beg to move the following amendment:

"In clause 11 omit sub-clause (4)."

I am not moving my other amendment at all.

Dr. Nand Lal: What is the number of your amendment?

Mr. President: The Honourable Member means the clause now re-numbered (5)?

Mr. N. M. Joshi: Yes, Sir; new number (5).

Dr. Nand Lal: May I ask the Honourable Member the number of the amendment?

Mr. N. M. Joshi: It is not printed. It is a very simple amendment; it asks for the omission of clause (4) in the Bill as submitted by the Joint Committee; now it has become clause (5) after the addition of the clause by the amendment of the Honourable Mr. Innes. Sir, this clause is intended to reduce the compensation which a workman may have for his injury, if it is shown that he did not avail himself of the medical treatment which may be offered to him by the employer or of any other qualified medical treatment of which he might have availed. Sir, I think that if this is allowed to be retained a large part of the benefit which the working classes may get from this Bill will altogether disappear. The working classes in this country are not generally ready to avail themselves of the treatment offered by western medical practitioners and if on that ground a man's compensation is to be reduced, I think the working people will lose their compensation in many cases. Sir, I am not an advocate nor am I a supporter of the Ayurvedic and Unani systems of medicine; as a matter of fact the House knows well that when Government showed their sympathy—it may be lip sympathy—for the Ayurvedic and Unani systems of medicine, I was one of those people who opposed the Resolution which was brought forward in this House in support of those systems of medicine. But, Sir, I am not here to propagate my views on the Ayurvedic and Unani systems of medicine. I must take note of the condition of things as they exist in India to-day. To-day it is a fact which no body will deny that the working classes in this country have a great prejudice against western systems of medicine.

Sir, among the opinions which have been received on this Bill, there are some which are in favour of the clause and there are also some which are against it. I would only read one, namely, the opinion of the Government of Madras on this proposal. They say:

"Refusal to receive medical or surgical aid offered by an employer should not debar a workman from claiming compensation for the original injury suffered by him. Though prejudice or ignorance may in some instances induce a workman to decline medical aid proffered by the employer, considering that a differentiation in the award

of compensation between the original injury and its subsequent development is not going to be easy and that it would be very difficult indeed to say that the subsequent ill-effects are due to the neglect of the original hurt or injury, the compensation should, this Government think, be awarded in spite of refusal to receive surgical or medical aid offered by the employer."

In the same way, the United Provinces Government point out the difficulty of the women workers who generally have got a great prejudice against male doctors treating them. Sir, I know very well that this clause does not totally debar a man from receiving compensation for injury even if he refuses to be treated by a qualified medical practitioner. But, Sir, if we leave this loophole in the Bill, the effect will be that every employer, though he may be very kind-hearted, will try to go to the Workmen's Compensation Commissioner before he pays the compensation. It is very easy for an employer to say to the injured workman that his wound aggravated because he received a treatment which was not a treatment from a qualified medical practitioner. Therefore, this Bill will not only deprive the poor workman of a part of his compensation but it will also leave a loophole for the employer to go to the Workmen's Compensation Commissioner. I can hardly think of an employer who will not take advantage of this clause to get the compensation reduced. I therefore think that this sub-clause in the interests of the working classes must be deleted.

Sir, there is another danger, and a great danger too. Many Honourable Members of this House have taken a very cynical view of the psychology of a workman. They had accepted, and many of them advocated, that a working man may commit suicide in order to get compensation or he may get his hand cut off, as Captain Sassoon only a few minutes back suggested, in order to get compensation. But, Sir, what does this clause provide for? Take the case of a factory which is not in Bombay. I want the House not to misunderstand me. I am not taking the case of a factory in Bombay. I am taking the case of a workman who is injured in a small factory in a suburb, or in an out-of-the-way place, where, there may be only one qualified medical practitioner paid by the employer. Now under these circumstances the only qualified medical practitioner available to the injured man is the employer's doctor. Now where is the guarantee that this employer's doctor will give sufficient and good treatment to the injured man? You will say "why not"? Sir, if we are to take a very cynical view of human nature, let us take a similar cynical view of the employer's psychology. Sir, if the man on account of the wound dies, the employer pays Rs. 240; if he lives, the employer has to pay a larger compensation. The difference between the highest limit for compensation for death and compensation for total disablement is Rs. 1,000. If a working class man will commit suicide for the sake of Rs. 240, as some said yesterday, what guarantee is there that an employer's doctor will not neglect the injured man in order to save the thousand rupees for his master? That is what is provided by this Bill, at least in some cases. I hope, Sir, since the House has taken a very cynical view of the psychology of the workman, they take a similar view of the psychology of the employer. Let us be fair to both parties, and, if you are going to be fair, there is a great danger to the life of a wounded man working in an out-of-the-way factory. There is a very great temptation for the employer to save Rs. 1,000 by neglecting him. Therefore, I hope my amendment will be accepted.

Mr. President: Amendment moved:

"In clause 11, omit sub-clause (5)."

Captain E. V. Sassoon: Sir, in the first place, I join issue with Mr. Joshi that the House has taken a very cynical view of the workman. (Mr. N. M. Joshi: "You yourself spoke".) I think that the voting on my amendment would have shown that whatever I have said did not get the approbation of the House. On the other hand, I am prepared to allow the House to take as cynical a view as they like of the bad employer. And, when Mr. Joshi read out the opinion of the Government of Madras on this clause, perhaps, even though I may be one of the hated class of employers, I may be allowed to read out extracts from the opinions of the Mill Owners Association on this very clause. This, I may tell you, is the opinion of a body consisting of men who, according to Mr. Joshi, nearly all of whom, I think he said, would be prepared to go to any length to save a few rupees:

"Section 4.—In connection with this clause, concerning the penalties which may be imposed on a workman as a result of his not availing himself of the services of a qualified medical practitioner when such services are offered to him by his employer, my Committee (that is to say, the Committee of the Mill Owners Association) draw attention to the deep-rooted prejudice that many Indian work people have against western medical methods.

Also, when considering this section it must be remembered that the judgment of the medical practitioner whose services are engaged by the employer may at times be biased in favour of the employer." •

This, Sir, is the opinion of the Mill Owners Association of Bombay, not, as you may think, of Mr. Joshi:

"For the foregoing reasons, therefore, my Committee advise that the Commissioner should be advised to make allowance for the Indian workman's prejudices concerning medical practice and that in all disputes the issue of which depends upon a medical decision he should be compelled to take independent medical evidence."

Now, Sir, I do feel that this new clause No. 5 does fail in that respect, and therefore I, though I would oppose Mr. Joshi's amendment which is to remove the whole clause, would like to add safeguards to that clause. Perhaps, Sir, I am not in order in doing that now? I would like to add to the clause that the Commissioner should take advantage of the facilities given him under sub-section (2) of clause 20 and appoint a medical assessor in such cases.

Mr. President: Amendment moved:

"In clause 11, omit sub-clause (5)."

The Honourable Mr. C. A. Innes: Sir, I must object to the amendment proposed by Captain Sassoon. I have had no notice at all of this amendment. It has just been proposed on the floor of the House and I am afraid, Sir, I must rise to a point of order against Captain Sassoon.

Mr. President: We can only deal with that after we have disposed of Mr. Joshi's amendment.

Mr. A. G. Glow (Industries Department: Nominated Official): Sir, I am afraid that my Honourable friend, Mr. Joshi, has unintentionally misled the House as to the opinions received on the Government proposal regarding this very difficult question of medical relief. This Bill was framed after consultation of Local Governments and interests throughout the country; the Government of India issued a circular letter, and in that letter they drew attention to the fact that in a number of American Acts a workman who refuses to take medical relief when offered by his employer

forfeits all his rights to compensation. It was in response to this that the Madras Government said that such a proposal would bear very hardly on workmen in this country who have prejudices, justified or otherwise, against accepting western medical science. And it was in consequence of that opinion and of the opinions received from other Local Governments that the Government of India completely altered the proposal before they drafted the Bill. Now the proposal, as it reads now, merely protects the

1 P.M. employer against aggravation of the injury. There is nothing whatever to prevent the workman being attended by a doctor of the Unani or Ayurvedic school. If the doctor is efficient, if he does not produce aggravation of the injury—and remember, it is for the employer, and not the worker to prove aggravation—if no aggravation is produced, then the worker does not suffer in any way. I think that this is a perfectly reasonable clause. It was accepted by the Joint Committee without change and I am surprised to find Mr. Joshi opposing it at this stage.

Mr. B. S. Kamat: Sir, I think Mr. Joshi's amendment to drop this clause is legislation by obsession. He seems to be obsessed by the fact that every employer for the sake of Rs. 96 upon which he has been harping since yesterday will kill a workman. The second obsession is that every employer

Mr. N. M. Joshi: I never said "every employer."

Mr. B. S. Kamat: Whatever he said, of course he led the House to believe that the employers as a rule will take advantage of this section as a loophole.

Mr. N. M. Joshi: Exactly; some people.

Mr. B. S. Kamat: Now, if his amendment is carried, the whole frame work of this Bill would be destroyed. If a workman, whatever his sentiments or whatever his prejudices might be up to now, wants to take advantage of a social piece of legislation like this which is—a Western product engrafted upon Indian society—he will have to adjust himself to new ideas, namely, if he wants compensation, he must submit himself for some sort of civilized medical examination. Mr. Joshi wants that the employer should be put under certain conditions. But on the other hand, he wants that the employee should be absolutely at liberty either to get his wound not treated at all by a proper man or to apply Unani medicine to it or to apply Ayurvedic decoctions to it and allow septic poisoning of the blood or gangrene or any other disease to intervene. And yet he wants that the employer should rigidly follow the Workmen's Compensation Act so far as compensation is concerned. I do not think, Sir, this is fair. You cannot have it both ways. You cannot have your cake, eat it and keep it in your pocket too. Now, I shall refer to what the Social Service League of Bombay, with which my friend, Mr. Joshi, is connected, and where he is doing such splendid work so as to evoke our admiration uniformly, say on this clause. They passed the following opinion upon this clause:

"The Social Service League of Bombay record the opinion that in this clause there should be this alternative:

'In clause 11 (4) the following should be added, namely, examination by any other qualified medical practitioner provided free of charge by Government or any local authority.'

[Mr. B. S. Kamat.]

In any case, I point out, Sir, that he had himself admitted the necessity of some sort of medical examination for the injured person. Now, he is coming forward to delete the whole of this clause and leave the injured man absolutely at liberty either to have no treatment at all or to have Ayurvedic treatment or to take homely domestic applications for the wound and yet to go to the employer and ask for compensation in full. I therefore think, Sir, as I said at the beginning, that this is nothing but legislation by certain obsessions.

Mr. N. M. Samarth: My difficulty, Sir, is this. Mr. Joshi was a Member of the Joint Committee. He has signed the Report of the Joint Committee subject to a certain minute of dissent. He does not, in that minute of dissent, raise any objection in regard to the clause which is under consideration. Is it open to a member of the Joint Committee, who comes before the House signing the Report of the Joint Committee on the Bill subject to a certain minute of dissent in which he does not take any objection to the clause which is under consideration, to do so now?

Mr. J. Chaudhuri: (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, this question was raised when we were considering the Police Bill in Simla during the last Simla session. I think it was understood—I do not recollect if the Chair gave a ruling on the point,—but we understood that the Members of a Joint Committee or of a Select Committee are quite free when the Bill comes up for consideration to move any amendment they like and vote any way they like and we did so. I think my Honourable friend, Mr. Samarth, is in error in this respect.

Mr. N. M. Joshi: May I say one word of explanation? I had learnt one lesson in my childhood and it was this, that it was never too late to learn. There was a time when I thought this clause was innocuous or not harmful as it was. During the last few days, having seen through the psychology of the employer, I have changed my mind.

Mr. President: Amendment moved:

"To omit sub-clause (4) [re-numbered (5)] of clause 11."

The question is that that amendment be made.

The motion was negatived.

Clause 11, as amended, and clauses 12 to 21 were added to the Bill.

Mr. K. B. L. Agnihotri: (Central Provinces Hindi Divisions: Non-Muhammadan): My amendment is:

"In clause 22 omit sub-clause (1). Under the clause we provide:

'No application for the settlement of any matter by a Commissioner shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement'."

It is well and good to prevent the workman from going in for litigation or approaching the Commissioner unless he has a real dispute with the employer and which has been left unsettled, but it is otherwise to force that man to enter into an agreement with the employer. So far as there is a recommendation for agreement, I am at one with the Government but so far as there is a compulsion for agreement, there I beg to differ from the Government. Sub-clause (1) of clause 22 practically compels the workman to go to the employer for an agreement and if he fails to get

an agreement on certain points, to go to the Commissioner, which I consider to be very objectionable, because under this sub-clause the workman will be under the belief, that he shall have to agree to the terms that may be made by his employer and if he did not do so, probably he would be ruined by his employer in the future. And he shall be in a way compelled to agree to those terms which he thinks to be undesirable. With that view, Sir, I move that this clause be deleted, which will not make it compulsory to have an agreement with the employer. The workman could approach the Commissioner directly where the need exists and without approaching the employer.

Mr. A. G. Clow: Sir, I do not think that there is any compulsion to reach an agreement. All that the clause provides is that the workman and the employer should first attempt to reach an agreement. We do not want the Commissioner to be flooded with a number of applications, when the workman has not even approached his employer and asked for compensation. If the Honourable Member will read sub-clause (d) he will see that there should accompany the application a concise statement of the matters on which agreement has and on which agreement has not been come to. There is no question of the workman having to accept anything the employer offers. I oppose the amendment.

Mr. President: The question is that in clause 22, sub-clause (1) be omitted.

The motion was negatived.

Mr. K. B. L. Agnihotri: Parts (b), (c) and (d) of my amendment drop out as they are only consequential. I beg to move part (e) of my amendment, namely:

"In sub-clause (3), after the word 'Commissioner' add the words 'or Secretary of any workman's union or association recognized by the employer or Commissioner and of which the applicant is or the deceased was a member'."

Under this sub-clause we provide that if the applicant workman is an illiterate person or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner. It will be very hard for the workman to approach the Commissioner for this and he should be allowed to give the information necessary under this clause and the information be allowed to be reduced into writing by any person he chooses; but if it is desired to stop him from asking advice from strangers, he may at least be permitted to get the assistance from the Secretary of the Union of which he happens to be a member. That will safeguard the interests of the worker also and give the information that may be required by the Commissioner. Therefore, Sir, I put before the House that there should not be unnecessary obstruction in his getting assistance from the Union and he may be allowed to have the help of the Union where the Union exists and where the employer or the Commissioner has recognized the Union.

Mr. A. G. Clow: I think the Honourable Member has misunderstood the intention of this clause. There is nothing to prevent the Secretary of any workmen's union or association from preparing the application. There is nothing to prevent the Honourable Member himself, who shows a keen solicitude for workmen, preparing these applications and I hope he

[Mr. A. G. Clow.]

will. All we say is that if the workman is unable to furnish his application and has no Secretary of the Union and no Honourable Member to come to his aid, then he has a right to ask the Commissioner to prepare his application for him.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Clause 22 was added to the Bill.

Clauses 23, 24 and 25 were added to the Bill.

Mr. B. N. Mishra (Orissa Division: Non-Muhammadian): Sir, I move:

"That in clause 26 for the words 'in the discretion of' the words 'taxed according to Rules provided in the Civil Procedure Code, 1908, by' be substituted."

This is a new Act and if we leave the discretion to Local Governments, the practice may vary in different provinces and we do not know what the effect will be. I think it will be well to give them some basis. That is why we have it in section 22, that such application will be accompanied by any such fee; and also in section 23 we provide that the Commissioner will follow the Civil Procedure Code in order to take evidence on oath, and in section 24 also we say that a legal practitioner or other person may be authorised to appear. We have almost followed the Civil Procedure Code, and we have already fixed data, and the rules of the Civil Procedure Code provide that the presiding officer of the Court can exercise his discretion, so that the costs should be taxed according to Rules provided in the Civil Procedure Code.

Rao Bahadur T. Rangachariar: What are those rules?

(*An Honourable Member:* "There are no rules; different Courts have different rules.")

Mr. B. N. Mishra: Rules according to which taxation takes place they are embodied. However, my point is that the basis should be to tax according to the rules which obtain under the Civil Procedure Code, instead of a simple discretion being given; I wish that it should be taxed according to rules provided in the Civil Procedure Code.

The motion was negatived.

Clauses 26, 27, 28 and 29 were added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I move:

"That in sub-clause (1) (a), clause 30, after the word 'sum' wherever it occurs, insert the words 'or periodical payment'."

Sir, in clause 30 we allow an injured worker and the employer the right of appeal in certain cases. This right of appeal has been confined only to such cases which involve an allowance or disallowance of a lump sum only, and does not provide for cases where questions of half-monthly or periodical payments are involved. By the acceptance of the amendment which I beg to move we shall be extending this right of appeal even

to the periodical payments which the workman may or may not be entitled to. With these words, Sir, I beg to move my amendment.

Mr. President: Amendment moved:

"In clause 30, sub-clause (1) (a) after the word 'sum' wherever it occurs insert the words 'or periodical payment'."

The Honourable Mr. C. A. Innes: Sir, I do not think that it is necessary to accept this amendment. We wish to limit appeals as far as possible under this Bill, and we wish to limit them to the really important issues. Half-monthly payments cannot in any case exceed Rs. 15. Ordinarily they will not last very long,—they are merely given in cases of temporary disability, and I think they can quite well be left to the Commissioner; there is no need for any appeal to the High Court.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, the next amendment which I beg to move is that in sub-clause 1 (a) after the words 'a claim' insert the words 'in full or in part.' Sir, we give a right of appeal to a workman only in case of disallowance of a claim in full. If the amendment which I move be accepted, I think we shall make the meaning of this clause rather very clear; it will mean, even if the claim is disallowed in part, the workman will have the right of appeal. With these words, I move my amendment.

Mr. President: Further amendment moved:

"That in sub-clause (1) (a), after the words 'a claim' insert the words 'in full or in part'."

The Honourable Mr. C. A. Innes: Sir, I have no objection to this amendment. It is governed by the Rs. 300 limit in the proviso. We may have to make a slight alteration in drafting in the Council of State, but no doubt this House will be ready to agree to that.

Mr. President: Amendment moved:

"In sub-clause (1) (a), after the words 'a claim' insert the words 'in full or in part'."

The question is that that amendment be made.

The motion was adopted.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, in view of the policy of this Bill which is of a special character, I do not propose to move my amendment, *vis.*:

"In the first proviso to clause 30 (1) for the words 'three hundred' substitute the words 'one thousand'."

Sir, I am given to understand that, if I make verbal changes, Government is prepared to accept my amendments. Will you kindly give me, Sir, permission to make verbal amendments? The verbal amendments are, that instead of putting a new clause, I am putting my amendment as sub-clause (3), and instead of saying "section 5," I shall

[Dr. Nand Lal.]

say "the provisions of section 5." Then, I anticipate your permission, Sir, and move my amendment which will run as follows:

"After clause 30 insert the following as sub-clause (3), namely:

"(3) The provisions of section 5 of the Indian Limitation Act shall be applicable to appeals under this Act."

Since the Government is prepared to accept my amendment, I think I need not detain the House. The amendment commends itself.

The amendment was adopted.

Clause 30, as amended, was added to the Bill.

Clause 81 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"In clause 32:

'In sub-clause (1) after the word 'may' insert the words 'with the approval of the Legislature'."

Clause 32 authorizes the Governor General in Council to make rules that may be necessary on matters mentioned in the various sub-clauses of this section. My object is to have those rules before the Legislature for their approval. No doubt, we have to leave many points to the Governor General in Council but it is desirable and necessary that these rules be approved by us. The other day when I moved a similar amendment, the Honourable Mr. Innes pointed out certain anomalies; he pointed out that there were many matters in the Mining or Steam Boilers Regulations that might require expert knowledge which might not be possessed by some Honourable Members of the House and that it would be simply ridiculous to put such proposals before the House. In this case, Sir, no such difficulty will arise. Even if difficulties were to arise, the House is expected to be guided by the opinion and the advice of the Government. I therefore beg to move that whatever rules be made under this Act or under clause 32, they may be placed for approval before the Legislature. It may be said, Sir, that the amendment which I am moving is incongruous with other Acts, because they do not provide such a clause. But I wish to remind the House and take them back to the Lac Cess Act passed the year before last in the Simla Session, which has made a similar provision. With these words, I beg to move the amendment which stands in my name.

The Honourable Mr. C. A. Innes: Sir, Mr. Agnihotri has mentioned one of the objections I took to a similar proposal made by him not in connection with the Mines Bill but the Steam Boilers Bill. But he has omitted to refer to another objection which I took on that occasion. I think it wrong, Sir, that rules of this kind should require the approval of the Legislature before they are made effective.

I think it wrong, as I said on that occasion, that the time of this House should be taken up with details like rules of this kind. Everybody knows—he has only got to look at the list of business—that we have not time as it is to get through all the business before us. Everybody knows that owing to the pressure of Government business, important non-official Resolutions and important non-official Bills never come before this House; and I deprecate our wasting the time of the House with rules of this kind. They are essentially the sort of rules which ought to be left

to the Executive Government, and we provide the safeguard that rules of this kind must be published before they are actually made. That is the proper safeguard. Sir, I oppose the amendment.

The motion was negatived.

Clause 32 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"In clause 33, after the words 'subject to' insert the words 'approval of the Local Legislative Council and'."

Sir, this amendment is similar to the one which I just moved. I have simply to answer one of the objections which the Honourable Mr. Innes has put forward, namely, that much time of the Legislature will be wasted if these rules are put up for approval. May I remind the Honourable Mr. Innes that even the rules that are framed about emigration and other laws have to be put before us for approval; and similarly there will be no harm if these rules are also put up. It happens that Bills come before us which though they have been considered by Select Committees and thoroughly considered by the Government still require some modifications which are made when they come to the House, and may sometimes be necessary that the people acquainted with local conditions may be better able to suggest certain changes or alterations in the rules when put before the House. Therefore, Sir, I beg to move this amendment.

The motion was negatived.

Clause 33 was added to the Bill.

Clause 34 was added to the Bill.

Sir Montagu Webb (Bombay: European): Sir, I beg to move that:

"In column 2 of Schedule I:

substitute the figures 10 for the figures 25; substitute the figures 10 for the figures 20; substitute the figure 5 for the figures 10 wherever they occur; and substitute the figures 2½ for the figure 5."

The reason for this amendment is that I feel, and those for whom I speak feel, that the compensation provided in this Schedule for minor accidents is on too high a scale. I am not quite certain, Sir, upon what principle exactly the scale of percentages in Schedule I has been based; but surely there are very few occupations in which the workman would lose one-quarter of his earning capacity by being deprived of a thumb.

Rao Bahadur T. Rangachariar: A weaver.

Sir Montagu Webb: I notice that the Karachi Chamber of Commerce have worked out some of these compensations in the Schedule as they would appear expressed in goats, sheep, cows and so forth; and taking that example, I find that a workman drawing, say, wages of about Rs. 60 or Rs. 70 a month, by the loss of a thumb would receive compensation equivalent in value to 10 cows, or 150 sheep or 200 goats! For the loss of a thumb, it seems to me, Sir, that such a scale of compensation would be too high. The same remarks apply to the scale of compensation for the loss of fingers and toes, etc. For that reason, Sir, I beg to move the amendment which stands in my name.

The Honourable Mr. C. A. Innes: Sir, I can answer the Honourable Sir Montagu Webb's question at once. These scales were worked out after taking the best advice we could get in Simla and Delhi and after the most

[Mr. C. A. Innes.]

careful study of the Schedules in force in the different countries. I should like also to point out to the House that throughout this debate there has been a sort of general understanding that we should leave the scales of compensation as they were left by the Joint Committee, and I think that we ought to carry that understanding right through to the end. In that view, Sir, I hope that the House will not accept this amendment.

The amendment was negatived.

Schedule I was added to the Bill.

Sir Montagu Webb: Sir, I have here a letter from Mr. Darcy Lindsay authorising me to move the amendments standing in his name. I beg to move, therefore, that:

"In Schedule II the following be substituted for sub-clause (vi) (a):

'(a) A building which is designed to be, is, or has been more than one storey in height above ground level, or.'

The object of this amendment, Sir, is only to define more clearly the conditions set forth in Schedule II and to avoid misunderstanding. As it is, the Schedule at present reads: "a building which at the time when the accident on account of which compensation is claimed takes place comprises more than one storey wholly, or partly above ground, or." The presence possibly of a single brick might be the deciding factor as to whether a building at the time of an accident was of more than one storey. It appears to me that it would avoid misunderstanding and lessen the possibilities of disputes if the definition were made a little more complete. Therefore, Sir, I beg to substitute the words which I have read out—"a building which is designed to be, is, or has been more than one storey in height above ground level, or".

The Honourable Mr. C. A. Innes: Sir, I am advised that the amendment moved by the Honourable Member brings out more clearly our original intention than the existing clause. That being so, Sir, we are quite prepared to accept the amendment.

The amendment was adopted.

Sir Montagu Webb: I beg to move, Sir:

"That in Schedule II the following be substituted for sub-clause (vi) (b):

'(b) A building which is used, has been used, or is designed to be used, for industrial or commercial purposes and is, or is designed to be, not less than twenty feet in height measured from ground level to the apex of the roof, or.'

The reasons for this amendment are exactly the same as those which I just put forward a minute ago; they are to make a more exact definition so as to avoid disputes. The amendment speaks for itself and I hope, Sir, that Government will be able to accept it.

The Honourable Mr. C. A. Innes: Government, Sir, are quite prepared to accept this amendment for the reasons I have already given.

The amendment was adopted.

Schedule II, as amended, was added to the Bill.

Schedule III was added to the Bill.

Schedule IV was added to the Bill.

Mr. President: The question is that this be the title of the Bill.

The motion was adopted.

Mr. President: The question is that this be the Preamble of the Bill.

The motion was adopted.

The Honourable Mr. C. A. Innes: May I point out, Sir, that clause 1 has not yet been passed which was postponed?

Mr. President: Does it require any amendment?

The Honourable Mr. C. A. Innes: No, Sir, it does not require any amendment, but it has got to be formally passed.

Clause 1 was added to the Bill.

The Honourable Mr. C. A. Innes: Sir, I beg to move the next motion which stands in my name, and before I do so, I hope that the House will permit me to say just a very few words. I wish, in the first place, to congratulate the House on passing a very difficult piece of legislation, and I wish to thank them also for the great consideration they have shown in dealing with a very intricate and controversial Bill. Government have made every effort to lay before the House a measure carefully thought out to meet Indian conditions. I am sure that I will have my Honourable colleague Mr. Chatterjee with me when I say that if Government have achieved any success in this direction, they owe it very largely to the labours of the gentleman on my right, Mr. Clow. (Applause.) But, Sir, whatever efforts we have made, I am quite free to admit that in almost every clause and in almost every line of this Bill, there is room for a fair difference of opinion and I think, if I may be permitted to say so, Sir, the House has shown the very greatest restraint in dealing with these controversial matters. I think that the House arrived at the conclusion that in dealing with a controversial matter of his kind, the wisest course was to go by the understanding, the implied understanding, which had been arrived at and which had been enshrined in the Joint Committee's Report, and the fact that the House did arrive at this wise decision has enabled us, I think, to get through in a reasonable time this very difficult Bill. I think, Sir, in this Bill we have a very good augury for the future. England has arrived at her present stage of labour legislation by a process of painful evolution, and I am afraid that in that process a legacy of class bitterness has been left. I hope, Sir, that in India we shall avoid that class bitterness, and if we do avoid it, it will be very largely due to the spirit of mutual good-will and toleration which employers and the labour people have shown in regard to this Bill. I have seen representatives of the employers in the persons of the Honourable Sir Alexander Murray and Mr. Saklatwalla and the representatives of labour in the persons of my Honourable friend, Mr. Joshi and Mr. Roy Chaudhury of Bengal, I have seen them day after day sitting across the table, thrashing out together the very difficult questions raised in this Bill, and I have admired very greatly the good-will, the tolerance and the reasonable spirit of give-and-take in which they approached the very intricate problems, and as long as we have that spirit of give-and-take and mutual good-will, I have no fears myself as to the way in which India will deal with her labour problems. I move, Sir:

"That the Bill, as amended, be passed."

Mr. President: The question is:

"That the Bill to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident, and as further amended by this House, be passed."

Rao Bahadur T. Rangachariar: Sir, when I give my assent to this motion, I am not without apprehensions as to the effect which this Bill may have on the growth of indigenous industries in this country. Sir, England took more than a century to enact her Workmen's Compensation Act. It was only in the year 1906 that she embarked upon this piece of legislation after she had had a most successful industrial career in the world. India has yet to begin her industrial career, and before we are yet on our feet, these fetters are put upon the growth of industries. But I welcome the measure in the hope that it will be liberally administered. The Government have always got a very serious responsibility indeed in administering this measure which will become law. This measure proposes the appointment of a Commissioner quite outside the ordinary Civil Court. I hope every effort will be made by every Local Government in the selection and choice of the Commissioner. It is no use appointing merely executive officers to discharge the duties which are thrown upon the Commissioner by this Bill. He must be a highly trained judicial officer who has to be in charge as Commissioner to decide the very complicated questions which will arise in the construction of this Act. There is a very great danger in appointing a Commissioner because, having only to work compensation cases, he is likely to get into a groove from which it will be very difficult for him to extricate himself. So it would have been perhaps a better provision to allow these questions to go before the ordinary Civil Courts where sub-judges and district judges would have their ordinary suits to try, where there is less chance or risk of their becoming confirmed specialists with fixed ideas. We have had that experience, Sir, in the case of income-tax officers who have been appointed to settle legal questions. We have had that experience in the Estate Land Act cases in Madras, where revenue officers have been appointed to decide civil disputes. I hope that will not be the result in this case. I hope the officer who is chosen for this responsible position will be a man of ripe judicial experience, although he may cost the country somewhat higher. Sir, in this country labour is quite disorganized. It is not organized at all. Unlike the labourers in England and elsewhere, these people cannot afford the assistance of either skilled lawyers or skilled experts to assist them in the conduct of cases before the Commissioner, whereas before the Commissioner the employer is sure to have the assistance of able counsel and able medical men—while the poor servant will not be in a position to afford the expense. Therefore, we must take care that what we give with one hand is not taken away with the other. So, this measure will have to be very liberally and carefully administered. And there is a chance of this measure increasing the cost of articles consumed by the consumer. Insurance Companies are sure to be started and high premia are sure to be demanded. It is not after all the pockets of the employer that the money required will come out of, but the pockets of the consumer. Here is a great chance for people in this country to undertake ventures in the shape of Insurance Companies. I know, Sir, many a foreign Company have their eye on this country now. They are closely watching the progress of this legislation in this Chamber and in another place. Directly this becomes law I am sure enterprising foreign Companies will plant their Companies and their Agents here. I hope my

countrymen in this Chamber—especially the magnates from the Bombay side—in addition to running mills will also encourage the growth of indigenous Insurance Companies to take advantage of this new Act, so that we may have Indian Companies taking advantage of Indian conditions and adding to the wealth of the country in this way.

Sir, there is one clause which we have passed to-day, to which I ask the serious attention of the Government; that is, sub-clause (8) to section 11. Sir, we have passed it no doubt but I hope in another place it will be set right. We have passed a clause saying that, if a man goes away from the place and if he does not return for medical examination, then the right of compensation is to be suspended. Sir, what is to happen if that man dies and is unable to return? He goes away to his place and he dies on the spot and he does not return. The compensation, according to the clause as it stands, will go. I hope that will be taken note of in another place and the necessary amendment made.

Sir, I support the motion.

Mr. Jamnadas Dwarkadas: May I be permitted, Sir, to say a few words in supporting the motion before us that the Bill be passed? I may say at once, Sir, that I do not apprehend that the passage of this Bill will in any way hamper the growth of industries in this country. Mr. Rangachariar has just told us that, after years of industrial development in other places, measures of this character have been adopted. If other countries have made the mistake of not starting in the right direction and allowing the evils that grow as a necessary adjunct to industrial development, I am sure we, at any rate, will not repeat the mistakes that they have made, especially when we consider the result of the mistake that have been made by other nations. In other countries we find as a result of the mistakes made by them that hatred, suspicion and distrust have come in where mutual understanding and good will ought to have been the rule. In this country we want to avoid hatred. In this country we want to avoid mutual distrust. In this country we want to avoid mutual suspicion. The best way to do it is to start with these precautions and then take up wholeheartedly the industrial development of this country, which seems to be in sight at a not very distant date, and we shall soon find that we shall be a prosperous India, rich, industrially developed, and without the feelings of hatred, mutual suspicion and distrust that are unfortunately in existence in other parts of the world. It is for us to avoid the mistakes that have made possible the existence of all those evil conditions in other countries, and if we begin in the right direction, as I am sure that this Legislature is beginning, we shall have achieved a good deal not only as a service to our own countrymen but as an example to other nations that will in future take upon themselves the task of industrial development. I may also, Sir, with your permission, add a word of congratulation to the Government of India for undertaking legislation of this kind. It has been rightly pointed out by a Labour Leader in Bombay, who has not always been in sympathy with Government actions, that so far as labour legislation in this country is concerned, since the inception of the Reforms the Government have gone beyond even his wildest dreams. Perhaps that is an exaggeration.

(At this stage Mr. President vacated and Sir Campbell Rhodes took the Chair.)

But I feel that a beginning in the right direction has been made. It is to the advantage of the country; it is to the advantage of the world, because

[Mr. Jamnadas Dwarkadas.]

it will be held as an example to other nations which are going to rise industrially. Sir, with these words, I heartily support the motion before us.

Mr. N. M. Joshi: May I be permitted to say one word in support of this motion? Sir, whatever may be the merits of the clauses and the proposals in this Bill, we owe a great debt of gratitude to the Honourable Mr. Innes, to my Honourable friend, Mr. Clow, and to my Honourable friend, Mr. Chatterjee, for bringing it forward and securing its passage through the Assembly. Sir, this Bill is the beginning of what is to follow in future and I welcome it in that light. The Bill no doubt has got its defects. I have pointed them out during the discussion. But, Sir, I would like to refer only to one of them. I felt greatly pained when I found yesterday the House refusing to help the widow and the children of a workman when he dies on account of an accident although the accident might have been caused by his wilful misconduct. That vote has unfortunately placed a very undesirable stamp upon the whole House. It has shown to the working classes that on certain occasions they may not get justice—not only that they may not get justice but that they may not even get compassion from this House. Sir, that is the effect of that vote and it means nothing else. (*Honourable Members:* “No, no.”) I am glad to hear it does not mean that. I have pointed out one defect of the Bill. I should also like to point out the strong point of the Bill. The strong point of the Bill is exactly that which my Honourable friend, Mr. Rangachariar, said is the weakest point. The strong point is the procedure by which the workman is to get compensation. It is wrong in the present condition of the working classes in India to send a workman to a Court or into the hands of a lawyer. I am not a friend of the lawyer, and I therefore feel that that is the strongest point of this Bill.

There is only one word more. Mr. Rangachariar mentioned in his speech that our industries are only just beginning to be started and established and expressed his apprehension that a legislation of this kind may not help them. May I tell him to learn, as Mr. Jamnadas Dwarkadas told him, by the experience of the western world. If you want western industries, if you want western industrialism, and if you do not adopt the western methods of social insurance and other ameliorative measures, certainly you will not only have the bitterness that you see in the west, but you will see here much worse things than that. Therefore, if the country wants industrialism, I think it is better in the interests of the country that all measures which are necessary to avoid the evils of industrialism should be taken. Nobody will express the opinion here that modern industrialism has no evils, and if these evils are there, we must take measures to prevent those evils before we undertake to develop industries. If you do not do that, then you will suffer not only what the west has suffered but you will suffer more. With these words I again congratulate the Honourable Member for having got this Bill passed in this Assembly.

Dr. Nand Lal: This a very useful piece of legislation and my belief is that it will prove a very effective step towards the industrial development of this country. I feel bound to offer a suggestion to the Government of India, which is this, that they will be pleased to impress on the minds of the Local Governments that, at the time of appointing Commissioners, they will kindly see that either very able and trained lawyers are appointed or judicial officers of great experience are put in charge of this important

work. At the same time, if the Commissioners will be in need of expert assistance, the Local Government should be careful to appoint experts of great capabilities and not pay attention to creed, caste or colour. With these few words I commend the motion which has been very ably moved and I congratulate the Government on this very useful measure.

The motion that the Bill, as amended, be passed was adopted.

The Assembly then adjourned for Lunch till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock. Mr. President was in the Chair.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

Clause 62 was added to the Bill.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): Sir, I move:

"That in clause 63, in clause (f) of the proposed section 239, for the words 'the possession of which has been transferred by one offence' the words 'the possession of which has been transferred in the same transaction' be substituted."

Honourable Members will find this is an amendment to section 239 of the Code of Criminal Procedure and the clause is "persons accused of offences under sections 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property, the possession of which has been transferred by one offence." Now, section 411, I may inform the Honourable Members of this House deals with the offence of receiving stolen property and section 414 with the offence of concealing stolen property. Now, in the first place I want the Government to explain what they mean by the clause 'the possession of which has been transferred by one offence.' Will they illustrate to me how the possession of property of one offence can be transferred so as to constitute offences under sections 411 and 414 of the Indian Penal Code. It seems to me what is intended is that if there is a theft, say, of half a dozen articles one man is made the receiver of property: another conceals that property: the third one assists in the concealment of the property. These are all offences committed in the same transaction and consequently persons who are privy to an act which constitutes a series of acts in the same transaction may be dealt with together. That seems to be therefore the intention so far as we on this side of the House understand it. If the Government justifies the retention of the clause which they have inserted in this sub-clause (f), I shall be pleased to withdraw my amendment. Otherwise I suggest to the Government that the adoption of the amendment made by me is an improvement on the language of the official draftsman.

Mr. President: Amendment moved:

"In clause 63, in clause (f) of the proposed section 239, for the words 'the possession of which has been transferred by one offence' substitute the words 'the possession of which has been transferred in the same transaction'."

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, my Honourable and learned friend asks that I should endeavour to explain what is the meaning to be attached to the words 'the possession of which has been transferred by one offence' in clause (f) of the proposed section 239. I would in the first place direct his attention to the fact that exactly the same words are included in clause (e), and he has not suggested any change of those words. Now, Sir, the Honourable Member has suggested that the official draftsman should explain what these words mean. This, however, Sir, is not a Government clause at all, it is a proposal of the Lowndes' Committee, introduced by them, and that Committee was not a Government Committee at all. They said, with reference to this clause, 'we accept this clause with certain verbal modifications and have added a new sub-section dealing with offences under sections 411 and 414 of the Indian Penal Code.' The clause is exactly as drafted by the Lowndes' Committee. My Honourable friend proposes to substitute for those words the words 'the possession of which has been transferred in the same transaction.' I would suggest, Sir, in the interests of the accused, that it is distinctly dangerous to make that change. But perhaps it will be sufficient if I merely explain what the meaning of the words is. Take a concrete example. A is a cattle-thief; two cattle are stolen; B is the dishonest receiver to whom A has passed on one of the cattle; C, the dishonest butcher who knows the cattle to have been stolen and assists in their concealment by slaughtering the other. Well, Sir, if A is present, A, B and C can all be tried together under clause (e). If A has disappeared, then this is not possible, and the provisions of clause (f) are required. The possession of these cattle has been transferred in one offence, the original offence of theft. One person has later committed an offence under section 411, and another person has committed an offence under section 414. The two cattle were stolen at the same time, that is one offence. I do not know whether it is necessary for me to go on and explain further as to how the proposed amendment is dangerous, but there is no doubt about it that the amendment proposed by my Honourable and learned friend has a much wider application than the words in the Bill, and I think the House will agree that it is desirable not to make the change.

Dr. H. S. Gour: Sir, in view of the explanation given by the Honourable Mr. Tonkinson, I do not wish to press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Clauses 63, 64 and 65 were added to the Bill.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadian): Sir, I beg to move:

"In clause 66, insert the following at the beginning:

'In sub-section (1) of section 245 of the said Code after the word 'accused' the words 'to explain points or circumstances appearing in evidence against him' shall be inserted.'"

Section 245 provides:

"If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal."

I wish to insert the words "to explain points or circumstances appearing in evidence against him" after the word "accused." The clause,

as amended, will require the Magistrate to explain the points or circumstances appearing in evidence against the accused and not ask him general questions about other details not against him. Sir, similar provision has been made under section 342 in connection with warrant cases and I think that procedure is more desirable than the one which we have already provided in section 245. Section 245 should also be altered and brought in conformity with the provisions of section 342. With these words, Sir, I move my amendment.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I think this amendment has been moved under a misapprehension. There are several sections of the Code which provide for the examination of the accused at a particular stage of the inquiry or trial. This section 245 is only one of them. In all these places where at a particular stage of the inquiry or trial an examination of the accused has to be made, that examination has to be made in accordance with the provisions of section 342. Section 342 is the provision which guides the Magistrate in all these cases. It is quite unnecessary in section 245 to lay down the details of the examination, because section 342 governs section 245. It is there already and it is quite unnecessary to put it into the Code a second time.

Dr. H. S. Gour: May I just point out, Sir, in addition to what has fallen from the Honourable Sir Henry Moncrieff Smith, that my Honourable friend is wrong in saying that section 342 only relates to warrant cases. If he will refer to Chapter XXIV, he will find that that Chapter deals with general provisions as to inquiries or trials, and consequently it entirely covers the case which my friend is now seeking to provide for.

Mr. President: Amendment moved:

"In clause 65, insert the following at the beginning:

"In sub-section (1) of section 245 of the said Code, after the word 'accused' the words 'to explain points or circumstances appearing in evidence against him' shall be inserted."

The question is that that amendment be made.

The motion was negatived.

Clause 66 was added to the Bill.

Dr. H. S. Gour: Sir, I beg to move:

"In clause 67 (i) in proposed sub-section (1) for the words 'upon information' substitute the words 'in consequence of information'."

This is merely a verbal amendment and I invite the attention of the Treasury Benches to accept it, if they consider it an improvement.

Mr. H. Tonkinson: Sir, as my Honourable friend has not endeavoured to justify the amendment which he has proposed, I would merely explain the reason why these words as they stand in the Bill are more appropriate than the words proposed by my Honourable friend. Cases are instituted by taking cognizance. Section 190 is the section dealing with taking cognizance of an offence and we want to use the same words as in section 190 in section 250.

Dr. H. S. Gour: I withdraw the amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I move:

"In clause 67, sub-clause (i) in proposed new sub-section (1) of section 250, for the words 'by his order of discharge or acquittal' substitute the words 'at the time of discharging or acquitting the accused'."

That clause runs as follows:

"(7) If, in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, call upon the person upon whose complaint or information the accusation was made forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or may, if such person is not present, issue a summons to him to appear and show cause as aforesaid."

Well, Sir, the complainant can only be called upon to show cause why he should not be made to pay compensation, after the accused has been formally discharged or acquitted; and the accused person can only be discharged or acquitted by means of a judgment which is written and signed. The Madras High Court has held that oral judgments are not valid under the Criminal Procedure Code, and so when an accused person is discharged or acquitted, it means that the judgment has been written and signed by the Magistrate. It is only after that that the Magistrate can call upon the complainant to show cause why he should not be made to pay compensation to the accused. So, the order which the Magistrate will pass ordering the payment of compensation can only be affixed or appended to the judgment as a postscript, so to speak. Therefore, it is impracticable for the Magistrate to order compensation or to call upon complainant to show cause, by his order of discharge or acquittal. He can only do it after he has acquitted or discharged the accused. That is the reason why I want to insert the words "at the time of discharging or acquitting the accused."

Sir Henry Moncrieff Smith: Sir, there is something perhaps a little unsatisfactory about this sub-section (1) of section 250, though not for the reason, I suggest, that my Honourable friend Mr. Pantulu has given. I do not think that any real difficulty arises from the fact that the Magistrate is required to do this by his order of discharge or acquittal. But if Honourable Members will look at the clause closely they will find that in the case where the complainant is present the clause requires the Magistrate to call upon him to show cause by his order of discharge or acquittal. When the complainant is not present he does it outside his order of discharge or acquittal. He issues a summons. I think that is distinctly unsatisfactory. I should like to meet my Honourable friend in one way, and I have an amendment here; it does not embody his words "at the time of" because we think that those words are apt to be vague and to lead to difficulties, lead perhaps to additional grounds of appeal and revision. What is the time of discharge or acquittal? We are generally told it takes a clever man to do two things at the same time. If he is delivering his judgment, he cannot at the same time write an order calling upon a man to show cause. Therefore we cannot have the words "at the time." I tried hard to think of a phrase which is satisfactory and have come to the conclusion that it is not possible. We must stick to the order, and I

would suggest that whether the complainant is present or not, the Magistrate must in both cases call upon the accused by his order—where he is present, call upon him directly, or where he is not present by his order direct the summons to be issued. The amendment will then run, if the House will permit me to move it:

“ For the words beginning with ‘ call upon the person ’ and ending with ‘ or may,’ the following words be substituted :

‘ if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any such accused when there are more than one, or ’,”

and then it will go on “ if such person is not present, issue a summons to him to appear and show cause as aforesaid.” It means another amendment, Sir, a second amendment—for the word “ issue ” insert the words “ direct the issue of.”

Mr. J. Ramayya Pantulu: I withdraw my amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

The amendment (proposed by Sir Henry Moncrieff Smith) was adopted.

The second amendment—to omit the word “ issue ” in order to substitute the words “ direct the issue of ” in proposed sub-section (1) of clause 67 was adopted.

Mr. K. B. L. Agnihotri: Sir, I move:

“ That in clause 67 in proposed sub-section (2) in sub-clause (i) after the words ‘ such amount ’ omit all words commencing from ‘ not exceeding ’ to the words ‘ third class ’.”

Sir, in section 250 of the present Bill we provide that in false and frivolous or vexatious accusations a compensation up to Rs. 100 may be awarded; and in the case of a Magistrate of the second or third class the amount has been limited to Rs. 50. My amendment will make it uniform for all classes of Magistrates, whether first, second or third. I think, Sir, the amount of fifty rupees which was provided in the old Code was a proper amount because if the accused thought that the amount awarded to him was not sufficient he could go to a Civil Court and have compensation or damages from that Court as well. One hundred rupees for each of the accused will be rather a high amount to be awarded in such cases of compensation. Therefore, Sir, I propose that the amount of fifty rupees which was provided in the old Code should be struck to and should not be changed in this new Bill. With these words, Sir, I propose my amendment.

Mr. H. Tonkinson: Sir, as has been mentioned by my Honourable friend the Bill proposes to increase the amount which may be awarded as compensation under this section from rupees fifty to rupees one hundred in cases dealt with by a first or second class Magistrate. In 1911 the Punjab Chief Court wrote that they would raise the penalty, which is entirely inadequate at present, to Rs. 150, and that, Sir, is the genesis of the present proposal. If Rs. 50 was inadequate in 1911, surely Rs. 100 is inadequate now. My Honourable friend says that it is possible to go and file a civil suit. That is true, Sir, but in this section we provide a summary proceeding with the object of stopping these vexatious and frivolous prosecutions, and I think, Sir, it is most desirable to increase the amount of compensation which may be awarded in the manner proposed in the Bill. I therefore, Sir, oppose the amendment.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move in the same sub-clause:

"That before the word 'third' insert the words 'second or'."

As the first amendment of mine has failed, I wish to provide by this amendment that the awarding of compensation to the extent of Rs. 10 should only be confined to 1st class Magistrates, and 2nd and 3rd class Magistrates could only award compensation to the extent of Rs. 50.

Mr. H. Tonkinson: Sir, the present provision in the Bill which restricts the power of Magistrates to award compensation exceeding Rs. 50 was introduced by the Joint Committee. They thought, Sir, that it was undesirable that a Magistrate who had only power to pass a sentence of fine up to Rs. 50 should have power to order compensation to an amount exceeding Rs. 50. This, Sir, does not apply to the case of a second class Magistrate who can award a sentence of fine up to Rs. 200.

Another point is, Sir, that these cases are very likely to be those in which a second class Magistrate exercises jurisdiction. In these circumstances, Sir, I oppose the amendment.

The motion was negatived.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, practically the first part of my amendment has already been disapproved by the House, which was also the amendment of my Honourable friend, Mr. Agnihotri, and so it remains for me only to move the second* part of my amendment which relates to (2A), the latter portion, that is, "shall suffer simple imprisonment for a period not exceeding thirty days". I propose that 30 days is too long a period. Possibly the offence for which the complaint might have been instituted may be of a very simple nature, and even if an accused was convicted for such offence, he might be sentenced to pay a fine. But when a complaint is presented and it is found to be vexatious and frivolous, to make the complainant in default of payment to pay a fine (which is now Rs. 100) to undergo a sentence of thirty days, will be very severe.

Sir, sometimes it happens that, after a complainant presents a complaint, the accused tries to win over the witnesses so that they may not prove the facts of the case. On account of the machinations of the accused, if the complaint is not proved, he may get Rs. 100. He may perhaps bribe the witnesses Rs. 5 or Rs. 10 each and spend Rs. 20 or Rs. 30 and get a compensation of Rs. 100. This would be very unjust. The Magistrate may hold in cases where the witnesses are won over by foul means the complaint to be false and frivolous. Sometimes it may be that the Magistrate may not be able to study the situation and there may not be many witnesses—there may be a single witness and that witness may be unwilling to appear. In such cases, it is a very hard case to impose a very heavy fine as well as to ask the complainant to undergo such a severe punishment, imprisonment for one month. I submit the result would be that probably many people won't go to court. Supposing a rich man, a big zamindar has given some blows or a slap or abused filthily one of his tenants, the tenant would be afraid to come to Court because the zamindar is an influential man who can win over the witnesses. This poor man will have no remedy, because the Court will again punish him. So the threat of these punishments will deter a man from going to Court. Under these

* "In proposed sub-section (2A) of clause 67 for the word 'thirty' substitute the word 'seven'."

circumstances, I respectfully submit that the House will accept my proposal that the punishment to be inflicted should not be so severe as one month in default of payment of Rs. 100.

The Honourable Sir Malcolm Halley (Home Member): The existing law provides for Rs. 50 compensation and, in default of payment, 30 days imprisonment. The House has already agreed that the maximum of compensation should be raised to Rs. 100. It hardly seems consistent, therefore, to reduce the period of imprisonment to seven days. I cannot myself exactly follow out the arithmetical ratio which the Honourable Member has in his mind, but it seems to me of a peculiarly inverse nature. The arguments which he has used and the instances which he has quoted apply of course equally against the whole scheme for compensating the accused as the result of false, vexatious or frivolous complaints. I would remind him that all that is provided is a maximum. It by no means follows that, because the law provides a maximum, the Magistrate will invariably, as he seems to suggest, award to a man who brings a frivolous complaint the full imprisonment for 30 days.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, there is a great question of principle in support of the amendment moved by my Honourable friend, Mr. Misra. Sir, it is an uncivilised method of recovering compensation to put a man in prison. I wish he had moved for the total abolition of imprisonment in default of payment of such compensation. How is it a compensation to the accused person—compensation for costs incurred by him in regard to his defence? It is no compensation to put the complainant in jail. Sir, it seems to me ridiculous that the Legislature should provide any imprisonment in this way. By all means recover the amount by selling his movable or immovable property. But if the man is unable to pay, simply because he went to Court complaining of an offence committed against him and may be he is not sufficiently influential to prove it and the Court comes to the conclusion that the complaint is vexatious, you put him in jail! I quite admit that it would be right to compensate, by making payment to the accused money for costs incurred by him. But to go and put a man in jail because he is unable to pay seems to me to be barbarous. I, therefore, Sir, support the amendment.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadian Rural): Sir, the principle under which my friend, Mr. Rangachariar, supports this amendment is the principle probably which applies to every provision in our law in which non-payment of a fine, non-payment of a debt is followed under various circumstances by imprisonment. That is, when we attack the entire principle which pervades all branches of law, then I think the argument of my learned friend here would hold good. But why this sympathy for a man who has dragged another into a criminal Court and the Court, after proper inquiry, has found that the complaint was frivolous and vexatious? Why should we assume that the Court which has found that the complaint was frivolous and vexatious came to that conclusion because one man was rich and the other man was poor, one man was able to win over the witnesses and so on? All these considerations are entirely outside the position, the basis on which this compensation has been fixed. We must assume in arguing a question of law, a question of legislative measure, that the court which passed judgment passed it rightly. But if you give the go-by to the finding of a court and then say that the court may have been misled, and therefore the consequences of that judgment ought to be nullified by these provisions, I think that is not a

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clean way of arguing a legislative measure. If the Court has gone wrong in its finding there are provisions for revision. There are provisions of law to guard against that. If the compensation is wrong, the man has the right to appeal against the award of compensation. This is a matter on which there need not have been any argument. Because the Bill says " fifty " you want to put in " thirty " or because the Bill says " forty " you want to put in an amendment saying " thirty ". You must fix it at some amount. Then this alternative of imprisonment in default of payment exists for ordinary simple debts. If a man gets costs in a civil suit and the other man does not pay it, then he is liable to be imprisoned. Why this tenderness for a man who has brought a criminal case which a court has found to be vexatious and frivolous.

Dr. H. S. Gour: Sir, there has been considerable misapprehension on the part of my learned and legal friends in reading the very elementary provision which prefaces section 250. It is not in a case of frivolous or vexatious prosecution that the Magistrate is empowered to impose a fine by way of compensation. The case must be found to have been false, and either frivolous or vexatious. In the first place, therefore, it must be a false charge, added to which it must be either frivolous or vexatious. In other words, it must be a case not merely which is not proved but a case which has been proved to be a false case and super-added to which a frivolous and vexatious case. That was the premises upon which my learned friend Mr. Rangachariar built up his argument.

Rao Bahadur T. Rangachariar: No, that was not my argument.

Dr. H. S. Gour: He further said that it was an uncivilised and barbaric thing for a man to be imprisoned for not paying his debts. I am surprised at my friend supporting a theory that it is a barbarous and uncivilised thing for a man to be imprisoned for not paying his debts. Surely, Sir, this is much more than a debt. A man has launched a prosecution in court. Let us assume, as the section assumes, that it is found to be both false and frivolous or vexatious. What is the remedy which the aggrieved accused has against the complainant? It is not a debt as my Honourable friend, Mr. Subrahmanayam, assumed, it is in the nature of a fine for having made a false and frivolous case against the accused.

Rao Bahadur T. Rangachariar: It is compensation.

Dr. H. S. Gour: My friend on my left says " compensation ".

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): It is a sanction.

Dr. H. S. Gour: If he has not got property, movable or immovable, from which this compensation is to be recovered, is he to go scot-free? If so, it is setting a premium upon all poor people.

Rao Bahadur T. Rangachariar: Upon paupers.

Dr. H. S. Gour: Paupers and vagabonds to institute false and frivolous prosecutions because forsooth they will have nothing to pay, nothing to lose, by implicating respectable people in cases under the Indian Penal Code. I cannot understand, Sir, what my learned friend meant by saying that the case may not be proved, witnesses may have been suborned, influence may have been brought to bear upon the case, and so the case may fail. But

my friend forgets that in all these cases, the Court will acquit the accused, because the case has not been proved. The Court will not pronounce it to be a false case and the Court will not pronounce to be a frivolous or vexatious case. If it does, you have the right of appeal and revision. I therefore submit that upon every ground this amendment fails and ought not to receive the support of the House.

Dr. Nand Lal (West Punjab: Non-Muhammadan): I oppose this amendment. Take a hypothetical case. Two persons are enemies. One is a rich man and he employs an ordinary man to lodge a false complaint against his enemy who is a very respectable man. The complaint is altogether vexatious and false. It has been dismissed and it has been found by a competent Magistrate that it was frivolous and that it was vexatious. Look at the disgrace to which the accused has been put. He has been dragged to the Court for nothing. He had to spend money in engaging Counsel. He was summoned to the Court, and no wonder in some cases he may be sent to a lock-up. The competent Magistrate after having gone into the evidence, after having examined all the circumstances, comes to this conclusion that the complaint is altogether unfounded and the complainant has been called upon to pay compensation, Rs. 100 if the case is tried before a first class or a second class Magistrate and only Rs. 50 if the case is tried by a third class Magistrate. He fails to pay that. As a matter of fact, he defies the law and then the Code provides that if he does so, he may be imprisoned for a period not exceeding 30 days. It will depend upon the discretion of the Magistrate. He may award imprisonment for 7 days, or for 15 days but not more than 30 days. Then you will be pleased to see the character of the imprisonment. It is simple imprisonment and such a sort of compensation is reckoned to be fine and would be realised as such. I think the amendment has got no justification whatsoever and it should be rejected. On no principle can it be supported.

The motion was negatived.

Mr. K. B. L. Agnihotri: I beg to move:

"In clause 67 in sub-clause (ii) after the word 'substituted' insert the following: 'and the words 'of the second or third class' shall be omitted'."

Sir, it has been said from the Government Benches that second and third class Magistrates have been authorised to award compensation only to the extent of Rs. 50 as otherwise they would have to award compensation beyond their powers, because a third class Magistrate cannot punish an offender and inflict a fine on him of any amount over Rs. 50. Therefore to provide against this anomaly they have provided for the award of compensation by a third class Magistrate to the extent of Rs. 50 only. In the old Code, the amount of compensation that a first class Magistrate could award was fixed at Rs. 50. Now, if a first class Magistrate had inflicted a fine of Rs. 50 on an accused, the accused had no right of appeal against that conviction or order. On that principle, if under the old Code no provision for appeal against an order of the first class Magistrate was made, that was quite sound in principle. But, here, we authorise the first class Magistrate to award compensation to the extent of Rs. 100. If the same Magistrate had awarded a punishment of fine extending to Rs. 100, but not below fifty, the accused could have had a right of appeal against that fine. In this case why should not the complainant have a similar right of appeal against the order of the first class Magistrate? It looks anomalous. If we adopt the principle in one case, why should we not adopt it in the other case?

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Therefore, I beg to move that even the compensation awarded by first class Magistrates should be subject to appeal as that awarded by second or third class Magistrates. With these words I commend my amendment for the consideration of the House.

Mr. H. Tonkinson: Sir, at the present time there is no appeal from an order of compensation passed by a Magistrate of the first class. I think the substance of the amendment moved by my Honourable friend is that if a Magistrate of the first class passes a fine exceeding Rs. 50 an appeal would lie, why then should an appeal not lie if he makes an order for compensation exceeding Rs. 50? If it would meet my Honourable friends I am quite prepared to agree to an amendment of the Bill on those lines. But I would ask the Assembly to deprecate any extension of the rights of appeal beyond that. There are at present, Sir, in the Code ample provisions as regards revision which will check any possibilities of failure of justice. If that suggestion will meet my Honourable friends, then we on the Government Benches would be prepared to agree to such an amendment.

Mr. K. B. L. Agnihotri: I am quite prepared to accept the amendment which has been suggested by Mr. Tonkinson.

Mr. H. Tonkinson: I would suggest that we may go on to later amendments, with your permission, until the draft of this amended clause is ready.

Dr. H. S. Gour: I beg to move:

"That in clause 67 (iii) after the words 'from the date of the orders' the following be inserted:

'or such further period as the Court may, in the circumstances of the case, think fit to direct'."

This is a very simple amendment and I hope Government will see their way to accept it. The additions made by Government to sub-clause (4) are as follows:

"And where such order is made in a case which is not subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order."

The object is that the payment of compensation should be withheld for a period of one month when giving the complainant a right of revision. But the revision may take a much longer time, and I therefore suggest the addition of the following words—"or such further period as the Court may, in the circumstances of the case, think fit to direct." If the case is already launched on the revisional side of the High Court, it is not likely that it will be disposed of within one month, and therefore I submit that the Court must have jurisdiction to extend the period, and not limit it strictly, as it has been in the amended clause, to 30 days. This is all the more necessary, Sir, in view of the fact that we have already adopted the provision for alternative imprisonment in case of non-payment, and I therefore suggest that the addition of these words should be made at the end of sub-clause (iii).

Mr. President: Amendment moved:

"In clause 67 (iii) after the words 'from the date of the orders' insert the following:

'or such further period as the Court may, in the circumstances of the case, think fit to direct'."

Sir Henry Moncrieff Smith: Sir, I quite agree with Dr. Gour that, if revisional proceedings have been launched, it is not likely that the proceedings will be terminated within one month, and that the Magistrate ought to have power to delay the payment of the compensation. Sir, the Magistrate has got that power: it is quite unnecessary to add it in the clause. If my Honourable friend will look at the clause which the Bill adds, it says that compensation shall not be paid before the expiration of one month from the date of the order. "Shall not be paid before." There is nothing to say that the compensation shall be paid on the expiration of one month. It is perfectly clear that the Magistrate has a discretion, and in a case like that he will exercise his discretion. It is unnecessary to add words to the Bill which would be redundant.

Dr. H. S. Gour: Sir, I withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

The Honourable Sir Malcolm Halley: I move, Sir, that the final consideration of clause 67 be postponed until we have prepared a draft on the clause which the House has just been discussing.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I wish to move the third amendment which stands in my name, namely:

"In clause 67-A, after sub-section (2) the following sub-section shall be added, namely:

"(3) The Magistrate before proceeding to hear the evidence shall if requested allow the accused reasonable time to prepare his case."

Sir, section 252 as it stands at present reads thus:

"When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complaint (if any), and take all such evidence as may be produced in support of the prosecution."

Sir, it does leave a discretion to the Magistrate to adjourn the case for a reasonable period in order to enable the accused to prepare his case, but what happens often is that the Magistrate takes up the case immediately when it is put before the Magistrate and the accused and his counsel do not generally get an opportunity to go through the *chalan*, or the papers filed by the police in the Court and thus are not able to prepare the case to defend the accused. Therefore, I suggest that provision of the nature I suggest be incorporated in this Code. Then the Magistrates will certainly give some opportunity to the accused to prepare their cases. I do realise that in many cases probably the accused may take undue advantage of this provision and may want to delay the proceedings; I admit that it is just possible, but, I propose that a period considered reasonable by the Magistrate be allowed and not a period which the accused thought reasonable. Therefore, the amendment which I have moved may be accepted by the House.

Sir Henry Moncrieff Smith: Sir, I suggest to the House that this is a case, most certainly a case, in which we should not trench upon the Magistrate's discretion. As my Honourable friend admits, most Magistrates will allow reasonable opportunity for the accused to prepare the case if good cause is shown to them. But, surely, in the ordinary course, the best way for the accused to prepare his case is to begin by listening to the evidence for the prosecution. How else is he going to prepare his case, unless my Honourable friend contemplates the preparation of false defences and that sort of thing? (*Mr. Agnihotri:* "No, no.") As I said, Sir, I

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think this is a case in which the Magistrate's discretion should not be taken away, just as we, who are sitting in this House, on a question of motion for postponement of business, are entirely in the hands of our President. You are not obliged, Sir, to put any motion for the adjournment of business; it is entirely in your discretion, and it would be a serious hampering possibly of public business if it were not so.

Mr. President: Amendment moved:

"In clause 67-A, insert the following at the end:

'The Magistrate before proceeding to hear the evidence shall if requested allow the accused reasonable time to prepare his case'."

The amendment was negatived.

Clause 67-A was added to the Bill.

Mr. J. Ramayya Pantulu: Sir, mine is merely a drafting amendment and if it does not commend itself to the Honourable Sir Henry Moncrieff Smith, I do not want to press it.

Mr. President: I cannot allow amendments to be moved conditionally. Does the Honourable Member move it or not?

Mr. J. Ramayya Pantulu: I move it, Sir. It runs as follows:

"In clause 68, to the proposed new section 255-A add the following:

'Before passing the sentence'."

The object of my amendment is this. Previous conviction can only be proved after the accused has been convicted. I want to make it clear that this should be done before the accused is sentenced. That goes without saying. But I propose that these words be added at the end in order to make it quite clear that evidence should be recorded before the sentence is actually pronounced.

Mr. H. Tonkinson: Sir, I do not know whether it is really necessary to oppose an amendment moved in such halting terms. I suggest it is entirely unnecessary. There is no doubt, of course that this action will be taken before passing a sentence. It is quite obvious I should think, Sir, to any one that that would be so. I would merely invite the attention of the House to the fact that in Chapter XXI of the Code the sections are arranged chronologically. This provision comes in proposed section 255-A, and the sentence comes in section 258. I think, Sir, that this amendment is therefore unnecessary.

Mr. President: Amendment moved:

"In clause 68, to the proposed new section 255-A add the following:

'Before passing the sentence'."

The question is that that amendment be made.

The motion was negatived.

Clause 68 was added to the Bill.

Rao Bahadur P. V. Srinivasa Rao (Guntur *cum* Nellore: Non-Muhamadan): Sir, the amendment standing in my name, runs as follows:

"In clause 69, omit the words 'if the Magistrate thinks fit'."

In place of the amendment that stands in my name, I hold in my hands a copy of the amendment drafted by the Government; and I am advised

Sir, to move it in place of my amendment, and if you permit me, I am prepared to do so, though, I must say, that I am not satisfied with it. But as a compromise and under the circumstances, I am willing to move it in place of my amendment. That amendment, Sir, runs thus :

"That in clause 69 for the words 'either forthwith or if the Magistrate thinks fit at the commencement of the next hearing of the case' the following be substituted, namely :

'At the commencement of the next hearing of the case, or if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith'."

I do not think any speech is required from me to commend it as the Government have, I understand, accepted it. I therefore move this amendment.

The motion was adopted.

Clause 69 was added to the Bill.

Clause 70 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I move the following amendment.

"In clause 71, for the words from 'after the' to the word 'inserted' substitute the following :

'after the word 'complainant' the words 'or his authorised agent' shall be inserted, the words 'and the offence may be lawfully compounded' shall be omitted'."

Sir, in clause 71, which refers to section 259 of the Code, we provide that

"When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded, the Magistrate may in his discretion, notwithstanding anything heretofore contained at any time before the charge has been framed, discharge the accused."

Sir, this section of the present Code provides that in the absence of the complainant the case may be dismissed in default if the offence be compoundable. Sir, the Lowndes Committee recommended that in every case instituted upon complaint the case may be dismissed in the absence of the complainant. They said :

"We think that no useful result follows from attempting in ordinary complaint cases to force the complainant to go on against his will. We therefore omit the words 'and the offence may be lawfully compounded,' as has been suggested by the Bombay Government. We think the requirements of justice will be sufficiently safeguarded by the discretion which is already vested in the Magistrate under this section."

What I beg to submit is that if the case has been instituted upon a complaint, whether it was a cognizable case or a non-cognizable case, the complainant should have the liberty to withdraw from the case, or absent himself or not proceed with the case as he thinks fit.

It may be argued, Sir, that in cognizable cases, the State has to look to the interests of the public and such cases may not be allowed to be withdrawn or dismissed in default. Well, Sir, in such cases the clause as it stands now provides that such cases could only be dismissed at the discretion of the Magistrate; so there will be no hampering of justice and no escape of a criminal even in cognizable cases. Moreover, in cognizable cases in 90 out of 100 cases the police do take cognizance of such cases, and even after the filing of the complaint if the police considers that in the interests of justice and to protect the interests of the public it was necessary to take cognizance,

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they could take cognizance, and in that case this section 259 would not apply because 259 applies only in those cases in which a complaint has been instituted in Court at the instance of the complainant. Here 'complaint' does not mean an information to the police, but 'complaint' in this clause means a direct allegation made in a Court of law. Therefore, Sir, the interests of justice would not suffer in any way if my amendment is accepted.

Mr. President: Amendment moved:

"That in clause 71, for the words from 'after the' to the word 'inserted' substitute the following:

'After the word 'complainant' the words 'or his authorised agent' shall be inserted, and the words 'and the offence may be lawfully compounded' shall be omitted'."

Mr. H. Tonkinson: Sir, I admit that the amendment proposed by my Honourable friend would bring the Bill back to the measure as it was drafted by Sir George Lowndes' Committee. I would merely in opposition to the proposal of Sir George Lowndes' Committee and the proposal of my Honourable friend read the remarks of the Chief Commissioner, North-West Frontier Province, with reference to that clause. He said:

"I also would press for the retention of the words 'and the offence may be lawfully compounded', which it is proposed to omit from section 259; otherwise it leaves the door open to blackmail and an abuse of justice, for it will encourage persons guilty of serious criminal offences to pay complainants not to continue the prosecution."

Sir, I submit that that is not an imaginary evil, and that that proposal in the Bill is a proposal which should be accepted as it stands.

The amendment was negatived.

Clause 71 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I move:

"That after clause 71 insert the following clause:

'71A. In section 260 of the said Code, in subsection (1) after the proviso insert the following further proviso:

'Provided further that no case in which the accused objects to its trial in a summary way shall be so tried'."

Sir, here we have

Mr. President: Before the Honourable Member begins to discuss the merits of the proposed amendment, I am not at all satisfied that it is within the scope of the Bill; I am prepared to hear him on that point.

Mr. K. B. L. Agnihotri: Sir, there was an original clause in the Bill which was numbered as 72 and it referred to section 260 of the Criminal Procedure Code. That clause has been omitted by the Joint Committee, and therefore I am entitled to move either its re-insertion or any amendment in that section. On this point I may perhaps mention, Sir, that on the very first day I requested the Deputy President to give me a ruling, and the Deputy President who occupied the Chair on that day was pleased to give me a ruling that I could put in amendments of this nature; and in accordance with that ruling, on previous occasions I have moved amendments referring to clauses of the Bill which have been dropped by the Joint Committee, and as such, Sir, I am entitled to move an amendment in regard to this clause also.

The Honourable Sir Malcolm Hailey: Mr. Agnihotri has recalled a ruling of the Deputy President on this matter. It is true that certain amendments have been allowed on the strength of that ruling. But I think the Deputy President allowed those amendments on their merits because he felt that they did actually refer to the subject matter of the Bill and I submit, that the question whether an amendment does refer to the subject matter of the Bill or not is really the crucial and decisive test. Now, may I put to you, what Mr. Agnihotri proposes in the present case? Section 260 was mentioned in the original Bill but it was proposed to amend this section (which is a somewhat long one) in one small matter only. There were a large number of sub-clauses in section 260 defining the particular offences which were to be brought within the scope of the summary procedure. It was merely proposed to add one additional offence, namely, the offence of attempting to commit suicide, within the scope of that section. This proposal however having fallen through, the whole section has been omitted in the Bill as it came to us; but taking the opportunity of the fact that the section was mentioned (for this very limited purpose) in the original Bill, Mr. Agnihotri now proposes an amendment which makes a substantive alteration in the whole of our procedure regarding trials by summary procedure. I claim then that this is not an amendment which is relevant to the subject matter. As I say, he will by this amendment introduce considerations which are not in any way pertinent to the purpose for which section 260 was mentioned in the original Bill.

Mr. President: I should like to know from the Honourable Member whether he accepts the description given by the Honourable the Home Member about the clause in the original Bill and whether it tallies with his view of it?

Mr. K. B. L. Agnihotri: I have not been able to follow the Honourable the Home Member, Sir

Mr. President: I put the point to the Honourable Member as to whether the statement that clause 72 in the original Bill did in fact refer to a single offence and not to procedure under which offences might be tried tallies with his view?

Mr. K. B. L. Agnihotri: Yes, Sir, it referred to the addition of an offence among the summary trials that are provided in section 260 of the Code, and section 260 was brought before us in the original. If it had been embodied in the Report of the Joint Committee I would have been entitled to move any amendment in that section, according to the ruling that was previously given. In that way, if I could move an amendment to the portion other than that brought before us in the original Bill, I cannot be debarred from moving this amendment in this section.

Mr. President: I will deal with the point raised by the Honourable Member as to the latitude of the Assembly to amend any and every provision within a certain section because that section happens to be mentioned in the amending Bill. The Honourable Member is well aware that a section may cover a great variety of different things. I have not the slightest doubt that the Deputy President gave a perfectly just and accurate ruling in that particular case; but I do not accept the Honourable Member's reading of this case, because the original section only brought an additional offence within the scope of summary trials. Now the Honourable Member is proposing to introduce a very large change in the rights of accused persons who may be brought to summary trial.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): As this is a very important matter, I hope you would allow us to put our case before the House. Sir, when a particular section is brought for the consideration of the House, what is in the mind of the Government is not the governing factor, if I may respectfully say so. We have to vote upon the section, and I take it, Sir, that ultimately you will ask that this clause do stand part of the Code. Therefore, the whole of that section is open to discussion, because I take it from the formal words in which you put the question the clause as presented is to be voted upon. Clause 67 includes the matter which the Government want to take into the Code and you will have to put to the House whether that should stand part of the Code. Under those circumstances, Sir, it seems to me, where one section is brought in the fact that Government have a particular idea in mind should not be the guide and the whole of the section should be allowed to be discussed by the House.

Mr. President: I must be guided by the subjects rather than by the fact that there may be two or three quite different letters in the same envelope.

Dr. H. S. Gour: May I advert to another aspect of the question. When a certain section comes up before this House, the question is as to whether that section should be amended. The Government say that it should be amended in a particular way. Any Honourable Member of this House may suggest that the amendment should take some other form. Consequently, by the very necessity of the case the whole section becomes subject to amendment. I submit that, when this section was an integral part of the original Bill and it was left out by the Select Committee, according to the ruling given by your predecessor in the Chair, the Deputy President, and yourself, Sir, in connection with the Workmen's Compensation Bill (the omission of Chapter II), section 260 which deals with summary trials became relevant and any Member of the House, therefore, became entitled to ask for the restoration of that section as open to discussion by this House and, that section having come up for discussion before this House, it is open to any Member to suggest an amendment to that section. I, therefore, submit that Mr. Agnihotri's amendment is in order.

Mr. President: I am afraid I cannot agree. The Honourable Member has not appreciated the distinction which I have drawn between a section which may raise several different subjects of importance and those subjects themselves. I draw a line between them. Otherwise, as the Honourable Member may well see, liberty to amend the Code would be practically unlimited.

Dr. H. S. Gour: This section merely deals, Sir, with summary trials. It categorises certain offences and says that these offences shall be summarily triable. That is all. Consequently, it comes within the ruling that has just been given, Sir, that it should deal with one single subject—in this case, the mode of trial of certain offences. That is all that the section deals with, Sir. Mr. Agnihotri's amendment is that the mode of trial shall be subject to a certain proviso, which he proposes to insert. A number of different subjects have not been brought together under section 260. It is only as regards the mode of trial in a summary manner that that section lays down one principle and one single fact. And under that section we have a large number of offences which are categorised as triable summarily.

Mr. President: No, I must uphold the objection taken by the Home Member, which seems to me to be valid.

Mr. President: Amendment moved:

"In clause 67, to sub-section (ii) add the following:

'and for the words 'to an accused person' the following shall be substituted, namely, 'or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees'."

The question I have to put is that that amendment be made.

The motion was adopted.

Clause 67 was added to the Bill.

Mr. President: Clause 73.

Rao Bahadur T. Rangachariar: Sir, would the next amendment not be covered (referring to the amendment in Dr. Gour's name) by the ruling which you have just given? The Government propose to include only a particular section. My friend wants to exclude certain sections. He may perhaps move an amendment with reference to the included section but not propose the exclusion of other sections.

Mr. President: Is the Honourable Member discussing clause 73?

Rao Bahadur T. Rangachariar: Yes, Sir.

Dr. H. S. Gour: He is trying to block my motion, Sir.

(Mr. President then called on Dr. Gour to move his amendment.)

Dr. H. S. Gour: Sir, my amendment is to section 261 of the Code of Criminal Procedure which lays down what offences shall be summarily triable. I wish to exclude therefrom certain distinct offences. These are offences punishable by section 292 (sale of obscene books), 293 (possession of obscene books), 294 (the singing of obscene songs), 426 (mischief) and 447 (trespass). Now, Honourable Members will see that the question of what is an obscene book or an obscene song cannot be summarily disposed of. Many of the sacred songs which have the sanction of religion may be described as obscene. Many of the statues which we see in the public galleries and museums may be described as obscene. It is not a matter which can be disposed of in a summary fashion. I, therefore, suggest, Sir, that these three offences dealing with obscenity be excluded from the summary jurisdiction of the Courts. I stand on very strong ground when I say that sections 426 and 447 should also be excluded. Now, if Honourable Members will turn to the definition of mischief and to the definition of criminal trespass given in section 425 and section 441, they will find that they are extremely complicated offences, and so far as regards trespass, the lawyers are not agreed as to when civil trespass ends and criminal trespass begins. Honourable Members know that trespass may be of a dual character. It may be a civil trespass or a criminal trespass, and the civil judges have not yet drawn the clear line of demarcation between these two classes of trespass. How can a Magistrate, wielding summary powers, distinguish what the Civil Courts have failed to discriminate? And the same observations apply generally to mischief. I suggest these are extremely difficult cases, cases which require close and careful scrutiny, and that therefore

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the Magistrate should not be empowered to deal with them summarily. I move my amendment, Sir, which runs as follows:

"In sub-clause (i) of clause 73:

(1) After the words and letter 'in clause (a)' insert the following:

'the figures 292, 293, 294 and 426 shall be omitted' and

(2) Omit the figure '447' where it occurs for the second time."

Mr. President: Amendment moved:

"In sub-clause (i) of clause 73:

(1) After the words and letter 'in clause (a)' insert the following:

'the figures 292, 293, 294 and 426 shall be omitted' and

(2) Omit the figure '447' where it occurs for the second time."

Rao Bahadur T. Rangachariar: I do not know whether you have considered the point which I raised, namely, whether this is not covered by your previous ruling, because it deals with sections which are not touched by the amendment.

Mr. President: Precisely: it is covered by my previous ruling. The Honourable Member is in order in moving his amendment.

Mr. H. Tonkinson: Sir, I object to the proposal of my Honourable and learned friend on the ground that it means a reduction in the jurisdiction of honorary magistrates. This section, Sir, is the section under which Honorary Magistrates try offences. I think that it is most desirable and I hope that I shall have the support of the House, which I believe includes a number of Honorary Magistrates (*Voices*: "No, no.") in objecting to any proposal to reduce the jurisdiction of honorary magistrates in this matter. My Honourable friend proposes the deletion of 5 sections from those which can be tried summarily under this section. I would refer the House to section 225 of the Code of 1872. Each of those five sections was included in the provision of that Code which corresponds to the present provision. I have never heard it suggested that honorary magistrates are not capable of trying such cases. There may be in a particular case a difficult question of criminal trespass or mischief, but such cases will not be transferred by the stipendiary magistrates to be tried by the honorary magistrates under this section. My Honourable friend objects to the honorary magistrates trying these offences. I would merely add that if he will refer to all the various amendments to the Village Acts which have recently been made, he will find that such offences are triable by panchayats,—section 294, section 426, section 447 are all triable by panchayats in one Act that I have here, the Bihar and Orissa Village Administration Act. Under these circumstances I oppose the amendment.

Dr. Nand Lal: Sir, I support this amendment. The grounds which have been advanced in opposition to this amendment are three. Firstly, "these are cases which are tried by honorary magistrates." I quite concede that there are honorary magistrates and honorary magistrates. Some are really capable and some are not, but the offences being of a highly technical nature and as most important points are involved in them, therefore it is not desirable that the adjudication, upon various crucial points, should be left to the discretion of the honorary magistrates. As for instance, there is a book, a religious book. The case has been sent to the honorary magistrate, and in consequence of not sufficient experience and

not having been a trained lawyer he gives a decision which is wrong. Do you know what will be the consequences? It will cause a stir. I think the Government Benches will accept this amendment which commends itself. Section 426 penalizes mischief,—it is extremely difficult to define what is mischief and what is not. Will the Government Benches be in favour of this provision under debate. I should say at once that it will hardly be right. Take the case of section 441. Section 447 is dependent on the definition given in section 441 of the Indian Penal Code which is somewhat difficult. There are such factors and points involved in that very definition that it is difficult to understand and follow the nicety of law in a very short time which the summary trial will allow. I need not go into other grounds of opposition with a view to save time. The suggestion is that summary trial should not be extended to the sections under discussion. I commend this amendment to the Government Benches. I think they will have no objection to the acceptance thereof.

The motion was negatived.

Clause 73 was added to the Bill.

Mr. President: Clause 74. Dr. Gour.

Dr. H. S. Gour: I have an assurance, Sir, from Sir Henry Moncrieff Smith that all these consequential changes* will be considered and made at the conclusion of the debate in this House.

There is no Chief Court in Lower Burma and I take it that it will be taken due note of as a consequential amendment.

Sir Henry Moncrieff Smith: It will not be a consequential amendment in this Bill. The matter is being provided for in another Bill.

Clause 74 was added to the Bill.

Clause 75 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That in clause 76, sub-clause (i) after the word and figures 'Chapter XVIII' the words 'and cross-examined by him' be inserted."

Section 288 of the existing Code provides that the evidence of a witness duly taken in the presence of the accused may in the discretion of the presiding judge before whom such witness is produced and examined be treated as evidence in the case. Sir, what I beg to propose is that the mere fact that the statement has been taken down by the committing Magistrate in the presence of the accused should not be deemed to be such evidence as may be admissible in the Sessions Court under section 288 but where the witness has been examined in the presence of the accused and the accused had a chance of cross-examining him or an opportunity of cross-examining him or had cross-examined him in such a case only such a statement may be admissible in the Sessions Court, otherwise not. It may happen, Sir, that in the Sessions Court the witness was cross-examined by the accused while he was not cross-examined in the committing Magistrate's Court and the statement which he had given before the committing Magistrata was not broken down in the cross-examination as

* Amendment No. 229 in List of Amendments:

"To clause 74 add the following:

'and in the same section omit the words 'and includes the Chief Court of Lower Burma'."

[Mr. K. B. L. Agnihotri.]

it happened in the Sessions Court. It will be perfectly justifiable for the Sessions Judge to include that evidence of the committing Magistrate's Court into this Sessions Court and to convict the accused on that evidence. I think this is not a good provision and therefore in order to safeguard the interests of the accused it is better that such a statement should be made admissible in the Sessions Court wherein the accused had a right or an opportunity or has cross-examined that witness. Otherwise not. With this view I beg to move the amendment.

Sir Henry Moncrieff Smith: I should like to read to the House section 238 as it would stand as amended by Mr. Agnihotri:

"The evidence of a witness duly recorded in the presence of the accused under Chapter XVIII and cross-examined by him may in the discretion of the presiding judge be treated as evidence."

I do not know whether it is the evidence which is to be cross-examined or the accused or Chapter XVIII. The word 'cross-examined' might apply to any of those. The substantive to which the words will not apply is 'witness.' Therefore the drafting of my friend's amendment is really hopeless. I think my friend has also overlooked that this is a provision that enables the evidence taken by the committing Magistrate to be taken as evidence in the Sessions Court only after the witness has been examined and cross-examined in the Sessions Court. That is a sufficient safeguard in this case. It would be entirely unreasonable, as my friend suggests, to lay down that unless the witness was cross-examined in the Magistrate's Court it would be impossible to use his evidence in the Sessions Court. It would enable the defence to obstruct, boycott the prosecution altogether. They would be given an opportunity of cross-examining in the Magistrate's Court, and as a matter of fact, Sir, I understand that it is a very common thing for the defence to reserve their cross-examination till they come to the Sessions Court. In every such case, Sir, it would be impossible to treat that evidence, use that evidence, as evidence in the Sessions Court even though the witness might be a purely formal one, a purely technical one.

Mr. President: The question is that that amendment be made.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 7th February, 1923.

LEGISLATIVE ASSEMBLY.

Wednesday, 7th February, 1923.

The Assembly met in the Assembly Chamber at Twelve of the Clock. Mr. President was in the Chair.

GOVERNOR GENERAL'S ASSENT TO BILLS.

Mr. President: I have to acquaint the Assembly that His Excellency the Governor General has been pleased to give his assent to the following Act:

The Criminal Tribes (Amendment) Act, 1923.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now proceed to the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

Rao Bahadur P. V. Srinivasa Rao (Guntur *cum* Nellore: Non-Muhamadan Rural): Sir, as a result of the formal conference we have had and the agreement we have come to, I request your permission for moving, in place of the amendment which stands in my name, another amendment with some modifications. That amendment runs thus:

"That in clause 77, sub-clause (a), before the word 'evidence' the word 'oral' be inserted.

And for the proviso the following be substituted, namely,

'or (c) with the permission of the Court when any document which does not need to be proved is produced by any accused person after he enters on his defence:

Provided that in the case referred to in clause (c) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced."

Sir, the principle involved is that the accused should have a right of reply in all cases tried in a Court of Sessions or a High Court. This principle has been recognized by the Lowndes Committee and also by the Joint Committee. This amendment goes a great way in giving the accused a right of reply. I therefore hope that the amendment will commend itself to this House.

Mr. President: The amendment moved is:

"That in clause 77, sub-clause (a) before the word 'evidence' the word 'oral' be inserted."

Mr. H. Tonkinson (Home Department: Nominated Official): I accept that amendment.

The amendment was adopted.

Mr. President: The further amendment moved is :

" And for the proviso the following be substituted, namely,

' or (c) with the permission of the Court when any document which does not need to be proved is produced by any accused person after he enters on his defence :

Provided that in the case referred to in clause (c) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced."

Mr. H. Tonkinson: I accept that amendment.

The amendment was adopted.

Mr. President: The question is that clause 77, as amended, stand part of the Bill.

The motion was adopted.

Clauses 78, 79 and 80 were added to the Bill.

Clause 81 was added to the Bill.

Clauses 82, 83 and 84 were added to the Bill.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions : Non-Muhammadian) : Sir, I beg to move :

" That in clause 85, sub-clause (1) omit the figures ' 211 '."

Mr. H. Tonkinson: Sir, I understood that my Honourable friend was not going to move the amendment in this form. We are prepared to accept an amendment on the following lines :

" That in clause 85, in the proposed new sub-section (i), after the words ' ten years ' the following be inserted, namely, ' or any offence punishable under section 211 of the Indian Penal Code with imprisonment which may extend to seven years ' ; and further that the figures ' 211 ' be omitted."

The reason for this, Sir, is that under section 211 there are three classes of courts which may try offences

Mr. K. B. L. Agnihotri: I accept the amendment suggested by the Honourable Mr. Tonkinson.

Mr. President: The amendment moved is :

" That in clause 85, sub-clause (i) omit the figures ' 211 '."

A further amendment to the amendment moved is :

" That in clause 85, in the proposed new sub-section (1), after the words ' ten years ' the following be inserted, namely, ' or any offence punishable under section 211 of the Indian Penal Code with imprisonment which may extend to seven years ' ; and further, that the figures ' 211 ' be omitted."

The question is :

" That the original amendment be amended by that addition."

The motion was adopted.

Mr. President: The question is that that amendment be made.

The motion was adopted.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban): Sir, my amendment has been altered slightly. In place of the amendment on the printed sheet, I move:

"That in clause 85, to proposed new sub-section the following be added:

'And shall on application made by the accused furnish him with a copy of such record:

Provided that the accused shall pay for the same unless the Magistrate for some special reasons thinks fit to furnish it free of cost."

Mr. President: The question is that that amendment be made.

The motion was adopted.

Clause 85, as amended, was added to the Bill.

Clause 86 was added to the Bill.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan): Sir, in place of the printed amendment, I beg to move the following:

"That in clause 86-A in the proposed new section 339-A, for the words 'to whom a pardon has been tendered', the words 'who has accepted a tender of pardon' be substituted."

The motion was adopted.

Dr. H. S. Gour: Sir, in place of the printed amendment, I beg to move the following:

"That in clause 86-A, for sub-section (2) of the proposed new section 339-A, the following be substituted:

'(2) If the accused does so plead the Court shall record the plea and proceed with the trial, and the jury or the Court, with the aid of the Assessors or the Magistrate as the case may be, shall before judgment is passed in the case find whether or not the accused has complied with the conditions of the pardon, and if it is found that he has so complied the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal."

The motion was adopted.

Clause 86-A, as amended, was added to the Bill.

Bhai Man Singh (East Punjab : Sikh): I move, Sir:

"That in clause 87 in sub-section (2) of section 340 before the word and figure 'Chapter X' the word and figures 'Chapter VIII' be inserted."

The object of my amendment, Sir, is that any person against whom proceedings are taken under Chapter VIII of this Code may be a good witness who should be examined on oath in those proceedings. As you will see, Chapter VIII, sections 107, 108, 110 and so forth, concern the proceedings for maintaining good behaviour and for keeping the peace, etc. After all, as we have seen, they don't consist of offences themselves but mostly consist of quite other things. The man might be asked not to commit a breach of the peace. The man might be asked to furnish security for giving seditious lectures. Or the man might be bound down because he had sought to be obnoxious, or his speeches might be so dangerous that anybody would pick a quarrel with him and there might be a breach of the peace and so forth. There is absolutely no reason why that person should not have the chance of appearing as soon as the statement is made and giving his own statement on oath as a witness. I hope in these circumstances that my amendment will be accepted.

Dr. H. S. Gour: Sir, it will be obvious to the House that I am in evident sympathy with my friend Bhai Man Singh's amendment when I have given notice of an amendment much wider in terms. The object of the Honourable Mover of this amendment is to allow the person against whom proceedings have been instituted for being of good behaviour or for keeping the peace to give evidence in his own behalf. In England, by a recent Statute, the accused is now empowered to give evidence on his own behalf, and I intended to extend the provisions of the English Statute to certain offences under the Indian Penal Code. However, on maturer consideration I do not propose to move my amendment; but I think there is a great difference between offences under the Indian Penal Code and proceedings under the Code of Criminal Procedure. Honourable Members will find that this Chapter VIII is a part of Part IV of the Code of Criminal Procedure which is headed "Prevention of Offences." Consequently all proceedings under Chapter VIII are of a preventive character. They may be regarded as of a quasi-criminal character, and I think the rule which obtains in England might well be tried in this country by enabling the non-applicant in all cases of security for peace and good behaviour to be able to give evidence on his own behalf. He will not be compelled to do so. It is purely permissive and optional. If he desires to explain a point which has been proved against him by the Prosecution there is no reason why he may not give evidence on his own behalf. He will no doubt be subject to cross-examination. As Honourable Members are aware, all accused under the present law are entitled to make a statement, and as a matter of fact they have to make statements in answer to questions put by the Court, and all that the present Code provides is that such statements shall be considered by the Court. But they have not quite the same value, evidential value, as the sole statement of the accused who has explained away the points that have been proved against him by the prosecution and who has submitted himself to the cross-examination of the prosecuting counsel. I submit that this procedure in England has been successful, and I do not see why in all cases of this character the accused should not be at liberty to give evidence if he is so minded. I therefore support the amendment.

The Honourable Sir Malcolm Halley (Home Member): Sir, I am quite prepared to admit that there is a difference between the action taken under the Indian Penal Code and the action taken under our present section; but I will put it to the House that if we are to embark on a procedure which gives the accused the right of giving evidence on his own behalf we ought to treat the question as a whole. The question is one which has had a long history behind it in England; it has a history of considerable controversy behind it in India also. I need not go into the history of the English case; those who have read the proceedings which led to the passing of the English Act will realise how strong were the differences of opinion on the subject. When it has been discussed in India there have been equally strong differences of opinion. Generally speaking, the Indian Bar, when we previously circulated the matter for opinion, as a whole was against it. Obviously in a country where an accused person cannot always afford to obtain first class advice, he is in a very dangerous position if he is exposed to cross-examination on any statement that he may make in his defence. So far we have admitted the accused to give evidence in his own behalf only in regard to cases arising out of those sections of the Criminal Procedure Code which I may describe as of a semi-civil character—Chapters X, XI, XII, XXXVI, the last of course being that which refers to the

maintenance of wives and children, and I think that before we go beyond this distinct category of semi-civil cases and give that right in criminal cases, pure and simple, for there is no doubt that section 110 for instance partakes of that character, we ought to reconsider the question as a whole. It is for that reason that, though I admit there is substance in the points put forward by Bhai Man Singh and Dr. Gour, I think we should be well advised not to follow their proposal, but to leave the whole question over for consideration anew, when public opinion and the Courts have come to some more clearly defined views as to the advisability of admitting the accused to give evidence on his own behalf.

Rao Bahadur T. Rangachariar: Sir, the Honourable the Home Member admits it is a case needing inquiry. How is this inquiry to be made? You must begin somewhere and make an experiment and see how it works before we can come to a conclusion on a matter of this sort. These proceedings against persons calling upon them to furnish security either for keeping the peace or for good behaviour are evidently fit cases where the persons are in the position of quasi-accused; they are not really accused of offences, but they are suspected as persons likely to commit offences. Therefore in such cases there are very many instances to my mind where this procedure will be very apt. In calling upon persons, especially educated persons to give security for keeping the peace as has been frequently done in the last two or three years when politicians have been called upon to give security for keeping the peace, I think it is but right that they should be allowed to give evidence in their own behalf to explain what they are doing, explain the meaning of words which they have uttered or which they are about to utter. I do not think any risk is run by allowing them to go into the box if they so like. No doubt it is a risk—I quite appreciate it—no doubt ignorant persons who are called upon to give security will run a risk, but I take it we can prevent it by giving discretion to the Magistrate. If the Honourable the Home Member would admit it, I would with your permission add the words “wherever the court so permits” or some such words so as to safeguard it further. Not only it is the option of the accused, but also in order to protect ignorant persons from being harassed by cross-examination I would suggest ‘with the permission of the court.’ That will be an additional safeguard in order to prevent miscarriages of justice. Now, the Code permits a court to put questions to accused persons under trial for explaining circumstances which appear in evidence against them. I know, Sir, that the power is judicially exercised; it has often been of great use in enabling courts to get at the truth of a case. Honourable Members, if they have read the report of the Racial Distinctions Committee, will have noticed Mr. Carey’s minute there. Mr. Carey makes it a point that accused persons where, for instance, they are in distant plantations where the occurrence takes place known only to the accused and the person injured, they ask for a right that the accused should go into the box. Mr. Carey insists on it in his minute, so that it is apparently a privilege valued by Englishmen, a privilege which has been on trial in England for some time and while Dr. Gour is quite right in giving up his amendment and not extending it to all accused persons, yet I think, Sir, we will not be making any very dangerous experiment by allowing it in this case. The law now proposed allows it in certain other chapters of the Code, such as inquiry into urgent cases under sections 144 and 145 and inquiry into maintenance cases—in such cases also the persons against whom proceedings are taken stand in an analogous position as in this case under chapter VIII. Perhaps if there is serious objection

[Rao Bahadur T. Rangachariar.]

to this, then, Sir, why not limit it to cases where a person is called upon to give security for keeping the peace, instead of extending it to persons who are called upon to give security for good behaviour? Probably cases where persons are asked to give security for good behaviour may be said to be more serious cases, because habitual offenders and other cases might come in there. Therefore I think if not the whole of Chapter VIII at least the first portion of it—cases coming under section 107—may be taken; that is persons called upon to give security for keeping the peace under section 107 may be given the option. If the Honourable the Home Member accepts it I will propose it as an amendment—proceedings under section 107 instead of Chapter VIII. I think, Sir, a beginning should be made, and I hope, Sir, the Honourable the Home Member will see his way to accept my suggestion; and I propose, Sir, formally to substitute the words "proceedings under section 107" for the words "Chapter VIII."

The Honourable Sir Malcolm Hailey: I am quite prepared, Sir, to agree to section 107 being substituted.

The amendment to the amendment was adopted.

The original amendment, as amended, was adopted.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): I move, Sir:

"That in clause 87, in sub-section (2) of the proposed new section 340, for the words 'if he so desires, be examined' the words 'offer himself' be substituted."

That section runs as follows:

"Any person against whom proceedings are instituted in any such Court under Chapter X, Chapter XI, Chapter XII, or Chapter XXXVI, or under section 552 may, if he so desires, be examined as a witness in such proceedings."

If my amendment is carried out it will read "Any person against whom may offer himself as a witness in such proceedings." I believe, Sir, that this amendment of mine improves the wording of the section, if I may say so without egotism, and I hope the Honourable the Home Member will accept it.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): I agree to this amendment.

The amendment was adopted.

Clause 87, as amended, was added to the Bill.

Mr. K. Ahmed (Rajshahi Division: Non-Muhammadan Rural): Sir, I move:

"That after clause 87 insert the following clause"

Sir Henry Moncrieff Smith: Sir, before the Honourable Member moves his amendment, I want to ask your ruling as to whether it is within the scope of the Bill. The Honourable Member proposes to amend section 342 which is not in the Bill, and never has been in the Bill.

Mr. President: Does the Honourable Member agree with that statement of fact?

Mr. K. Ahmed: Sir, it is admitted by all

Mr. President: Order, order. Before the Honourable Member proceeds to discuss the merits of his amendment, I should like an answer to my question.

Mr. K. Ahmed: The answer is in the negative, Sir.

Mr. President: Objection by the Honourable Sir Henry Moncrieff Smith is upheld.

Mr. K. B. L. Agnihotri: Sir:

"In clause 88 sub-clause (i) after the word 'substituted' insert the following:

'and in the table in the said sub-section, the following amendment shall be made.'

After entry relating to 'Criminal Intimidation' add the following entries:

Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the Act was committed."
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Mr. President: I have not been able to follow the Honourable Member. I don't know which portion he proposes to omit.

Mr. K. B. L. Agnihotri: I want to omit the sub-clauses (a) to (f) and start with (g) only.

Mr. President: Amendment moved:

"That in clause 88, sub-clause (i) after the word 'substituted' insert the following:

'and in the table in the said sub-section, the following amendment shall be made':

'After entry relating to 'criminal intimidation', add the following entries:

Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the act was committed."
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Is that what the Honourable Member wants?

Mr. K. B. L. Agnihotri: Yes, Sir, only that portion.

Mr. President: The question is that that amendment be made.

The motion was adopted.

Mr. President: Then the Honourable Member does not move the rest of his amendment?

Mr. K. B. L. Agnihotri: Sub-clause (ii) will come in, Sir:

"In this clause in the proposed table in sub-section (2) of section 345, the following amendment be made.

"Insert in their proper places the following entries:

Criminal misappropriation of property.	403	Owner of property which was misappropriated."
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Mr. President: Further amendment moved:

"In sub-clause (ii) in the proposed table in sub-section (2) of section 345 make the following amendments:

"(b) Insert in their proper places the following entries:

Criminal misappropriation of property.	403	Owner of property which was misappropriated."
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Sir Henry Moncrieff Smith: Sir, we are prepared to accept this amendment if the Honourable Member on his part will accept the substitution of the word "dishonest" for the word "criminal," so that it will read "dishonest misappropriation" instead of "criminal misappropriation." That is the proper description of the offence.

Mr. K. B. L. Agnihotri: I accept it, Sir.

Mr. President: Amendment moved:

"In the proposed amendment to substitute the word 'dishonest' for the word 'criminal'."

The question is that that amendment be made.

The motion was adopted.

The question is that the amendment, as amended, be adopted.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I now come to the other amendment, namely, criminal breach of trust in respect of property not belonging to the State which is in sub-section (2) (c). This amendment relates to the section of the Penal Code which deals with criminal breach of trust in respect of property. My object in moving for the inclusion of this section under this provision of the Code is that in such cases also the accused and the complainant should be permitted to compound the offence. There may be cases, in which several parties may be aggrieved, the whole public or a number of persons or bodies besides the complainant, be concerned, and in such cases the composition of such offences would be undesirable and objectionable. But this has been safeguarded by putting section 406 in the second sub-section of section 345 which enables the compounding of offences with the permission of the Court only. Were the Court of opinion that permission in such a case should not be given, then it could stop compounding of the offence and there will be no hampering of justice. I would propose therefore that this amendment be accepted. I will just put before the House a case to show how harmful would be the omission of this offence from the list of the compoundable sections sometimes. In one case a lady and her husband's brother were sitting together. Her husband's brother asked the lady for the loan of her wedding ring for a day or two, the request was acceded to by the lady. Thereafter the man went to college and did not return the ring. In the meantime the husband and wife fell out and the wife started proceedings for judicial separation. The brother returned the ring to the husband and declined to return it to the lady, and she in her annoyance filed a complaint against him under section 406 for criminal breach of trust. After the case was filed, the friends and pleaders on both sides thought that the husband and wife should amicably be brought together and reconciled, but this could not be possible unless the case was withdrawn or compounded which was absolutely impossible under the present law. The lady had to take shelter behind a subterfuge that she had no witnesses to offer, and absented herself from the case and the court was kind enough to stop the proceedings. But if the Court had thought otherwise, it could have proceeded with the case and the relations between husband and wife would have been further estranged. Therefore, I submit, that there are also cases in which only individual persons are concerned and in such case there will be great hardship, if we do not insert such a provision but where the accused is one of a bad character, a scoundrel, or has been in the habit of committing breaches of trust, or where there are many persons aggrieved, then certainly he should not get the benefit of this section, and that could be done by vesting the Court with the power to allow the composition of the offence only when it thought desirable.

Mr. President: Amendment moved:

"In the proposed table in sub-section (2) of section 345 make the following amendments:

"(b) Insert in their proper places the following entries:

Criminal breach of trust in respect of property not belonging to the State.	406	Owner of property in respect of which the offence was committed."
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Dr. H. S. Gour: Sir, I have the misfortune to oppose this amendment. The Honourable Member has given an illustration by no means an apt one, and I think if my Honourable friend assumed in the case which he cited that it was a case in which the accused had committed a criminal breach of trust, he is under a wrong impression. If my friend will only turn to the definition of "Criminal breach of trust" in section 405, he will find that the foundation of the offence lies in dishonesty. There must be a breach of trust and there must be dishonesty. In that case there was no dishonesty.

Now, Sir, cases of breach of trust are of a most serious character, and my friend himself admits in omitting to make the rest of the cases compoundable under sections 408 and 409 that all cases of criminal breach of trust are not fit to be compounded. What reason has he then given for making a case under section 406 compoundable? Honourable Members will find that an offence under section 406 is not bailable and if it is made compoundable it will set a premium on blackmail. A man will complain against a person who is immediately arrested and sent to jail and for the purpose of extricating himself out of jail he will open negotiations with the complainant, pay him the money and get out of the clutches of the law. There is no harm done, so far as the complainant is concerned, because he has compounded with the accused, but let us look at the question from another point of view. I employ a porter at the railway station and ask him to carry my baggage to a carriage standing outside. He walks off with it. That is criminal breach of trust. He comes to me and says he will pay me a certain amount of money and I should let him go. Out of misapplied kindness I let him go. I confirm him as a habitual station thief. He goes about as passengers' nought from the train, he keeps on committing offences of a similar character, and becomes a licensed thief at the railway station and keeps on swindling people by hundreds, it may be by thousands. Does my Honourable friend think that an offence of such an egregious character should be allowed to be compounded at the instance of the complainant? I give other cases. A person is entrusted with a sum of money. It is his duty to take it to the Bank. Instead of taking it to the Bank, he decamps with it. That is criminal breach of trust. I lay him by the heels. He then asks me to forgive him. I forgive him. He goes again and gets employment with other people and, knowing that the offence is compoundable and he can always purchase his liberty, he keeps on swindling other people. I have been very fortunate in catching him. There may be other people less fortunate and he may decamp with their money. A person who is guilty of such atrocious crimes should, I submit, be not permitted to go free at the instance of a private complainant. He is a danger to society and to the public. Honourable Members will also see that the offence of criminal breach of trust is little, if at all, distinguishable from the general offences of theft and cheating. They all belong to the same genus, and my friend has not suggested—in fact it has never been suggested here—that the offence of cheating or of theft should

[Dr. H. S. Gour.]

be compounded. (Mr. K. B. L. Agnihotri: "It is already provided by the Government.") The offence of theft certainly has not been provided for and if they have provided for the offence of cheating they have done so in spite of our protest. But whatever may be the question, we have to deal with the specific case of criminal breach of trust and I submit that he is not an offender against the individual but an offender against the public justice. He is an offender against society and therefore I submit he should not be permitted to be freed at the instance of the complainant. I therefore oppose this amendment.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadian Rural): Sir, this question of compounding an offence may be stated simply in this form. For instance, in breach of trust, the complicated case is of a clerk or a cashier who is entrusted with money and is found not to account for the sum entrusted to him. Then a prosecution is lodged. Proof of the embezzlement is not always easy when it has occurred over a period of time. Oftentimes, owing to the difficulties of proof, men get off. Sometimes, the prosecution itself, i.e., the complainant finds it is very difficult to pursue the case and he tells the Court: "I am not in a position to prove it." That is one form in which an offence like this is allowed to be dropped. Now, whatever may be the heinousness of it, this is a case between two persons and the proof of the offence is within the knowledge and within the control of the complainant. As the law at present stands, the Court has to depend for the proof of the offence on the complainant and if the complainant does not choose to prosecute the case vigorously, then the case must fail because there is no intervention of the police, there is no intervention of a public officer in the prosecution in such cases. Now, that is the position which I think every businessman will understand. Now, in such a case, if the parties have come to some kind of understanding, that is a restoration has been made or the accounts have been settled or, through the interference of other people, what the complainant does is he goes to Court and tells the Magistrate: "Well, I cannot prove it. No doubt I believe the man is guilty but I have not sufficient proof." The Court cannot take up the case from that point. It is not in a position to pursue the case. Now, in cases where there is this settlement between the complainant and the accused, what happens is that this form, which probably everyone in the Court knows is practically compounding of a non-compoundable offence, is going on. Now, instead of allowing people to do this thing in an indirect and secret fashion, what the amendment suggested by my friend, Mr. Agnihotri, seeks to do is, with the permission of the Court, to allow the parties to compound. Now, I don't see any difference between the two. This one is what happens in practice when it is a case between party and party the other is with the permission of the Court to allow the case to be compounded. And therefore the argument of my friend, Dr. Gour, does not apply. If the prosecution is started by the police or by a third party, that is a public body or the State, then it is a different thing. But all that the amendment seeks to establish is that what is done now secretly and *sub rosa* should be expressly set down, and that, with the consent of the parties and with the permission of the Court, the case should be dropped. Therefore, there is a great deal to be said in support of the amendment which my friend, Mr. Agnihotri, has moved. ■

Sir Henry Moncrieff Smith: Sir, I oppose the amendment very much on the same ground as those already adduced to the House by my friend, Dr. Gour. The real criterion in these cases, in deciding whether an offence should be compoundable or should not, is this: "Is the offence one that affects two persons only? Does it just affect the complainant and the accused or may the effect of the offence go beyond that?" As Dr. Gour suggested, if there is any chance of an offender being a public danger, then in the case of that particular offence there should be no question of composition. I should just like to refer the House to two of the illustrations in the Penal Code under section 405: A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A. A dishonestly sells the goods. Now, that is a matter between A and Z. But the warehouse-keeper has other goods than Z's. Suppose the warehouse-keeper is able to appropriate the goods for his own use and then, by handing back the value of the goods to Z, is allowed to go scot-free. There is a public danger in that, he may do it again and there is no guarantee that he will not do it a second time. Another illustration, Sir. "A, a revenue officer, is entrusted with public money, which he is required to pay into a treasury"

Dr. Nand Lal (West Punjab: Non-Muhammadan): Section 406 will not be applicable to that case.

Sir Henry Moncrieff Smith: May I read the illustration from the Code? "A, a revenue officer, is entrusted with public money and he is either directed by the law or bound by a contract"

Dr. Nand Lal: May I point out, Sir, that you are reading the illustrations under section 405 which gives the definition?

Sir Henry Moncrieff Smith: Where else am I to get the illustrations but in this section?

Mr. K. B. L. Agnihotri: Under section 405 which defines Criminal Breach of Trust, but the illustrations cover cases under sections 407, 408 and 409.

Sir Henry Moncrieff Smith: I see that the Honourable Member has doubts about it. The point really is that a person who commits criminal breach of trust is a danger to the public. I think there can be no question about it. It is not just a matter between the man who loses his property and the criminal who takes it, and in such cases I feel perfectly convinced that there should be no chance of composition.

Dr. Nand Lal: Sir, I most heartily support this amendment and it is no less than a wonder to me that an able lawyer like Dr. Gour has opposed it. Sir, the complainants, who go to court with their complaint under section 406, as a matter of fact, go to court, in some cases, with a view to extort money from their clients, customers or dealers, and therefore the criminal machinery in those cases is abused. The dispute is of a civil character and that civil character is wrongly and unlawfully twisted into a criminal case. My learned friend, Dr. Gour, says that it affects the community and it will give rise to blackmailing. I cannot understand how it would. Supposing A gives two or three clothes to his washerman to wash, but unfortunately the washerman uses those clothes for himself or his children use them, though eventually he returns them. According to the definition as given in section 405, he will come within the clutches of the law and section 406 will be applicable. I ask Dr. Gour what sort of dishonesty has been committed in that action? According to the definition of dishonesty, which means wrongful loss to one person and wrongful gain to

[Dr. Nand Lal.]

another, there is no dishonesty in this case. And yet, that washerman may be prosecuted and most probably he may be convicted of having committed an offence under section 406, because he has used those clothes against the term of his contract. The provision of section 405, Sir, you will be pleased to see, runs as follows, and section 406 is dependent on section 405 :

"Whoever being in any manner entrusted with property"—the washerman is entrusted with property—"or with any dominion over property"—he has got dominion over property . . . —it cannot be denied—that he converted to his own use that property," because he has used those clothes or he has allowed his children to wear them. Taking the technicality of the law he will be considered guilty. Will Dr. Gour countenance this view that there should be so many criminal cases, and that for ordinary things criminal complaints should be lodged? Therefore, the amendment suggests that, in such cases, the complainant, who is the owner of those clothes, and who unfortunately went to court, should be able to say that he will compound it or compromise it. There is no harm done by his doing so. The community does not suffer at all. I cannot understand in what way the community suffers. This is a kind of contract between the complainant and the accused, that is, between the owner of the clothes and the washerman. Then, Sir, section 405 goes on:

"or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged."

Now, Sir, suppose A has been asked to go to the bazar and purchase a pair of shoes. Well, unfortunately, he uses for his own purpose the money which was given to him. The next day he borrows money from his friend and purchases the pair of shoes as was ordered or desired by his friend or relation or associate. Then, that friend or associate who gave money to him may say "why are you so late?" And he replies "unfortunately I spent the money which you gave me". He will be within the clutches of the law, because he has not acted according to the directions given by the man who had entrusted the property, that is the money, to him.

The Honourable Sir Malcolm Hailey: Read Explanation 1.

Dr. Nand Lal: I have read that. He will be within the clutches of the law.

The Honourable Sir Malcolm Hailey: Read it to the House.

Dr. Nand Lal: He has used that money for himself, so far as the wording of this definition goes. Has he not used it, Sir? Rs. 5 were given to him, as I have already submitted, to purchase a pair of shoes. He did not spend that money in buying shoes but utilised it for his own use. Technically, taking the letter of the law, he comes within the clutches of section 406 and he may be prosecuted and convicted for that. Then my learned friend, Dr. Gour, says, it will give rise to blackmailing. I cannot understand that. Rather it will be a weapon in the hands of those dishonest creditors, those dishonest dealers who will force other people to be dragged to the criminal courts instead of suing them in the civil court. Supposing there is a contract between A and B to make a chair within two days. Unfortunately, he fails to act up to it and therefore he is unable to execute the contract. According to this definition he will be within the clutches of law, because he has not acted in accordance with the terms of the contract. Contracts and engagements should not be considered a subject matter for

determination or decision in criminal Courts. That is why the Magistracy are crying that so many civil cases are given the garb of criminal complaints and the Courts are flooded with cases. My learned friend, Dr. Gour, says "Supposing you have entrusted property to a coolie to carry" I may tell him that section 406 will not be applicable to that case. It is section 407 which will apply. If anything is handed over to a carrier, he may carry the thing from Delhi to Lahore or from Delhi town to the Railway station. He will be called a carrier. Further, I may point out to my learned friend that section 406 will not, as I submitted before, apply.

Dr. H. S. Gour: A porter is not a carrier.

Dr. Nand Lal: A porter is not a carrier?

Dr. H. S. Gour: Of course not.

Dr. Nand Lal: What is he then? He is not a repository.

Dr. H. S. Gour: He is a porter.

Dr. Nand Lal: Then, Sir, Sir Henry Moncrieff Smith says, supposing money is entrusted to a revenue officer, then also, I may submit, section 406 is not applicable. That is quite a different offence. If a public servant criminally misappropriates money, he will be tried under a separate section. If a clerk or a servant in a company or office commits criminal misappropriation as such, he will be tried under section 408 or 409, but not under section 406. Section 406 is of a very mild character. It relates to the transactions which we find every day in life. (*Dr. H. S. Gour:* "It is non-compoundable, and three years imprisonment.") There are a number of offences which are non-compoundable, no doubt about that. The illustrations which have been given from the Government Benches are not of sufficient force, so far as the present debate goes. Therefore, in brief, I submit that this amendment which commends itself should be accepted, unless the Government Benches wish that all civil suits and civil contracts should be given the garb of criminal cases.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): I move that the question be put.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): I entirely agree with Sir Henry Moncrieff Smith that you should not allow offences to be compounded with which only the complainant is not concerned but the public at large is concerned. That is a very sound proposition to which I think no objection can be taken. But I am afraid he has not carefully considered the proposition that has been placed before us by Mr. Agnihotri. If you refer to section 407 there you find criminal breach of trust by a carrier. If you refer to section 408 you find criminal breach of trust by a clerk or servant. Again if you go to section 409, you find criminal breach of trust by public servant, or by banker, merchant or agent. The amendment which has been moved by Mr. Agnihotri does not refer to these sections but only refers to section 406. In section 406, then it is obvious that the two persons concerned are the man in respect of whose property a criminal breach of trust has been committed and the man who has committed it. Now, the point is—should the parties be allowed to compound the case? Sir, we find that the clause requires that you can compound it with the permission of the Court. It is not as if these two persons could compound it without giving the Court any chance of deciding whether or not that offence was compoundable. I

[Munshi Iswar Saran.]

submit, if there be any objection to it, it is removed by the provision that this case can be compounded only with the permission of the Court and not without it. It is rather difficult for a humble individual like myself to express any opinion with confidence when two distinguished and learned doctors disagree. We find Dr. Nand Lal on the one side haranguing with his usual force. We find Dr. Gour maintaining his position with equal vehemence. He says, if you allow these cases to be compounded, what is to happen? The man gets into the habit of doing the same thing over and over again. If you refer to clause 88 you find one offence, which can be compounded, is marrying again during the lifetime of husband or wife. Apply Dr. Gour's remarks. If you allow a man to compound that offence, then according to the learned doctor, he gets into the habit of repeating that offence.

Rao Bahadur T. Rangachariar: I wish to point out the grave danger in allowing such cases to be compounded. Take the case of a goldsmith. It is a very common case in almost every village or town. You entrust him with gold or silver for making ornaments and he does work for the public generally, for the village public or the town public. If the man commits a criminal breach of trust and you allow it to be compounded you offer a premium to such dishonest fellows to carry on that trade. Take the case of a tailor. You entrust him with valuable cloth to be converted into clothes. He carries on the trade for the benefit of the public and for his own benefit. If you allow such cases to be compounded, I think you will be running a very grave danger. The safeguard that you do it only with the permission of the Court is an illusory safeguard. The Court is not likely to know of the circumstances or the antecedents of the people. The Court is not omniscient. I think it is allowing too much in the hands of the Court, and the Court has only to dispose of the particular case before it. On the other hand, probably, the Court will be very glad that one case is out of its hands. (A Voice: "No, no.") The Court may say "I am saved the bother of trying this case," or as Mr. Subrahmanayan said, it may be a complicated case requiring investigations. So I think we are running a serious risk in allowing such cases to be compounded.

Mr. President: Clause 88 Amendment moved:

"In the proposed table in sub-section (2) of section 345 insert the following entry:

Criminal breach of trust in respect of property not belonging to the State.	496 Owner of property in respect of which the offence was committed."
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The question is that that amendment be made.

The Assembly then divided as follows:

AYES—26.

Agnihotri, Mr. K. B. L.
 Ahmed, Mr. K.
 Ahsan Khan, Mr. M.
 Asjad-ul-lah, Maulvi Miyan.
 Ayyar, Mr. T. V. Seshagiri.
 Barua, Mr. D. C.
 Bhargava, Pandit J. L.
 Chandhuri, Mr. J.
 Hussanally, Mr. W. M.
 Ikramullah Khan, Raja Mohd.
 Iswar Saran, Munshi.
 Jatkar, Mr. B. H. R.
 Kamat, Mr. B. S.

Lakshmi Narayan Lal, Mr.
 Mahadeo Prasad, Munshi.
 Man Singh, Bhai.
 Misra, Mr. B. N.
 Mukherjee, Mr. J. N.
 Nag, Mr. G. C.
 Nand Lal, Dr.
 Neogy, Mr. K. C.
 Ramji, Mr. Manmohandas.
 Reddi, Mr. M. K.
 Sarvadhikary, Sir Deva Prasad.
 Subrahmanayan, Mr. C. S.
 Venkatapadiraju, Mr. B.

NOES—47.

Abdulla, Mr. S. M.
 Ahmed Baksh, Mr.
 Bagde, Mr. K. G.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Clow, Mr. A. G.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Dalal, Sardar B. A.
 Davies, Mr. R. W.
 Faridooji, Mr. R.
 Ginwala, Mr. P. P.
 Gour, Dr. H. S.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.
 Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.
 Jamnadas Dwarkadas, Mr.

Joshi, Mr. N. M.
 Latthe, Mr. A. B.
 Ley, Mr. A. H.
 Moncrieff Smith, Sir Henry.
 Muhammad Hussain, Mr. T.
 Muhammad Ismail, Mr. S.
 Percival, Mr. P. E.
 Pyari Lal, Mr.
 Ramayya Pantulu, Mr. J.
 Rangachariar, Mr. T.
 Samarth, Mr. N. M.
 Sarfaraz Hussain Khan, Mr.
 Sassoon, Capt. E. V.
 Singh, Mr. S. N.
 Sinha, Babu L. P.
 Spence, Mr. R. A.
 Srinivasa Rao, Mr. P. V.
 Tonkinson, Mr. H.
 Townsend, Mr. C. A. H.
 Tulshan, Mr. Sheopershad.
 Webb, Sir Montagu.
 Willson, Mr. W. S. J.
 Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. J. Ramayya Pantulu: I move the following amendment:

"In clause 88, subclause (ii) in the table in proposed new sub-section (2) of section 345 omit all the entries relating to the offences of (1) Cheating, (2) Cheating a person whose interest the offender was bound by law or by legal contract to protect, (3) Cheating by personation, (4) Cheating and dishonestly ~~including~~ delivery of property or the making alteration or destruction of a valuable security, and (5) Marrying again during the lifetime of a husband or wife."

These offences which I want to omit are offences punishable under sections 417, 418, 419, 420 and 494 of the Indian Penal Code. These are not compoundable at present under the existing law but they are made compoundable with the permission of the court, in the Bill. My proposal is that they should not be made compoundable even with the permission of the Court. Taking the cases of cheating first, they constitute a very serious batch of offences. No doubt, the persons immediately affected are particular individuals and every offence, in the first instance, is a tort, but it is more than a tort. The crime affects not merely the individual but also society at large. It is an offence against society. Therefore a man who commits the offence offends not only against a particular individual but also against society and society has a right to be protected against criminals. Therefore, to make an offence compoundable really amounts to this. You settle the dispute between the criminal and the person who is immediately affected by the crime but the society at large which is also offended against by the commission of the crime is left unprotected and that is the reason why the more serious offences are not made compoundable, because it is not only the party who is immediately affected by the crime that is involved but also the society at large. There is another aspect of this case. The complainant in these cases may not always be the person who is cheated, because the law does not require that the complaint should be made by the person cheated. Suppose the prosecution is conducted by the police and behind the back of the police the accused goes and compounds the offence with the man who is cheated. The prosecutor may know nothing about it. I think that is a very undesirable state

[Mr. J. Ramayya Pantulu.]

of things. The police prosecute a man for the commission of an offence and the offence is compounded without the knowledge of the police. I think, Sir, that there is a great danger in allowing such offences to be compounded. Again, take the case of bigamy, marrying again during the lifetime of a husband or wife. It is an offence against public morality. I do not think such offences should be allowed to be compounded even with the permission of the court. Some of my friends may say, 'You have got the guarantee of proper discretion being used by the Magistrate in refusing to allow the offence to be compounded.' Well, most of these cases come in the first instance before the Magistrates and during all these days we have been trying our very best to show that the Magistrates cannot be trusted to use their discretion properly. That is the game which we have been playing. We now want to believe that these Magistrates will use their discretion properly. Is it not likely, as has been pointed out by Mr. Rangachariar that there may be some Magistrates who would be anxious to get these cases compounded, so that they may not have any more trouble with these cases? We hear of Civil Judges, District Munsifs and Sub-Judges who bring pressure to bear on the parties to compound their cases, and when a party does not want to come to terms, well, generally he is supposed to labour under a disadvantage to that extent. And so it is not at all unlikely that there may be Magistrates who wish to get rid of their cases, who wish to show a clean sheet at the end of the quarter or at the end of the year, and to show all these cases as disposed of. I for one, Sir, would not trust even a Judge to exercise his discretion in allowing such very serious cases to be compounded. I would not give power even to a Sessions Judge to allow these cases to be compounded. I well remember, Sir, a case of cheating in which no less a person than my Honourable friend, Mr. Seshagiri Ayyar, was a victim. There was a man, Sir, who appeared under a false name and cheated my friend, Mr. Seshagiri Ayyar, and not only he but a number of other prominent gentlemen in Madras were cheated by that man. I had the satisfaction of sending that man to jail. Would Mr. Seshagiri Ayyar allow that man to be let loose on society? I think, therefore, in all the circumstances, these offences should not be allowed to be compounded either with or without the permission of the Court.

Mr. President: Amendment moved:

"In clause 88, sub-clause (ii) in the table in proposed new sub-section (2) of section 345 omit all the entries relating to the offences of—(1) Cheating, (2) Cheating a person whose interest the offender was bound by law or by legal contract to protect, (3) Cheating by personation, and (4) Cheating and dishonestly inducing delivery of property or the making alteration or destruction of a valuable security."

The question is that that amendment be made.

Mr. K. B. L. Agnihotri: Sir, I rise to oppose the amendment moved by the Honourable Mr. Pantulu. He has given certain reasons for moving the amendment. One of them is, how would you allow cases prosecuted by the police to be compounded behind their back? If my Honourable friend had taken the trouble of going through the whole of sub-section (2) of this section, he would have found that it is not only those cases which are non-cognizable that have been made compoundable, but there are also other cases which are cognizable and which have been so provided by the Government, and which my Honourable friend has not objected to and has accepted them to remain as compoundable. For instance, sections 324, 325, 327, 328, 343, 346, 347,—all these cases are compoundable and all

these cases are cognizable cases. So, may I ask, how can such cases be compounded with the permission of the Court behind the back of the police? The police ceases to have any right in a case the moment they put up the case before the Magistrate. They have taken cognizance, they have brought it to the notice of the Magistrate that the cases are of a nature in which the public is interested and the offences are such in which the State is interested. When the Honourable Mr. Pantulu would authorise a compromise in such cases, why should he not allow a compromise in cases under sections 417, 418, 419 and 420? The second point advanced in support of his argument for his amendment is that they affect many persons and if you were to allow the compounding of such offences with one man, the other persons would have a grievance against the accused. My humble submission is that in such cases leave it to the discretion of the Court: The Court may or may not permit the compounding of the offence.

Mr. J. Ramayya Pantulu: You trust the Court now.

Mr. K. B. L. Agnihotri: Certainly, the Government gives discretion to the Courts and trust them; I may or may not trust the Court at all, but that does not matter. That is another matter, whether I trust the Court or not, but I can at least claim to use that argument against you who had implicit trust in them so long. Sir, if many persons are affected by any offence which has been put up by the police, and if the complainant on whose complaint the police prosecuted that man compounds the offence with the accused, what barrier is there to bring up the accused again, where is the barrier to prevent the Magistrate or Judge from proceeding against that accused and for not granting that permission which is made indispensable under this clause? My Honourable friend has given a case in which some of our Honourable friends were affected. In that case it was a very right thing that such a man was convicted. Supposing one of them was kind-hearted enough to compound that offence, would the police have been debarred from prosecuting the man again? Would any other person or my Honourable friends have been debarred from prosecuting him again for that? Supposing the charge was framed when such a composition would have amounted to an acquittal of the accused; in that case the Court could not have permitted such composition when many persons were concerned, or when the man had cheated many other persons. The cases in this section refer only to cases which are more or less of a technical nature. It is not only that the present Joint Committee accepted this amendment, and brought it into the Code, but even the Lowndes Committee, which consisted of very eminent lawyers and Judges, considered it desirable that these cases should be included in this clause of the section. My Honourable friend has also referred to section 494—so far as morality is concerned, everyone would certainly admit such a contention, but there are customs and customs prevailing in the different parts of the country, and are not uniform in all parts of the country. Take the case of positions of the country which are in a very backward condition where the man, the husband, may be satisfied with coming to the Court . . .

Mr. President: Order, order. That question is not before the House.

Mr. K. B. L. Agnihotri: So on these grounds I beg to oppose the amendment moved by my Honourable friend.

Mr. R. A. Spence (Bombay: European): I move that the question be put.

The motion was adopted.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. President: Further amendment moved:

"In clause 88, sub-clause (ii) in the table in proposed new sub-section (2) of section 345 omit all the entries relating to the offence of marrying again during the lifetime of a husband or wife."

The question is that that amendment be made.

The motion was negatived.

The Assembly then adjourned for Lunch till Fifteen Minutes Past Two of the Clock.

The Assembly re-assembled after Lunch at Fifteen Minutes Past Two of the Clock.

Rao Bahadur P. V. Srinivasa Rao: Sir, with Mr. Agnihotri's permission and on his behalf I move the amendment standing in his name:

"In clause 88 for sub-clause (iv) substitute the following:

(iv) For sub-section (5) the following sub-section shall be substituted, namely:

(v) Notwithstanding anything contained in this Code any case instituted on a complaint, not being one by a public officer as such, may be compounded by the person aggrieved."

Mr. H. Tonkinson: Sir, in rising to oppose this amendment, I think it will be only necessary for me to remind the House of the discussion which took place upon the amendment No. 226 which was moved by my Honourable friend, Mr. Agnihotri, yesterday. My Honourable friend then proposed that in section 259 the words "and the offence may be lawfully compounded" should be omitted. The effect of that, Sir, would have been that in proceedings instituted upon complaint, if the complainant was absent then the Magistrate would be able to discharge the accused. Now, Sir, in substance the present amendment is exactly on all fours with that amendment. When my Honourable friend moved his amendment I believe he secured the support of himself alone. I hope, Sir, that the present amendment will secure the same measure of support.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, I do not move my amendment No. 264, but I move No. 265:

"After clause 88 (v) insert the following sub-clause:

'(vi) to sub-section (7) after the word 'section' the words 'The composition of an offence under sub-section (1) if made out of Court may be allowed to be proved by any other evidence' shall be added'."

Sir, Honourable Members will notice that there are two ways of compounding an offence. The first clause provides for composition by the parties concerned without the intervention of the Court. The Court takes no part in the composition of an offence when it takes place under the first

clause. Under the second clause the Court's permission has to be obtained. Now, a composition means, not a mere withdrawal, not a mere non-prosecution, but an agreement come between both parties, *i.e.*, the complainant and the accused. They meet out of Court, come to terms as regards how they are going to compose the difference between them, and that forms the composition. So that, invariably it has to take place outside the Court. The complainant receives money or some other consideration for his agreeing not to prosecute the offender for the offence which he alleges the accused has committed. Now, it some times happens that the complainant after receiving consideration, whether it be in the shape of money or otherwise, wants to back out of it. It happens in civil cases; it happens in criminal cases. In civil cases, as Honourable Members know, compromise or adjustment of a suit can take place outside a Court and the Court is asked to record it under section 373. So also compositions are really allowed under the Criminal Procedure Code, because they are more or less quasi-criminal but partaking of a civil nature. That is why the law allows composition. Therefore there is nothing in the section as it stands to prevent the procedure which I have indicated in my amendment. In fact all the rulings recognise that the procedure which I have indicated in my explanation, or rather in my sub-clause, should be adopted. In a case in XXI Calcutta page 103, it was laid down that it is competent to the Court in which the charge is pending to take evidence as to whether there was in fact a composition outside the Court when one of the parties to it refuses to abide by it when the case comes on afterwards for hearing. That is in XXI Calcutta 103. That was followed in Madras in a case reported in XVIII Madras Law Times, page 602. It was also followed in the Patna High Court in I Patna 21. And I do not find any case to the contrary. In fact, almost every Court has followed that. And after all it is only natural that composition should take place outside the Court because the Court does not sit there as an arbitrator between the parties and say "Now come on, you complainant, you accused, what are your terms, how are you going to settle this business?" Composition then must take place, in the very nature of things, outside the Court. And human nature being what it is, sometimes these agents who are hovering round the criminal courts get hold of the parties, and the peace already effected is disturbed by these agents and they try to induce one party or the other to back out of the compromise already effected. And in such cases one party or the other, often times the complainant, after taking the money outside the court, comes forward and says "Very well, I will still insist on prosecuting the accused person." Honourable Members will agree with me that it is not right to permit him to adopt such a course. There must be some way out of it. In Civil cases there is no difficulty. One party or the other puts in a petition to the Court saying "we have adjusted our differences" and wants the Court to record it, and the Court makes an inquiry and records the adjustment if it is satisfied that it is a lawful adjustment. So also here. As the composition takes place outside the Court, one party or the other will inform the Court that we have adjusted our differences, and the procedure is the Magistrate puts a question to the complainant "Have you adjusted it?" When he admits it, the Magistrate records that the case has been compounded. I only want to make it clear in this section that a composition made outside the Court can be, may be allowed to be, proved by any other evidence—that is, the evidence may be in writing, the evidence may be that of a respectable pleader or a family friend, who might have intervened and effected a compromise. If one party backs out of it, then there will be evidence called. I think it is

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but right that we should allow this evidence to be given. It is the practice. I am only trying to introduce what is the practice to-day and what has been recognised to be the rightful practice.

The object of these changes which the Government have introduced in their various amendments is to introduce into the Code matters on which there have been judicial decisions; if there have been divergences of opinion the Legislature makes it clear what it intends. If the judicial decisions have made a certain position clear the amendments which have been introduced hitherto are to make it clear what the Legislature intends. So also, I am not here doing violence to existing practice; I am only seeking to introduce into the Code a practice which is recognised to be legal and regular. I therefore move the amendment as it stands in my name.

Mr. H. Tonkinson: Sir, I rise to oppose the amendment. I think, Sir, that in these cases the position which we must take is that normally unless the complainant or the person who has power to compound the offence appears in Court and admits that he has received compensation, composition should not be permitted. We do not wish, Sir, to increase by any means the number of cases in which Courts have to inquire as to whether a composition has been effected outside the Court. As regards the rulings which my Honourable friend referred to, I notice that the leading case was to the effect that when an accused person alleges that an offence with which he has been charged has been compounded, so as to take away the jurisdiction of the Criminal Court to try it, the onus is on him to show that there was a composition valid in law. Well, Sir, I am not at all clear that if the amendment proposed by my Honourable friend is accepted we shall be in fact giving effect to that ruling. My Honourable friend says that this is the present practice. Well, Sir, if it is the present practice, we would prefer to leave it at that without adding these words to the section.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, I oppose this amendment and my reason is this: we would not only be turning a Criminal Court into a Civil Court for the purpose of deciding as to whether a composition has taken place or not, but we would be introducing any amount of delay in the disposal of criminal work. What is after all the object of allowing these offences to be compounded? The object is that the dispute or enmity between the parties which has arisen thereby may for the future be put an end to. But if it has to be proved whether composition has taken place, the same state of things which existed before will continue for ever. So by allowing this amendment, that is, by allowing proof of composition, we will be simply defeating the object of this section. My learned friend, Mr. Rangachariar, says this is the practice usually followed. With all respect for his wide experience and learning I must join issue with him on this point. I have never yet come across a case where a Criminal Court has gone into the evidence as to whether a real composition between the parties has taken place or not. From the mere fact of the section being silent on that point, the Patna High Court or the Madras High Court or the Bombay High Court might have put that interpretation on it. Otherwise to me this state of things, at least as far as my province is concerned—and I am aware of the practice that prevails there—this state of things does not exist; and I therefore think that it will be simply delaying proceedings *ad infinitum* to allow an amendment of this kind.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I also rise to oppose the amendment, and I wish to supplement what has fallen from my Honourable friend, Mr. Tonkinson, and my Honourable friend who has just spoken. Taking into account the comprehensive character of the amendment proposed, I shall presently proceed to consider its effect. The amendment as it is worded says in its first portion "the composition of an offence under sub-section (1), if made out of court, may be allowed to be proved." What my Honourable friend, the Mover of the amendment, evidently means is that the composition must be such as may be lawfully effected. But as it is, it includes all possible cases of composition, lawful and unlawful.

Rao Bahadur T. Rangachariar: Under sub-section (1).

Mr. J. N. Mukherjee: Quite so. Composition of course is doubtful under sub-section (1). But as the amendment is worded it may be taken to suggest all possible cases of composition, lawfully or unlawfully made.

Rao Bahadur T. Rangachariar: Under sub-section (1).

Mr. J. N. Mukherjee: Quite so. But the words "composition of an offence under sub-section (1)" may be taken to throw some doubt as to whether the amendment proposed contemplates even such compositions as those which although mentioned in sub-section (1) are, however, unlawfully made.

Now, Sir, the question that arises in the case of money-payments, referred to by the Honourable Mover of the amendment, comes to this. In all such cases, it must be supposed that it is the accused who pays the money to the complainant as an inducement for the composition; and it may be taken in some cases, that the complainant is made to accept the sum by hook or by crook. Here the accused cannot be a poor man, but he is able to pay, in order to be out of the scrape, and it may often happen that the complainant is not given any *locus penitentia* as it were. The matter may have been simply rushed in such case or a trick may have been played upon the complainant. If the composition was a voluntary one brought about without any undue influence being brought to bear upon the situation, why is it that such a composition, it may be asked, could not last for a short space of time? One would find an element of suspicion in that. It might not be a case of denial after deliberate cheating, after all. Therefore, I submit, Sir, that if the inquiry is to be made following a positive direction of the law, and the composition is enjoined to be proved in all cases of denial, in the way suggested, there is no doubt litigation will considerably increase. There is every chance, in such event, of a crop of cases arising, under the circumstances, which will be extremely undesirable to have. Again, where a monied man happens to be the accused and the complainant is poor, the monied man can always be expected to devise means, by the employment of his money or influence, to make the complainant agree, at least temporarily, to a proposal of settlement and in that way the accused can always have a side-issue as to composition raised in course of a trial in a Criminal Court, and have it decided, one way or another. I think, Sir, that is not desirable. The trial of the case itself being protracted in this way will exhaust the complainant and will ultimately defeat the ends of justice. Apart from other points, it must be remembered that the *ratio decidendi* of

[Mr. J. N. Mukherjee.]

a judgment is always surrounded by facts which govern the conclusion arrived at, in every case, and the conclusion if it be detached from and be shorn of the circumstances of the case, and then be put in an abstract form for purposes of general application, a source of danger of error is likely to creep in by the very process itself of generalization from concrete to abstract. I submit that if it is the meaning of the case law on the point that the Court can consider and decide upon any question of disputed composition, upon the interpretation of the law as it now stands, it can always do so, in a proper case. But it is undesirable to have such cases adjudicated upon in a criminal trial as a rider to the criminal case that is before the Court. This will be the result if the amendment in question be made part of the Statute.

As regards the last part of the amendment proposed, namely, the part which says: "If made out of Court may be allowed to be proved by any other evidence," it is difficult to understand what this "other evidence" is. These are verbal matters no doubt, but the amendment, as it is, apart from the question of drafting is open to objection, as I have submitted, on the ground of the principle underlying it. I therefore, Sir, oppose the amendment.

Dr. Nand Lal: Sir, only a couple of hours back, I was of opinion that this amendment was of no use and that it was futile, but after my deep study of the whole question I now stand converted. I have given my serious thought to it, and I think that this is a very useful amendment. Now the ground which has been taken in opposition to this amendment is simply this, that it will prolong the proceedings in the Criminal Court, and that the Criminal Court shall have to determine whether there was any composition outside the Court, and if so, whether it is lawful or unlawful. Now, Sir, supposing the argument of the opposition holds good and the composition is not accepted. The case proceeds on, the complaint or the chalan as the case may be is proceeded on with, and then naturally it will take greater time.

But, if the composition is accepted, if it is held by the Court that in reality there was composition and the complainant had backed out on account of some dishonest motive, naturally, Sir, you will agree with me that it will nip the whole proceedings in the bud and time will be saved, and, at the same time, the promise which was held out, the contract which was effected outside the Court between the complainant and the accused will be substantiated and will be held as true. It may happen in a good many cases. There is some sort of valid agreement between the accused and the complainant, Sir, outside the Court, and a clear understanding has been arrived at that, when the complainant appears before the Court, he will make a statement that the case has been compounded, but, on account of some dishonest intervention or on account of the inducement held out to him, he backs out. When he appears before the Magistrate, the accused says: Sir, the case was compounded. The complainant says: No. Then, naturally, Sir, it would be better if evidence be recorded in order to determine whether really there was compromise or not. The case is compoundable. It has been allowed by the new provision that certain offences, in regard to which this amendment is moved, are compoundable. So far as the composition goes, it is lawful. Then the question which is the crucial question of the whole case would be whether that composition has

been brought about or not. That point could easily be determined. So, therefore, the ground which has been advanced that there will be delay in the criminal proceedings I may respectfully submit, with due deference, has got no force.

The other point which has been urged by the other speakers on this amendment is this. That, as a matter of fact, it will give rise to a number of points which could naturally arise in a Civil Court and that a Criminal Court should not be called upon to determine those points. In reply to that, my submission is, why not. We have got in any case an analogy. That in civil cases, if the case is compromised and one of the parties says that the compromise was not effected, then there is a clear Statutory law that the Court will take evidence and, if it finds on the ground or on the strength of that evidence that in reality there was a compromise between the parties, then the adjustment of the claim, as it is technically called, will be recorded. So it ought to be in the criminal case which is comprehensible. I cannot find in what way it will hamper the work of the Criminal Courts. One of the arguments which was advanced by the Honourable Mr. Mukherjee was that most probably it will give rise to animosity between the parties, that the underlying spirit, which has actuated the Government to incorporate this provision, is that the parties may become friends, and that if the decision is given by the Court again on the same point, then there will be no room for friendship. I say this argument does not hold good. Rather, if this composition is accepted as it has been urged by the accused in the Court before the Magistrate, then there will be friendship again, namely, friendship will be revived. Dishonesty should never be countenanced—we should never set a premium on dishonesty. If the complainant has given an undertaking to the accused outside the Court why should he not be asked to adhere to it? In the interests of honesty, I very strongly support this amendment which will be of great utility both to the Government and to the public.

Sir Henry Moncrieff Smith: Sir, Dr. Nand Lal devoted most of his arguments to showing that there would not be any delay or any prolongation of proceedings if this amendment were accepted. But, Sir, for the most part he confined himself to the one case in which the parties come up and the accused is able to prove that there has been a composition and the Court holds that there has been a composition and therefore acquits the accused. He did not explain, Sir, how delay would be avoided or the proceedings would be expedited in the converse case, which would probably be quite 50 per cent. of the cases, in which the accused was not able to prove that there had been a composition. I wish to put it to the House in another way. Should we not, by introducing this new provision into the Code, be supplying the accused with what in effect would be an additional false defence? The accused person sees the case is going against him. He goes into the Court and says: You cannot go on with the case: we have compounded it. The Court asks the complainant if that is so and the complainant denies it. However, we are going to compel the Court to inquire into it and to give the accused an opportunity of proving his statement. Up comes the accused with all his friends and tries to prove that he did pay the complainant Rs. 5 or Rs. 10 and that the complainant agreed to withdraw the case. Sir, there is a very very grave danger of this resulting in further prolongation of proceedings in this respect. You are giving the accused an opportunity of providing himself with an additional defence which I venture to suggest in 90 per cent. of the cases will be a false one.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, with your permission, I wish to move a verbal amendment to the amendment moved by Mr. Rangachariar, namely, to omit the words "by any other evidence." These words are unnecessary and I ask that they should be omitted.

Rao Bahadur T. Rangachariar: I accept the amendment, Sir.

Mr. T. V. Seshagiri Ayyar: I wish to say a few words with regard to the arguments which have been put forward. I am sorry I was not here when the discussion went on, but I have been able to understand enough of the gist of the arguments against this amendment to speak on it. Sir, Sir Henry Moncrieff Smith just now told the House that the acceptance of the amendment would result in the prolongation of criminal proceedings, and that it is the essence of these trials that they should be expedited. Sir, there is an equally important consideration in regard to criminal trials. We should not give room to a person to blackmail or to behave dishonestly. If a complainant and an accused compose their difference outside the court and if as a result the complainant receives some money but he does not want to report it to the court, what is the position of the accused? The complainant, after receiving money on the understanding that he would not press the prosecution, would persist on prosecuting. Does it not encourage him to blackmail? Does it not encourage him to behave dishonestly? And is it in the interests of justice that we should give room for such a state of affairs? If a man after having agreed to abandon the prosecution and after having received consideration for the abandonment, still goes on pressing the prosecution, in the hope that he may be able to induce the poor accused to pay more money, is it in the interests of justice that he should be encouraged to do so? Sir, I understand it was said that this is unnecessary because there have been some decisions upon the matter. If I understand the position aright, I believe the Lowndes Committee were trying to introduce amendments into the Code with a view to embodying decisions of courts. No doubt there are two decisions of two courts. The matter had to go to the High Court and two High Courts accepted the principle underlying the amendment. Some lower court in other provinces may take it into its head not to follow the decision of the two High Courts. Is it in the interests of justice that we should embody in the section language which would make it unnecessary to parties to resort to the higher court? I think having regard to the two decisions and having regard to the object of the Lowndes Committee, it is desirable to make the position clear, so that there may be no doubt in the minds of the Magistrates who have to try these cases. Under these circumstances, I think this amendment ought to be accepted. Having regard also to the analogy of civil courts, where, if a composition is entered into outside the court, the court allows proof to be given of such composition, I think that we should provide a similar remedy in criminal cases if only to prevent persons behaving dishonestly and blackmailing others.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I rise to oppose the amendment. I wish to support the statement of my friend Mr. Pyari Lal, as I have never come across a case in which an accused person has come to Court and has said that he has compounded the case, although the complainant is not there or denies having compounded the case.

I have never known a case in which the Courts have approved of the compounding of a case in such circumstances, and I do not think they would do so. I find in a Bombay case that:

"When the parties to an offence compoundable without permission of Court produce before the Court a writing signed by them: the Court is bound to act upon it and is not at liberty to call upon the parties to adduce further evidence that the case has been compounded."

This is a decision in favour of the accused. If the accused produces a document signed by both parties, or approved of by both parties, saying that the case has been compounded, the Court does not go behind that. It is not right on the one hand that the accused should be allowed to come forward and say that the case has been compounded, and at the same time that the complainant should not be allowed to come forward and say that the case has not been compounded. The fact is there is no analogy between the civil procedure and the criminal procedure in connection with these proceedings. You cannot expect the Court to go into inquiries entirely outside the criminal proceedings, and say, "I shall inquire into the question whether A paid B Rs. 10 or Rs. 15, or whether they came to an agreement at all." Besides this the Court does not go into the question whether a proper or full amount has been paid for compounding the case or not. All that it considers is that the complainant says in Court "I have compounded the case;" and the Court need not trouble any more about the matter. For these reasons, I suggest there is no reason to make the amendment proposed.

Mr. President: Amendment moved to the original amendment:

"To omit the words 'by any other evidence'."

The question is that that amendment be made.

The motion was negatived.

Mr. President: Original amendment moved:

"To insert the following sub-clause at the end of clause 88:

'(vi) to sub-section (7) after the word 'section' the words 'The composition of an offence under sub-section (1) if made out of Court may be allowed to be proved by any other evidence' shall be added'."

The question is that that amendment be made.

The motion was negatived.

Clause 88, as amended, clauses 89, 90, 91, 92 and 92A were added to the Bill.

Mr. J. Ramayya Pantulu: I move:

"In clause 93, in the proposed new sub-section (2-A) of section 356, after the word 'and' insert the words 'or cause it to be taken down in that language in his presence and hearing and under his personal direction and superintendence.'"

I move this amendment to meet the case of a Magistrate or Judge who does not know the language in which the evidence is given. In such cases, it will be necessary for the Magistrate or Judge to have the statement recorded in the language in which the evidence is given. I trust the amendment will commend itself to the House.

Mr. H. Tonkinson: I accept that amendment.

The motion was adopted.

Mr. K. Ahmed: I move:

"In clause 93 for the words 'following sub-section' substitute the words 'following sub-sections' and at the end of the clause insert the following, namely:

'(2-B) In trials before the High Court the evidence of each witness shall be recorded under the direction of the presiding Judge.'

Sir, it is desirable that the presiding Judge should see that the evidence is recorded. Otherwise, it is very, very difficult for the Court of revision or a higher Court, for instance, a Full Bench, to come to a decision and see whether a case has been made out or whether it is a fit case for the Full Bench to interfere with the decision of the Lower Court. In the absence of that, it is very very difficult for any Judge or any court of law to decide a case because the particulars of that case are not before the court.

Sir Henry Moncrieff Smith: I think it will save the time of the House if I am allowed to make one brief remark. I think my Honourable friend has overlooked section 365 of the Code. That section, as amended by the present Bill, lays down that every High Court shall make rules prescribing the manner in which evidence is to be taken and will also lay down that the evidence shall be taken down in accordance with those rules. I think, Sir, that will surely meet the point of my Honourable friend.

Mr. K. Ahmed: That argument is only for amendment No. 277, to clause 96, on the top of page 38 . . .

Sir Henry Moncrieff Smith: I move that the question be now put.

Mr. President: The question is that the question be now put.

The motion was adopted.

The amendment was negatived.

Mr. President: The question is that clause 93, as amended, do stand part of the Bill.

The motion was adopted.

Mr. K. Ahmed: I move:

"In clause 94 (iii) for the words from 'it shall not be necessary' to the word 'charge' the words 'the Magistrate shall record the evidence briefly' be substituted."

Honourable Members will see that in section 362 of the Code of Criminal Procedure, item No. 4, I want the words put in, namely, "the Magistrate shall record the evidence briefly." May I read the section with your permission? "In cases other than those specified in sub-section (1) it shall not be necessary for a Presidency Magistrate to record the evidence or frame a charge." My amendment is that the Magistrate shall record the evidence briefly. This House has got the representatives of the people and they will see the difficulty. The matter is entirely at the discretion of the Magistrate to take down the evidence if he likes or not to take it down if it does not suit him. He could convict a man then and there on the substance of the evidence he may have taken down and

the higher court cannot decide a case properly as it has no other evidence except that material on which the man has been convicted. It is the rule of nature, Sir, and no doubt any Magistrate convicting a man must apply that theory and if that theory is applied, then you can appreciate the position of the unlucky accused who is tried and convicted on that portion only of the evidence, the evidence the important part of which has been missed. My amendment is a very important one suggested by able grey-haired lawyers and experienced men of the world and that you must not give discretion to the Magistrate to make note of a portion of the evidence only because it is not safe at all (in this country). Unless you get this down, unless the Magistrate takes it down, records it, word for word, and if the Magistrate records it only briefly, if the more important parts are not taken down, it is for the Revisional Court to see those most important parts, and if these important parts are missed, the poor man is wrongly convicted, and therefore it is for the higher Courts to see that justice is done to him, and under the circumstances, Sir, it is the duty of the Revisional Court under section 439 of the Code of Criminal Procedure, or probably under section 15 of the Charter Act or under the Government of India Act, 1907 and so on, we should make the High Court, revisional side, satisfy itself as to the correctness or propriety of the order. Sir, if there are provisions of the Criminal Procedure Code that appeals should be heard, and cases should be revised, and in the hearing, under those sections, Sir, if the full material is not placed before the Court, is there any purpose which will be served by simply getting a Bill, which has been passed by the Council of State, passed here, if the important portions are missed in the Bill. I ask that this House will see its way, I ask each and every Honourable Member of this House to consider the point, that whether it is a sound theory, a sound principle of law, that it must provide sufficiently that if a man is going to be tried, he must be tried properly. Possibly the Government Member in charge will find that it will be a miscarriage of justice if a Magistrate is given that discretion, if the law does not provide for the safety and protection of the people in the administration of justice, a fair and impartial trial should be held according to the soundest principle of law, that the offence adduced against the accused by the prosecution should be taken down, and it is for the revisional Court to see whether this man has been convicted according to law, rightly or wrongly, properly or improperly. If that is so, Sir, I do not find any difficulty for my Honourable friend to accept it, because that will certainly make the law more reasonable than it is by leaving it to the discretion of the Magistrate, to the sweet will of the Magistrate, and that he should only take down the substance of it and not the real part of the evidence upon which this man is convicted: and it is no use getting a number of Judges, getting a number of appeals and revisions, when you have not got the materials before them, and therefore, you are really doing injustice, because you are supposed to provide everything and all for those higher Courts to revise the cases under revision, but they have not the full material before them, and still you come and say, 'here is your appellate Court, the Judge says that your conviction is right or that your conviction is wrong'—but you have not given that opportunity of a fair trial that was expected. I suppose, Sir, it will be wanting,—in the Bill, it will affect the administration of justice in this country as far as the Criminal Procedure Code is concerned. I ask, Sir, most humbly that the Government will find themselves able to accept it, because, Sir, there is not so much difficulty in it. I would not saddle, Sir, the Government Bench with important rulings of the High Courts, but, Sir, it is

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commonsense. But, Sir, it is a commonsense that if the Government of this country convict a man of an offence and the taking down of the evidence is left to the discretion of the Magistrate, then if the man goes in appeal to the High Court and to the Privy Council, and they will say, "We are sorry; the learned Magistrate did not take down the real essence of the evidence, the important words that you rely on for the defence of this man." Is that, Sir, a sound principle, leaving so much discretion and liberty with the Magistrate? I leave it entirely, Sir. I move the amendment.

The Honourable Sir Malcolm Hailey: I do not intend to go into the merits of the motion that Mr. Kabeer-ud-Din Ahmed has put forward, and for a simple reason. The law regulating the procedure of our Presidency Magistrate has remained unaltered for many years, but it has come under a good deal of criticism. There are many who have expressed the view that the procedure now applicable to Presidency Magistrates is not suitable in view of the present composition of the Presidency Magistrate's Courts and their modern developments. We have been invited at different times to go into the whole of this question; and for myself I think that it would be better if we had an opportunity of investigating it as a whole, and consulting both Local Governments and the High Courts concerned, before we proceed to make any change at all in the law regulating procedure. If changes in procedure are required, they would come better as the result of such an investigation into the whole question, and I would deprecate making small modifications at present in the procedure applicable to the Courts. For this reason, Sir, I hope Mr. Kabeer-ud-Din Ahmed will see his way to withdrawing the amendment before the House.

Mr. K. Ahmed: I beg to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Clauses 94, 94-A and 95 were added to the Bill.

Mr. K. Ahmed: I suppose, Sir, that this amendment is not included in the promise given by the Honourable the Home Member in which he is going to bring these matters into conformity with the laws. This refers not to Presidency Magistrates' Courts but to a Court called the Honourable the High Court. Sir, I move:

"After sub-clause (ii) of clause 96, insert the following sub-clause:

'(ii) (a) To the proviso to sub-section (5) the following shall be added, namely:

'In trials before the High Court the heads of the charge shall be recorded under the direction of the presiding judge and shall be signed by him.'

Members will kindly see that if a case (called a Sessions case) is tried by the Quarter Sessions of the Honourable High Court of Calcutta, Sir, that case is tried like this: 9 jurors sit to try that case, and then the case is put before the gentlemen of the jury and the case is made out by the Public Prosecutor. It is heard no doubt at great length, but the difficulty that we come across when we go against the order of the learned Judge, against sometimes the verdict of the gentlemen of the jury, and file an appeal before the Full Bench composed of sometimes five of the learned Judges of the High Court or three of them at least if not more. Then, Sir, the learned Judges who preside over the Session no doubt hear our appeal, but they generally find it very difficult to follow the case, because

the evidence is not before them, because the most important portions of the documents are not before them, the heads of the charges are not even signed by the learned Judge, nor recorded at all by him, and the result is that many of them are censured, and even the Advocate General is censured, because the Advocate General has given his sanction or fiat which can only apply to that sort of trial. We approach the Advocate General for the sake of getting this fiat, and we move the full Bench with this result. In a case reported in XXIII Calcutta Weekly Notes at page 426 (my Honourable friend, Mr. Chaudhuri, is the proprietor of this Report), five learned Judges of the Honourable High Court in 1919 comprising the Chief Justice, Sir Lancelot Sanderson, Sir John Woodroffe, Sir John Chitty, Mr. Justice Fletcher and Mr. Justice Teunon, made the following remarks. I shall read an extract of the actual words that fell on that occasion from the mouth of the Honourable Chief Justice we have got at present. The learned Chief Justice says:

"Before I conclude my judgment I desire to refer again to the fact that there were no notes of the learned Judges summing up taken by the learned jury and Counsel for the prosecution. In my judgment it is most desirable that in these cases, specially in an important case like this, the learned Counsel for the Prosecution should take a note of the summing up of the learned Judge. It is impossible for the learned Judge himself in his summing up to take a note. What has happened in this case is an instance of how desirable it is that these notes should be given. It may be that if in this case adequate and reasonable notes of the learned Judge's summing up had been taken a great deal of time and expense might have been saved. At all events, I hope that in future regard will be had to what has been said, and that proper notes of the learned Judge's summing up will be taken."

Now, Sir, it is not a Court or Bench where we get a certified copy of the order that you are moving there against the order of another Court or a Judge or a Magistrate or certified copies of deposition that you had applied for and have taken from and enclosed in a memorandum of appeal or have got a certified copy to show to the Full Bench that this is the evidence adduced in the case against you. Nothing of the kind. I hope the majority of the Honourable Members will understand and that this is an extraordinary kind of trial that you have in Calcutta where you do not get a copy of the evidence upon which a man is sent to jail. This is a procedure by which the Court will not take down under what section you are charged, the offence you are charged with and of which you are convicted for so many years. It is a curious part of the law, as the learned Chief Justice has found—as I read out just now. I hope that we will also see, Sir, that this extraordinary procedure should no longer be allowed to continue. Six years have gone when the matter was under contemplation since 1916 and to-day, Sir, in 1923 on the 7th of February we shall have something which is reasonable and which is a sound provision of law; it is high time that we should not be tried under any law which is wrong and in which there is no sound principle laid down. Here we have the assistance of lawyers from all parts of the country and the benefit of all these opinions, and here are amendments brought forward by the representatives of the people, and I ask, Sir, that this amendment, which I shall repeat again, should be accepted, viz., that in trials before the High Court the heads of the charge shall be recorded under the direction of the presiding Judge and shall be signed by him. Thereby we shall be able to get a signed copy and we shall get copies of the deposition and we shall get thereby what Honourable Members will see, is obtained in other parts of the country. Justice is nearer perhaps in the rural districts than in the town of Calcutta. In that place everything can be had, we have got a High Court and a number of Judges; but justice is not accessible to us. I hope this is the high time—

[Mr. K. Ahmed.]

when the Government Bench will probably accept my amendment. I therefore move my amendment and hope it will be accepted.

The Assembly then divided as follows :

AYES—17.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asjad-ul-lah, Maulvi Miyan.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Gulab Singh, Sardar.
Ibrahim Ali Khan, Col. Nawab Mohd.
Jatkar, Mr. B. H. R.

Mahadeo Prasad, Munshi.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Reddi, Mr. M. K.
Sarvadhikary, Sir Deva Prasad.
Venkatapatiraju, Mr. B.

NOES—42.

Ahmed Baksh, Mr.
Ahsan Khan, Mr. M.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Blackett, Sir Basil.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Chaudhuri, Mr. J.
Clow, Mr. A. G.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Gidney, Lieut.-Col. H. A. J.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.

Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Joshi, Mr. N. M.
Ley, Mr. A. H.
Misra, Mr. B. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rhodes, Sir Campbell.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Sinha, Babu L. P.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, it has been suggested to me that this amendment* will be coming up under section 497. So, I do not move it now.

The Honourable Sir Malcolm Hailey: We shall be glad to discuss it then.

Clause 96 was added to the Bill.

Mr. President: Clause 97. The amendment† standing in the name of Mr. Kabeer-ud-Din Ahmed is beyond the scope of this clause.

Clauses 97 and 98 were added to the Bill.

* "In clause 95 (iii) for the words 'following sub-section' substitute the words 'following sub-sections' and at the end after the word 'judgment' insert the following :

'(7) Nothing in this section or section 366 shall be deemed to prevent the Court from setting the accused at liberty after the conclusion of the trial and before the judgment of acquittal is pronounced'."

† "After clause 97 insert the following clause :

'97-A. In sub-section (1) of section 371 of the said Code after the word 'judgment' the words 'of the trial and appellate courts' shall be inserted'."

Dr. H. S. Gour: Sir, the amendment I propose :

"In clause 99, in proposed section 386 (1) (b), omit the words 'or immoveable' and the words 'or both'."

raises a very important question of law. Honourable Members will see that under the existing Code of Criminal Procedure, section 386, fine is only recoverable by distress and sale of moveable property. Under the amendment proposed by Government it is intended to extend the recovery of a fine by sale of both moveable and immoveable property. Now Honourable Members will find that the object of levying fines is not to supplement the State revenues but to punish the offender. Consequently, fine must be levied not with reference to the property which the accused possesses but with reference to the gravity of the offence and due regard being had to the fact that the fine would act as a deterrent sentence. The law up to now has worked, so far as I can see, satisfactorily. I do not know why the Government now wish to take the power of recovering fine both from moveable and immoveable property. Honourable Members will see that recently the Government introduced a measure abolishing the sentence of forfeiture of property as a substantive punishment. Under the Indian Penal Code the forfeiture of property could be ordered only in a very few cases. Offences against the State, like waging war against the King, and extreme cases of murder and a few other cases of that character. When the amendment of the Indian Penal Code was before this House, I pointed out that the punishment by way of forfeiture of property had been abolished in England. It had a peculiar history. Honourable Members will remember, I pointed out that in the feudal law a person who had committed high treason was regarded as having corrupted his blood and that in consequence all property in England which was held in fee simple, or as a tenant from the Crown, he was held no longer entitled to hold. But the law of property in this country is quite different. The subject in England is at best a tenant. The ownership vests in the Crown and consequently he has a peculiar relation to the Crown. In India, the right of absolute ownership has been conferred upon the people of this country, and therefore, the owner of immoveable property is under no peculiar obligations as he is in England. But, even as it is, in England the sentence of forfeiture as a substantive punishment has been abolished and it has been abolished now in this country. It was suggested in the Select Committee on the Indian Penal Code abolishing the sentence of forfeiture, that the abolition of forfeiture as a substantive sentence might be sanctioned if fine could be levied both from moveable and immoveable property, and I presume that this amendment is the outcome of that recommendation. But Honourable Members will not accept this amendment because it has been recommended by any Select Committee. They will examine and consider it upon its own merits. Now, let me turn to a very short question that arises in this connection. Take, for instance, the case of a Hindu joint family and assume a case that one member of that joint family has been sentenced to pay a certain fine. Honourable Members know that a member of a coparcenary has no specific property of his own. He has a certain interest in the joint immoveable property. As a matter of fact, if the family is joint and undivided, he is not likely to have any moveable property of his own. In a case like this what will be the procedure? The procedure would be to attach and sell his share, because that would be regarded as immoveable property, and consequently the courts would hold that it is liable to seizure and sale. Now, if this is the view of the law, it will make an inroad upon an ancient and well-established doctrine which

[Dr. H. S. Gour.]

the courts in this country and the Privy Council have enunciated for the last hundred years. Let me refresh the memory of the Honourable Members in this connection. The existing law on this subject is this. Leaving out of account the High Courts of Bombay, Madras, Central Provinces and Berar where a coparcener can alienate his undivided share for valuable consideration, take the case of those who follow the orthodox *Mitakshara* law—the High Courts of Bihar, United Provinces, part of Bengal and the Punjab. What is the position there? An individual member has merely an interest in immoveable property. He cannot predicate that any portion of the joint property belongs to him. That property cannot be sold as such. If there is a decree, if the member sells that property and makes an express representation and the alienee takes it without notice then the High Courts lay down that equity comes into force in favour of the alienee which gives him certain rights, namely, to ask the court that in a partition, the specific share of the estate sold to the alienee may be allotted to his alienor which may be ultimately transferred to the alienee and he may obtain a declaration of his right as an alienee, and if a partition takes place, he can then enforce that equity. I do not wish to take this House through the extremely complicated question of law which surrounds the Courts in this connection. I will rest content with saying that in the case of an undivided *Mitakshara* coparcener, no alienation of immoveable property can take place. But if the coparcener has the misfortune to be convicted of an offence and to be fined, the Code now provides for the sale of his immoveable property. That must of necessity lead to a forced partition or it must of necessity lead to the sale of right, title and interest of the delinquent, in which case his share will be sold for a mere song and in which case the rights of his sons and grandsons will be destroyed, though the *Mitakshara* lays down that every son and grandson has, upon his birth, a vested interest in coparcenary property. I can picture to the Honourable Members far more complicated cases than I have given by way of illustration. I have no doubt my Honourable friend, Munshi Iswar Saran, who has practised and is practising in the Allahabad High Court, will be able to enlighten you upon the numerous difficulties which this clause, if passed into law, will give rise to. I therefore submit that this clause should not be inserted, because it is vicious in principle, it is unprecedented, it did not exist in the previous Codes of Criminal Procedure, and no case has been made out why a departure should be made from the existing law, because the burden is on the Government to show if there have been any cases, in which fines levied by the Court have not been recovered. Lastly, I submit it would lead to the imposition of fines which would be out of all proportion to the nature and gravity of the offence committed. If it is the intention of the Treasury Benches to make a bargain with this part of the House by suggesting that because Government will lose some money as the punishment of forfeiture has been punished it must be now compensated by being empowered to recover fines out of immoveable property, then I have no doubt, Sir, that Honourable Members here will prefer the lesser evil of forfeiture to the greater evil of having fines recovered out of immoveable property. (Sir Deva Prasad Sarvadhikary: "Has that been suggested?") That evil affected an infinitesimally small number of people. It was a practice which was almost abolished and the abolition of forfeiture has merely followed the existing practice which obtained in this country where they did not order forfeiture because they considered the sentence as obsolete. I therefore dismiss that question out of consideration.

The question that because forfeiture was abolished this sentence has been allowed in substitution therefor is wide of the mark. Let us, therefore, examine the question upon its own individual merits. What is there to suggest, what is there to reinforce the arguments of the Government that fines must henceforth be levied both out of moveable and immoveable property? I ask Honourable Members to reflect. I have not given here cases of wives and children. Take the case of Muhammadans. Take the case of even Christians. The fact that the father commits an offence and his property is all sold, will deprive his wife, his children and other dependants of the only means of livelihood. Members must also remember how tenaciously the people in this country cling to their ancestral soil. Let them remember there is land to lose, not because of any wrong they have committed but because some members of the family may go astray and may be convicted and fined and thereupon the whole property may be brought to the hammer. Let them also remember that joint family property may be disrupted. The whole property may be sold for a song. If the intention of the Legislature is, as indeed it must be, of selling the right title and interest of the offender, there are weighty practical considerations which stand in the way of this amendment and I hope Members will pause and reflect upon the great injury that they will do to themselves and to the public at large by voting against this amendment. Sir, I move my amendment.

Mr. President: Mr. Tonkinson.

Rao Bahadur T. Rangachariar: This is a rather important question. May I move that the discussion be taken up later?

Mr. President: I was assuming that this was an important question on which Honourable Members might wish to speak, but nobody rose except Mr. Tonkinson. We had better take up the discussion on the next day on which this Bill is set down.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 8th February, 1923

LEGISLATIVE ASSEMBLY.

Thursday, 8th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

INDIANS IN RAILWAY COMPARTMENTS RESERVED FOR EUROPEANS.

334. ***Rai Bahadur Lachmi Prasad Sinha:** With reference to the reply given by Mr. Hindley to my starred question No. 141, during this Session, will the Government be pleased to obtain the informations from different railways on the subject and place them on the table?

Mr. C. D. M. Hindley: The Railway Board believe that in practice no objection is offered to Indians who have adopted European dress travelling in compartments reserved for Europeans on the different railways. Government do not propose to call for further information on this point from Railway Administrations at present.

RAISINA CHUMMERIES.

335. ***Rai Bahadur Lachmi Prasad Sinha:** With reference to reply given by Sir Sydney Crookshank to my question No. 137, during this Session, will the Government be pleased to lay on the table a copy of the circular, if any, issued inviting the non-orthodox Indian clerks to occupy the bachelors' chummeries already built at Raisina?

Colonel Sir Sydney Crookshank: No such circular has been issued for the bachelor chummeries or for any other quarters in Raisina. The Government quarters in Delhi have now been classed as "orthodox" and "unorthodox," and may be applied for as such by Europeans and Indians alike.

UNSTARRED QUESTION AND ANSWER.

SAFEGUARDING OF TITLES OF NAWAB, RAJA, ETC.

153. **Lala Girdharilal Agarwala:** What safeguard if any is provided in India for protection of the position, prestige, dignity and paraphernalia of persons created or recognised as Rajas, Nawabs, etc., whether as personal distinction or hereditary, in the past or in future corresponding to the Peers in England with irreducible minimum income or ancient nobility of India with impartible estates?

Mr. Denys Bray: Government safeguard the higher titles of Nawab, Raja, etc., by ensuring that recommendations for such titles are only made in the case of persons of considerable position in their own provinces and possessed of sufficient landed property to enable them to support the title. The Honourable Member is perhaps unaware that in certain provinces steps have been taken to provide for the descent of jagirs by primogeniture and for the descent of estates to a single heir. He appears also to be under a misapprehension as regards the practice in respect of peerages in England.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I beg leave to move that Sir Campbell Rhodes be nominated to serve on the Select Committee to consider and report on the Bill further to amend the Code of Civil Procedure. Honourable Members will remember that on the last occasion I moved for the appointment of a Select Committee to amend certain sections of the Code of Civil Procedure, and that that Committee consisted of the Honourable the Law Member and certain other Members of this House. The Honourable the Law Member has ceased to be a Member of this Assembly, and it is necessary to obtain one of the panel of Chairmen in his place. I therefore move that Sir Campbell Rhodes be appointed a Member of this Committee.

Mr. President: I presume the Honourable Member from Bengal consents to his name appearing in this motion.

Sir Campbell Rhodes (Bengal: European): Yes, Sir.

Mr. President: The question is that Sir Campbell Rhodes be nominated to serve on the Select Committee on the Bill further to amend the Code of Civil Procedure, 1908.

The motion was adopted.

THE MARRIED WOMEN'S PROPERTY (AMENDMENT) BILL.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I beg to present the Report of the Select Committee on the Bill to amend the Married Women's Property Act. The Report contains one or two changes which the Select Committee has made. The first is to omit Buddhists from the operation of the amending Bill on the ground that there are very few Buddhists in India, and secondly, the Local Government of Burma propose to introduce legislation to amend the Married Women's Property Act, if necessary, in their local Legislative Council. The second change introduced by the Select Committee is with reference to the original proposal to give retrospective effect to this Bill. The Select Committee thinks that it would be a hardship to give retrospective effect in the matter of insurance policies already effected. These are the only two principal changes. I beg to present the Report to the House.

RESOLUTION RE STATE MANAGEMENT OF RAILWAYS IN INDIA.

Mr. President: The Assembly will now resume consideration of the Resolution moved by Maulvi Miyan Asjad-ul-lah on the 7th September, 1922, in the Simla Session, in the following terms:

"That this Assembly recommends to the Governor General in Council that the Indian Railways Act of 1890 be so revised as to give India the full benefit of State ownership of Indian Railways as is done in other countries where the Railways are owned and managed by the State."

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, before the House proceeds to the business of the day, I have a statement to make which I fear may cause a considerable disappointment.

This House last September agreed at my request that the debate on this Resolution should be postponed in order that the Government might have time to formulate their views on the question, what form of management should be adopted on the expiry of the existing contracts with the East Indian and Great Indian Peninsula Railways. The Government of India have formulated their views, though perhaps they might have formulated them earlier. I am afraid that the delay is due to my fault and I can only plead that during the last two months I have been rather heavily pre-occupied with work. Our views were wired Home to the Secretary of State at once, but in the time allowed to him the Secretary of State has not yet been able to form his conclusions. Our latest advice received only last night is that he will require another eight or ten days. The position therefore is that if Mr. Samarth's amendment comes on for discussion it will be quite impossible for me to explain our view as to the right solution of this important question. It seems to me therefore that the debate will be an unsatisfactory one, for if it does come on the Government will be unable to take any effective part in it. If therefore Mr. Samarth's amendment does come on, I shall be compelled to move for an adjournment of the debate on that amendment. I have thought it right, Sir, to give the very earliest possible notice of the position. I may say that if the debate on the amendment is adjourned the Honourable the Leader of the House undertakes to give a Government day for the adjourned debate before the end of this month and before the debate on the separation of the Budgets. I quite recognize, Sir, that this statement of mine may cause justifiable disappointment to this House and I can only express on behalf of the Government of India and myself our very great regret. I think it only fair to say that we did not give the Secretary of State very much time for consideration of what is after all a very important question, and for that also the Government of India in general and myself in particular must accept responsibility.

Mr. T. V. Seahagiri Ayyar (Madras: Nominated Non-Official): Sir, the Honourable the Commerce Member is right in saying that there will be a feeling of disappointment in the House owing to the suggestion made by him. The Secretary of State has had ample time since the Ackworth Committee's report was presented to make up his mind upon this matter, and it is to be regretted that he should not have come to a conclusion upon this important matter earlier. The country has been agitated upon this question for a considerable time and it is not desirable that the decision should be put off any longer. However, Sir, having regard to the statement made by the Honourable the Commerce Member I do not think that my friends in this part of the House would object to the adjournment which he seeks, but on the understanding that before the end of February there must be a Government day on which this matter could be fully discussed. On that condition, Sir, we agree to the adjournment.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I regretfully subscribe to the sentiments to which expression has just been given. If anything, it illustrates the difficulty of our position; but we must recognize it. Mr. Innes has our complete sympathy in the troublous times that he has had. He has done admirable work and it is not his fault but his misfortune that he was not able to cope with the question earlier. We do feel, Sir, that it would be serving no useful purpose to have only a partial debate. Those of my friends whom I have been able to consult, agree with me that it would be an advantage to let the whole

[Sir Deva Prasad Sarvadhikary.]

question stand over till the end of the month, when we may be able to get all the materials that Government might think fit to place before us. I myself had an intuition that this debate was not coming on to-day and I am glad to be confirmed in my intuition.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I have no doubt everybody will sympathise with Mr. Innes's misfortunes, but I should like to know if the Honourable Member had instructions from the Secretary of State on the substantive motion which was moved during the September Session of this House and upon which surely the Government must have received instructions from the Secretary of State regarding the attitude they should adopt. The Honourable the Member for Commerce and Industry could not be unaware of the fact that that is a wide and sweeping Resolution and that both Mr. Samarth's and my own amendments are merely specific recommendations not confined to the general question but limited to the future management of the two Indian Railways. In discussing these specific questions raised by Mr. Samarth and myself, I have no doubt the Government of India must have adverted to them in connection with the general Resolution which was under discussion during the Simla Session and the postponed discussion of which is set down on the agenda paper to-day.

Another question I should like to address to the Honourable Member for Commerce and Industry is, when did he send up his recommendations to the Secretary of State? (*Cries of "No, no."*) It may be that delay in sending up these recommendations long after

Mr. President: I think it my duty to warn the Honourable Member that if he continues on this line he will forfeit his right of speech on the main Resolution on the adjourned occasion.

Dr. H. S. Gour: I am only asking, Sir, for information to guide me as to the action the Government of India will take in future not only in connection with this Resolution of Mr. Asjad-ul-lah, but with reference to my own amendment to that Resolution. It is for that purpose, Sir, that I should like some further information upon the subjects I have adverted to.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, without making any of those remarks or endorsing them which have fallen from Dr. Gour, I fully recognize the difficulty under which the Honourable Mr. Innes labours at the present moment. Dr. Gour along with myself is a member of the Central Advisory Committee on Railways

Mr. President: I must issue the same warning. There is no motion for the postponement of this debate before the House and therefore I must warn Honourable Members that they will exhaust their right to take part in the main debate on this Resolution if they continue to deliver speeches on the question which is not yet before the House, namely, the question that the debate be now adjourned.

Mr. N. M. Samarth: That is the question upon which I am addressing the House.

Mr. President: The Honourable Member has not moved that motion.

The Honourable Sir Malcolm Halley (Home Member): As I am not afraid of exhausting any right of speech on this subject, perhaps you will permit me now, taking what I think is the obvious sense of the House, to move formally that this debate be adjourned.

I would only wish to add, in reply to an observation which fell from Dr. Gour that we have received no specific instructions—that was I think the word he used—from the Secretary of State on the general question raised in the debate of September last. I may also perhaps be permitted to add that I and my colleagues feel that though Mr. Innes has very handsomely taken on his own shoulders the blame, if I may use the word, for the disappointment which has been caused to the House, we all feel that we must share that amply and fully with him. The fact is, that for some months the Government of India has been working at very high pressure on a large number of questions of great importance; and it was for that reason and that reason alone, not from any desire to delay this important question, that we were forced into postponing our recommendations to the Secretary of State on the question of State *versus* Company management. We have as a matter of fact—I feel it also due to the Secretary of State to say this—allowed very little time indeed for consideration of a question which, I need not say, does vitally concern him also. That is, I think, enough to say on this particular question. If my motion is carried, it will, I hope, meet with the sense of the House if we proceed to business which is by this time somewhat familiar to the House, I mean the Criminal Procedure Code.

Mr. President: Amendment moved:

“ That the further consideration of the Resolution be adjourned.”

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the question, in connection with the State management of railways, is of the greatest and most vital importance, and I think sufficient time was not given to the Secretary of State. I share the view which has been put forward by the Honourable Mr. Innes and the Honourable Mover of this motion for adjournment; and I, therefore, am in favour of it and support it.

Mr. President: The question is that the further consideration of the Resolution be adjourned.

The motion was adopted.

STATEMENT OF BUSINESS.

The Honourable Sir Malcolm Halley (Home Member): It will perhaps be convenient to the House if I give some indication of the future course of business beginning with to-day. We have found it useful to meet with Members of the Assembly who have proposed various amendments and discuss with them some of these amendments in advance. This has led to great expedition in debate and I would ask you, if you would give us to-day, before we resume the formal consideration of this Bill, some further time to go through these amendments. I would suggest that if we could continue this process amongst ourselves this morning the House might meet somewhat early this afternoon and continue the formal discussion of the measure.

[Sir Malcolm Hailey.]

With regard to future business, there will be no meeting of the Assembly to-morrow. The list of business for Saturday will be in the hands of Honourable Members in the course of the day. The Malabar Completion of Trials Bill, the Paper Currency Consolidation Bill and the Indian Stamp Amendment Bill will be introduced and the Indian Factories Amendment Bill will be taken into consideration and passed if the Assembly agrees. After that we shall take Mr. Hullah's two Resolutions on Emigration. On Monday, the 12th of February, we propose to continue the consideration of the Code of Criminal Procedure. On Tuesday, the 13th, we propose further to consider the Code of Criminal Procedure, and I hope to finish it. That will, I am sure, be a source of regret to the whole of the Assembly. To me it will be a source of additional regret, as I am beginning to learn a good deal about the Code of Criminal Procedure. After that on Tuesday we shall take up the Official Secrets Bill which has of course passed through the stage of Select Committee. Wednesday is a public holiday. Thursday, the 15th, is a non-official day for Bills. On Friday and Saturday we propose to take up the Fiscal Commission's recommendations (beginning on Friday and continuing on Saturday), and if time is left on Saturday to continue the discussion on Mr. Yamin Khan's Resolution regarding the Indianization of the Army which would otherwise come up on the 22nd. On Monday, the 19th, we propose to put before the House the Racial Distinctions Bill. I may explain, that I have had many conversations with my friends here regarding the proper way in which this Bill should be put to the House; I found that some Honourable Members were in favour of putting it for a Select Committee; others thought that it should come before the whole House. Of course I cannot anticipate the decision of the House when I finally bring the matter up; but, for my own part, I have decided to put before the House on the 19th instant a motion that the Bill be taken into consideration. On Tuesday, the 20th of February, we have a non-official day for Bills. On Wednesday the 21st, we propose to continue the discussion of the Racial Distinctions Bill. Thursday, the 22nd, is a non-official day for Resolutions. On Friday, the 23rd, or Saturday, the 24th—we have not yet decided on which of these two days it is more suitable to sit—we shall continue, and I hope to conclude, the consideration of the Racial Distinctions Bill. On Monday, the 26th of February, we have put down the Indian Penal Code Amendment Bill, known as the White Slave Traffic Bill, for consideration. That, I hope, will not take us long, and it will then be possible to proceed with the consideration of the Resolution which we have postponed to-day and to continue that on the 28th, if necessary, leaving time before the end of the month for the consideration of the further matter in which the House is interested, namely, the separation of the Railway and the ordinary Budget.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban):

With your permission, Sir, may I ask the Honourable the Leader of the House if he is in a position to give information as to what Resolution will be taken on the recommendations of the Fiscal Commission? Will it be one of those non-official Resolutions of which notices have been given by myself and by my Honourable friend, Mr. Manmohandas Ramji?

The Honourable Sir Malcolm Hailey: I have consulted my Honourable friend, Mr. Innes, on the subject and he proposes to take up the discussion

on a Resolution put forward by Mr. Jamnadas Dwarkadas running as follows :

" This Assembly recommends to the Governor General in Council that a policy of protection be adopted as the one best suited to the interests of India, its application being regulated from time to time by such discrimination as may be considered necessary by the Government of India with the consent and approval of the Indian Legislature."

Mr. Jamnadas Dwarkadas: With your permission, Sir, I should like to hear further on the question. This is only the first of a series of Resolutions that I have given in on the recommendations of the Fiscal Commission. Will not all of them be taken up or will the question be discussed piecemeal? I thought all might be taken up together as was done in the case of the Esher Committee's report.

The Honourable Sir Malcolm Hailey: Mr. Jamnadas, Sir, must not, I think, take up too much the attitude of *Oliver Twist*. We are doing our best for him by putting forward his own particular Resolution, and we think that this itself, as a matter of fact, will open up the whole question for discussion.

Mr. President: In order to meet the proposal made by the Home Member, I propose to adjourn the House now and meet again at 15 minutes past 2 this afternoon.

The Assembly then adjourned till Fifteen Minutes Past Two of the Clock.

The Assembly re-assembled after Lunch at Fifteen Minutes Past Two of the Clock. Mr. President was in the Chair.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

The Honourable Sir Malcolm Hailey (Home Member): I beg to present the Report of the Select Committee on the Bill to amend the Indian Penal Code in order to give effect to certain articles of the International Convention for the suppression of the white slave traffic.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The House will now resume further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State. The amendment under consideration is that moved by Dr. Gour:

" That in clause 99, in proposed section 386 (1) (b) omit the words ' or immoveable ' and the words ' or both '."

Mr. H. Tonkinson: (Home Department: Nominated Official): Sir, when my Honourable and learned friend moved this amendment in his well-known stentorian tones he referred to the proposal in the Bill as vicious and unpredcedented. I regret, Sir, that I was unable to get down any more of the adjectives which he used, but I propose to show that the provisions in the Bill are essential and that they are not accompanied by any possibility of

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abuse. I want in the first place to refer to the position in England. I suppose, Sir, that all Honourable Members will agree that if I can show that exactly corresponding provisions exist in the English criminal law after all the efforts which have been made by the legislators of the Victorian era and later, then there can be no possibility of these provisions being abuses or that they are unprecedented as suggested by my Honourable and learned friend. Rather, Sir, I would suggest that if such provisions do prevail in England then that is a reason why we should introduce such provisions in India. Well, Sir, as regards the position in England: at common law a fine was rarely if ever imposed on a conviction for treason or felony; fines were imposed on a conviction for misdemeanour, and except for provisions in Magna Charta and the Bill of Rights there was no general restriction upon the maximum amount of fine. For felony the provisions usually resorted to were the provisions relating to forfeiture. It is interesting to observe that as my Honourable friend in his speech when moving his amendment yesterday referred to the history of the abolition of the forfeiture provisions in the Indian Penal Code, so the corresponding history in England is also relevant to this point. I should like to read to the Assembly section 4 of the English Act by which the forfeiture provisions were abolished in England. Section 4 runs:

"It shall be lawful for any such court as aforesaid, if it shall think fit, upon the application of any person aggrieved, and immediately after the conviction of any person for felony to award any sum of money not exceeding one hundred pounds, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said felony, and the amount awarded for such satisfaction or compensation shall be deemed to be a judgment-debt, due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs ordered by the Court to be paid under the last preceding section of this Act."

That last preceding section, Sir, was repealed by the Costs in Criminal Cases Act, to which I will refer later, but I will invite the attention of the House to the words "judgment debt" in that provision. Honourable Members may suggest that these are provisions relating to fines imposed with the object of awarding compensation to the persons aggrieved, but, Sir, in this matter we are in an exactly similar position in India. When serious crimes are committed, it is surely reasonable, and I think many Magistrates do as a matter of course follow that procedure, if they have any reason to think that the fine will be recovered, to impose a fine with the idea of compensating the person who has suffered under the provisions of section 545. Now, Sir, how are these costs recovered in England? They are recovered, under the provisions of sub-section (5) of section 6 of the Costs in Criminal Cases Act, 1908. That sub-section runs as follows:

"Any order under this section may be enforced, as to any costs primarily paid out of local funds, by the council of the country or borough out of the funds of which they have been so paid, and, as to any other costs, by the person to whom the costs are ordered to be paid, in the same manner as an order for the payment of costs made by the High Court in civil proceedings, or as a civil debt in manner provided by the Summary Jurisdiction Acts, and, in the case of costs which a person convicted is ordered to pay, out of any money taken on his apprehension from the person convicted, so far as the Court so directs."

Honourable Members will see that that contains a very similar provision to the proposal in the Bill. We are dealing up to the present with fines inflicted with the object of paying compensation to the person who has suffered from the misdeeds. I will turn now, Sir, to the cases of fines imposed

with the idea that the proceeds will go to the Crown. I will merely read a part of a writ of *fieri facias* for a fine which may be issued in such a case :

" Edward the Seventh, by the Grace of God, etc., to the Sheriff of..., greeting :

We command you that of the goods and chattels, lands and tenements of A. B., you cause to be levied — pounds, imposed upon him in the King's Bench Division of our High Court of Justice before him for his fine..."

That, Sir, is a much more stringent provision than anything that has been put into this Bill.

Well, let us turn now to the position in India. I would like first to refer to the history as regards the abolition of sentences of forfeiture under the Indian Penal Code. It will be remembered that Government made proposals for a limited abolition of such sentences. Well, the Bill in that case, Sir, was referred to a Select Committee of this Assembly. I should like to read the recommendation contained in the Report of the Select Committee. They said :

" We consider that it is better to proceed against the property of an offender under these sections by the imposition of a fine rather than by forfeiture. At present the law does not provide for this, as section 386 of the Code of Criminal Procedure, 1898, does not permit of fines being levied on immoveable property. We, therefore, recommend that fines imposed as a result of a conviction under sections 121, 121A or 122 of the Indian Penal Code shall be recoverable from the immoveable property of the offender if they cannot be recovered from the moveable property, and that this be provided for in the Bill for the comprehensive amendment of the Code of Criminal Procedure, 1898, which is at present under consideration."

I admit, Sir, that that is only a limited recommendation. But, Sir, amongst the signatories to that recommendation was the Honourable Member who moved the amendment. When he was moving the amendment yesterday, he said, that provisions as regards forfeiture only applied in a few exceptional cases. It is better to have those back rather than to be able to recover the fine from immoveable property. But he recommended in an exactly contrary sense when he signed this Report of the Select Committee, and in addition, it is not really true to say that the provisions as regards forfeiture only applied in a few exceptional cases. They applied, Sir, to all those cases which come within the purview of section 62 of the Indian Penal Code which we then repealed, that is, to all cases of persons transported or sentenced to imprisonment for a term of seven years or upwards.

Now, let us turn to the merits of the proposal. Why, Sir, if a man has invested his income in jewellery or other moveable property, should that property be subject to attachment for a sentence of fine when, if he had invested his income in a house, that house would not be so liable to be proceeded against on a warrant for the attachment of property in execution of a fine. There is no reason whatsoever why there should be this difference. My Honourable friend, Sir, suggested that there was no reason for believing that the present provision had been ineffective in any way. That, I submit, is a statement made under an entire misapprehension of the existing difficulties. Any person who has had any experience as a Magistrate will know the difficulty—the enormous difficulty—in recovering a fine under the present provisions, and they will know that some further provision is essential. This was realised in the Bill of 1914. Sir George Lowndes' Committee decided that some provisions were required, but they introduced a large number of safeguards and said in these cases a Civil Court ought to take action. Those are practically, Sir, the provisions in the Bill. In this connection perhaps I should now refer to the red-herring

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of the Hindu joint family to which my Honourable friend referred. Let us see what are the proposed provisions of section 386.

" Under sub-section (3):

" Where the Courts issue a warrant to the Collector under sub-section (1), clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court, by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to the execution of decrees shall apply accordingly."

Well, Sir, as regards the Hindu joint family, we have introduced all the precautions contained in the Civil Procedure Code. There is absolutely nothing at all in the danger to the property of the members of a joint Hindu family which was suggested by my Honourable friend. I would like, Sir, just to recapitulate my arguments very briefly. The proposal in the Bill was found to be necessary and was embodied in the Bill of 1914. It was continued in the Bill of Sir George Lowndes' Committee and they introduced provisions so as to secure that all questions as to title should be determined by a Civil Court. That is the present form of the proposal. There is no fear as to the property of a Hindu joint family as it is secured exactly to the same extent as it is secured in the case of the execution of a decree under the Civil Procedure Code. The rules regarding exemption from attachment in section 60 of the Code of Civil Procedure apply also to the execution of such a fine. There are similar provisions in the English law. A Select Committee of this Assembly definitely recommended that we should make such a provision although their recommendation was, I admit, only as regards a few sections. But, Sir, those few sections do not cover the whole scope of the old forfeiture provisions in the Indian Penal Code. Under these circumstances, Sir, I hope that my Honourable friend will not press his amendment.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, my first impression on hearing Dr. Gour was to support him. But on further reflection I find there is really no substance in the amendment proposed by my Honourable friend. I was under the impression that the new section proposed a new liability on immoveable property which did not exist already. If that is the idea under which this amendment was moved, then I find it is a mistaken impression. Under section 70 of the Indian Penal Code all the property of the person against whom a sentence of fine has been imposed is liable for the payment of that fine. It does not make a distinction between moveable property and immoveable property. In fact, the liability lasts for a period of six years and even the death of the offender does not discharge from the liability any property which would after his death be legally liable for his debts. So that, a mere amendment of the procedure section will not remove the substantive law which is enacted in section 70 of the Penal Code. The only difference which is sought to be made by the proposed amendment by Government is this. Hitherto there was no process by which this liability could be enforced under the Criminal Procedure Code. Probably—I must speak with caution on this matter—the Crown would have to file a suit and get a decree in order to enforce this liability on immoveable property. As regards moveable property, under the Criminal Procedure Code as it was, it could be seized and sold. That was the procedure hitherto applied. As regards the liability of the immoveable property, the Crown

would have to figure as plaintiff in a suit and get a decree and then get the decree executed, under the ordinary process of a Civil Court. No doubt, that would lead to delay and if that would save the property from attachment, if that procedure would in any way benefit the accused, I can understand our standing up for omission of this proposed new section. I do not see what defence the accused is going to have when he is put up as a defendant in the Civil Court when the Crown sues him for a fine lawfully imposed by a Court under the law. So it would be a mere formality altogether. The Crown is bound to get a decree. After all, the Crown will have to pay the stamp duty and the defendant will have to engage a pleader and the decree would be a matter of course. I could not understand what defence he could have when such a suit is instituted. So that it will be a meaningless procedure for the man to adopt, it is a purposeless procedure for the accused. After all, the procedure prescribed is only to enforce this liability of treating this order for fine as a decree as it were of a Civil Court and the Civil Court proceeds to execute the decree by attaching and selling the immoveable property of the defaulter. There is a great deal of force in the argument which Mr. Tonkinson has given to-day. Why should persons who invest their savings in moveable property be any more liable than persons who invest their savings in immoveable property? For instance, a business man who believes in stocks and shares may invest his savings in shares and stocks which can be easily seized and sold for non-payment of fine, whereas the other man who invests his savings in immoveable property would escape this liability. It seems to be a meaningless distinction, an unnecessary distinction. After all, it is a debt. He has to pay the debt and his property will be liable for that debt, and this only indicates the procedure for enforcement of the payment of that debt, and I do not know anything harsh in the procedure proposed. The Civil Court will still have power to enquire into any claims with reference to immoveable property. No doubt, it is a complicated procedure. Hitherto the Code of Criminal Procedure did not contemplate such a procedure on account of the attachment, claim sections and further other proceedings which arise out of those claim proceedings. But all those things have to be gone through in case this man has no moveable property from which the fine could be recovered. I wish the Government amendment had provided as in the English Act that if the fine could not be recovered from the moveable property then only the immoveable property should be proceeded against. I mean, if it had been left like that, there would be no objection, that is to say, if the words "issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the moveable or immoveable property, or both, of the defaulter," could be slightly modified in this way, "against the moveable, and on failure to recover the same, thereout the immoveable property of the defaulter." As it is, the option is left to the Magistrate to proceed either against the moveable property or against the immoveable property or both. Immoveable property should be the last resort. It is only in case the fine could not be recovered from the moveable property of the accused person, then only the immoveable property should be resorted to. If some such amendment could be made, then perhaps the amendment of the Government would not be open to objection. I merely throw it out as a suggestion. I am sorry I have not given notice of that, but I hope the Government would bring their amendment in conformity with the English procedure which my Honourable friend, Mr. Tonkinson, referred to just now. I therefore see no substance in the amendment proposed by Dr. Gour.

Mr. H. E. Holme (United Provinces: Nominated Official): With due respect to the opinion of the Honourable and learned Mover of the amendment I am bound to say that my own experience at any rate suggests that the present system of realising fines in criminal trials does not work in a satisfactory manner at all. The realisation of such fines even from wealthy offenders is often a most tedious and most difficult process. Many such offenders seem to make it a point of honour not to pay their fines, if they can evade doing so in any possible manner. They are often able to conceal or remove their moveable property or to make it over to their friends or relatives or to persuade the agency deputed to realise the fine to make a false report that no such property is forthcoming. So much so that personally I have had practically to give up the imposing of fines as being a useless waste of public time and money. I have hardly ever taken over charge of a judgeship without having to write off a large amount on account of irrecoverable fines imposed by my predecessors and I understand that the same is the case in Magistrates' courts. This state of things would be entirely altered by the simple expedient of making immoveable property also liable for the payment of fines. I cannot see any reason whatever why criminal fines should not be a source of legitimate revenue to the State. On the contrary, it seems to me eminently desirable that criminals should not only make some compensation to the State for the expense caused by their misbehaviour but should assist in relieving the burden of taxation which so heavily presses on law-abiding citizens. A money-lender who may perhaps be extortionate and grasping is allowed to realise his demands by the sale of the immoveable property of a person whose only crime may be his improvidence, and I fail to see why the State should not realise fines imposed by criminal courts as some inadequate compensation for the misdeeds of criminals. I accordingly oppose this amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I am not one of those, who are opposed to the realisation of fines from immoveable property, but there are certain features in the proposed amendment which to my mind demand careful consideration of this House and of the Treasury Benchers specially. I quite see that an offender should not escape payment of fine by investing his money in immoveable property but at the same time the difficulties which were pointed out by my Honourable friend, Dr. Gour, are not entirely obviated by considerations such as those which were referred to by the Honourable Mr. Tonkinson in explaining the situation. What I mean to say is this. Has the Government amendment provided for the exclusion of all moveable properties which are not liable to attachment under the Code of Criminal Procedure, but which may have been attached in execution of a decree for the realisation of fine? To my mind, Sir, there are certain difficulties in the Government proposal for amendment and the difficulty lies in clause (2). The Local Government may make rules regulating the manner in which warrants under sub-section (1), clause (a) are to be executed and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrants.

Mr. H. Tonkinson: May I explain, Sir, that my Honourable friend seems to be under a misapprehension. Clause (a) relates only to moveable property and it has nothing to do with the amendment under discussion.

Mr. J. N. Mukherjee: Yes, of course, strictly speaking, I am not correct. I should have put my reference to this point, last of all. But as regards

the words 'other than the offender,' the House will notice that there are, under the Civil Procedure Code, certain moveable properties which are not liable to attachment, and if those words are to be retained in the clause certain moveable properties belonging to the offender as judgment-debtor—a list of such properties is given in section 60 of the Code of Civil Procedure which are not liable to attachment and sale—will be sold. Is it intended that articles such as implements of husbandry, and other means of subsistence of an agriculturist, are to be attached and sold under the Criminal Procedure Code? If the man was simply fined, is it proper that he should be turned into a criminal by being deprived of all his means of livelihood by the sale of such articles of primary necessity? I would ask the Honourable Members on the Treasury Benches to consider whether the words 'other than the offender' should remain where they are or should be dropped. These words go to exclude all objections that may be preferred by the judgment-debtor himself on the ground that the property attached is not liable to attachment and sale, when he does so as the man on whom the fine has been imposed.

Then as regards immoveable property, there can be no doubt that provision has been made in the clause in question by which the nearest Civil Court, by which any decree for the amount of the fine could be executed, shall be in a position to realize the fine by executing the suit as a decree, and such court shall be deemed to be the Court which passed the decree, and all the provisions of the Code of Civil Procedure as to execution of decrees shall apply. So, my submission on this matter is not so very pointed as that of my learned friend, the Mover of the amendment. I think all the provisions of the Civil Procedure Code relating to the execution of decrees have been made applicable to cases where immoveable property has been attached for the realization of fine. The judgment-debtor under section 47 of the Code of Civil Procedure, in case of a joint property, or any co-parcener in such property under some other appropriate section of that Code can come forward and say that such property is not liable to attachment, on the ground that according to the law prevalent in any part of India, joint property or any interest in such property is not liable to attachment. From that point of view my submission is that the learned Mover of the amendment would not be justified in pressing it. But there is that other aspect of the question to be considered to which I have invited the attention of the Honourable Mr. Tonkinson.

Mr. Pyari Lal (Meerut Division: Non-Muhammadian Rural): Sir, I agree with the Honourable Dr. Gour that the introduction of this new provision, that a man's immoveable property is also liable to attachment, is not a proper one. It would lead to endless complications, considering the state of society in this country. Things in England may be different, but here we are living under a society where the joint family system prevails, where among Muhammadians the system of dower prevails, where, when a criminal Court would impose a fine, in nine cases out of ten it would naturally follow that the matter would have to be taken to the Civil Court to decide as to whether there are any other owners of the property which is sought to be attached. The Criminal Court is not competent to go into the question, the matter will have to be gone into by the Civil Court. When the Civil Court considers that point, there will be any number of hearings, and the case will drag on its slow length and it will be very inconvenient, and in every district the work of the Criminal Courts and of the Civil Courts on this account will be very greatly increased.

[Mr. Pyari Lal.]

Every criminal file will be kept alive till the fine is realized and the case relating to the fine is decided. You will require a special Civil Court to always try such cases. It will of course represent a gain for the legal practitioners working on behalf of Government and those retained by the accused; but the ends of justice will not be very much furthered. The learned gentleman who spoke last said that these fines might be a source of revenue to Government. I am sorry, Sir, to say that the idea of making the imposition of fines a source of Government revenue is peculiar to himself. I do not think this Government or any other civilized Government can take such a suggestion seriously. It is within my experience that the imposition of fines is not a real punishment to the accused but it is so to the members of his family. This punishment is not visited on him but on his wife and children and those immediately dependent on him. I have known cases where after a man has been fined, his wife has been divested of all her ornaments, jewellery and cooking utensils and the poor little homestead that she occupied. What happens is that you inflict any amount of misery on these persons. There may be in cities persons, of whom Mr. Rangachariar spoke, who possess stocks and shares and inmoveable property. But in the district a poor man owns perhaps a share in a single little house in a village, in which not only he but his brothers and children and all his collaterals live. If the Government attaches and sells his share of the house what will it amount to? Only a fraction of the house is his and by selling it Government practically gains nothing and the whole family is disturbed by the introduction of a stranger into it, namely, the purchaser of the share. In fact I think that it is a mistake to impose fines in a criminal case; because no sooner is a fine imposed in a criminal case the police pounce upon the house of the accused and cause any amount of inconvenience and trouble and harassment to the inmates of the house. The result is that not only that man but the whole neighbourhood suffers. Then again, if the Civil Court goes into the question there are always any number of claimants, his brothers and collaterals and, in the case of Muhammadans, the whole thing may be charged with the dower debt of his wife. To decide such a question will not be an easy thing.

With these observations, Sir, I support the amendment moved by my Honourable friend.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, in case the House should have been misled by any remarks from my friend, Mr. Mukherjee, I would merely emphasise what Mr. Tonkinson pointed out when he interrupted my friend, namely, that so far as clause (a) of the Bill is concerned, which deals with the attachment of moveable property, we are making no change whatever in the law, nor indeed has Dr. Gour's amendment anything whatever to do with it. As regards clause (b)—immoveable property—Mr. Mukherjee himself pointed out that the Bill lays down that all the provisions of the Code as to the execution of decrees shall apply. Therefore, if the Code exempts any property from sale and attachment in execution of a Civil Court decree, that same property will not be attachable or saleable in execution of a warrant for the levy of a fine. Sir, Mr. Pyari Lal has revived what I thought was a very dead red-herring, viz., that complications will be dragged in in connection with the Hindu undivided joint family. Mr. Tonkinson's arguments on that point were, I think, quite conclusive.

We are introducing nothing new. The Code of Civil Procedure has to deal with these matters in exactly the same way as it will in its application for the levy of fines under the Code of Criminal Procedure. Mr. Pyari Lal thought it a most improper thing that Government should make any revenue out of the imposition of fines. Sir, I do not know whether Mr. Pyari Lal is a Municipal Commissioner in Meerut, but very probably he is. But whether he is or he is not, he is probably aware that all Municipalities make a very large income out of fines imposed in their Municipalities. He has even suggested that we should go so far as to abolish fines altogether—a most iniquitous form of punishment. He has not suggested what we should substitute for it. The only substitute of course is imprisonment; that is the next minor punishment. Sir, if he is not prepared to go as far as that, the only solution of the difficulty so far as I can see is that we should first make a start by abolishing crime.

Mr. B. N. Mishra: (Orissa Division: Non-Muhammadan): Sir, I am sorry I have to differ from the learned Dr. Gour as regards his amendment that attachment of immoveable property should be omitted. Sir, the object of the Criminal Procedure Code will be frustrated if immoveable property is not reached in order to realise fines. (Dr. H. S. Gour: "What is the present law?") Of course, immoveable property is reached now. A man may cheat me Rs. 10,000, may commit breach of trust of Rs. 20,000 and invest it in immoveable property, and then the law will have no hand to touch such property. If that be the sense of this Honourable House, I think, then, Dr. Gour's amendment may prevail, but I do not think that any Honourable Member of this House will consent to such criminal robbing of a man and investing money in immoveable property so that the Court cannot attach the same. I submit, Sir, that generally in India, as Mr. Pyari Lal has said, people possess more immoveable property and only in a few cases have got enough of moveable property. In case immoveable property is absolutely excluded from the scope of the criminal courts, really it will be difficult to realise any fine. In some cases landlords rather feel it much beneath their dignity to go to jail; they would sometimes court a sentence of fine. I think they consider it to be a lenient sentence if they are let off with a fine. In such a case if they cannot pay money, the only course left to the Court is to realise the fine by attaching immoveable property. Sir, it has been said that there will be complications in the case of members of joint Mitakshara family. No doubt there may be difficulties but that will not justify the abolition altogether of the attachment of immoveable property. I think that would strictly speaking come under the amendment which I have proposed as an explanation and I think Honourable Members would do well to support my amendment, that is, to attach only the interest of the offender or of the criminal. Sir, I think it has been already supported by Honourable Members and the Honourable Mr. Tonkinson has already explained fully the position. I oppose the amendment of Dr. Gour.

3 P.M.

(An Honourable Member: "I move that the question be now put.")

The motion was adopted.

The amendment was negatived.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, may I move an amendment with regard to what my Honourable friend, Mr. Rangachariar, has suggested with regard to this clause if I am in order? The practice has always been to . . .

Mr. President: Order, order.

Rai Sahib Lakshmi Narayan Lal (Bihar and Orissa: Nominated Non-Official): Sir, the amendment that I am going to move is:

"That in clause 99 in the proviso to proposed section 386 (1) (b) for the words 'undergone the whole of such imprisonment' substitute the following: 'been sent to prison'."

Clause 99 runs as follows:

"For section 386 of the said Code, the following section shall be substituted, namely:

'386 (1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways,'

Mr. President: I think it is unnecessary to read the whole section.

Rai Sahib Lakshmi Narayan Lal: Sir, in the proviso it is said that:

"If the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so."

The present law is that even if the man who has been sent to imprisonment in lieu of fine, has undergone the whole period of imprisonment which he was ordered to undergo, he is not exonerated from his liability to pay the fine. This is very hard, and in many cases it may mean double punishment. There are many to whom an imprisonment in lieu of fine even for a day or even for a few hours means degradation for life in some shape or other, and this degradation is caused from the fact of the imprisonment itself apart from the period for which he underwent imprisonment. The effect of my amendment is that no sooner a man is sent to prison in lieu of fine, he is exonerated from his liability to pay the fine. This change is not likely to create any difficulty in the administration of justice, if steps are taken for the realisation of the fine from the moveable and immoveable properties before the man is sent to prison, especially when new provisions are now being introduced for creating facilities for the realisation of the fine from immoveable properties also. With these few remarks I commend this amendment to the House.

The motion was negatived.

Mr. K. B. L. Agnihotri: (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move:

"In clause 99, in the proviso to sub-section (1) of proposed section 386, omit all words after the word 'warrant'."

The effect of my amendment will be, Sir, that the proviso will read as follows:

"Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant."

Sir, under this law, we provide that in case a fine is imposed on an offender, the Court may direct that in default of payment of fine, an offender may be sentenced to imprisonment for a particular period and that period has also been limited to one-fourth of imprisonment given or some

such period. The period also diminishes proportionately to the amount paid or recovered. Well, the Court has already ordered and directed that he is to be imprisoned in default of payment of the fine and now under the new clause 886 we also provide that the fine could also be realised as a decree. In that case, Sir, this provision of directing the realisation of fines by sentencing the man to imprisonment will become superfluous. This addition itself shows that it is only in rare cases that the imprisonment might be inflicted on the offender in case he fails to pay the fine. If this is the case, then why should that offender be held liable for an extra punishment after he had undergone the extra imprisonment which he had been ordered to undergo in default of payment of the fine. I, therefore, propose that when once a man has undergone the sentence in default of a fine, he should not be made to pay that amount subsequently. With these words, Sir, I commend my amendment to the House.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, this section has to be read with the sections of the Penal Code which provide the substantive punishment of fine and under the Penal Code, if a portion of the fine had been paid after the man had been sent to jail for not having paid the fine, a *pro rata* reduction of the term of imprisonment in default shall be made and if no part of the fine is paid it is also laid down that if he suffers the imprisonment which is provided in default (sections 67, 68, 69 and 70), then again the six years' liability to pay the fine remains. So, it seems to me doubtful how we can here in this clause say that the suffering of imprisonment in default of payment of a fine should absolve the man from being liable to the fine, if the fine could be recovered by other means than by sending him to jail. And, therefore, I think this amendment which my learned friend proposes cannot stand together with the sections of the Penal Code. And it must also be recognised that the fine may be evaded—assuming that the man must pay the fine—then a fine might be evaded by a contumacious person and he may suffer the imprisonment and yet, having the means to pay the fine, not pay the fine. Is that an advantage? Will it work justly? That is another point which has to be taken into consideration. I, therefore, think that this amendment that serving the period of imprisonment provided in default of payment of the fine should absolve the person from being liable to pay the fine—I do not think I can support this amendment.

Sir Henry Moncrieff Smith: Sir, Mr. Subrahmanayam has quite rightly pointed out here that we must be consistent with our Penal Code. It is no good moving an amendment here unless we look to the Penal Code. The chief point against the amendment has already been made. If the fine is realised, or a portion of the fine is realised after the man goes to jail, then there is a proportionate reduction in the term of the imprisonment and we get rid of the man. I ask the House whether it is reasonable that a man should be allowed to be a burden upon the State when he has property from which the fine can be realised. As long as there is property and the Court thinks that the amount of the fine can be realised, I see no reason why in the law of this country, at all events, we should allow the accused to go to jail to lead a comfortable life there, very possibly a life which he enjoys, and to call upon the taxpayer to maintain him there when he has property out of which the fine might be realised.

The motion was negatived.

Mr. B. N. Misra: Sir, I am rather encouraged to move my amendment* which is an explanation, seeing the attitude of many Honourable Members who do not want property to be attached at all. Sir, what I propose is an explanation, and it relates to the section which provides that the property belonging to the offender is liable for the fine. Sir, these words are liable to be interpreted differently by Magistrates and that is why I have proposed this explanation. I had originally put in the words "specific interest in the property," but, Sir, there may be some difficulty in using the word "specific." So, with your permission, Sir, I propose that the explanation should be:

"When the defaulter is a member of a joint family, property of the defaulter means the interest in the property."

I wish to cut out the word "specific," as was suggested by the Honourable Mr. Rangachariar. Sir, many Honourable Members have already described the difficulties of attaching moveable property when they happen to be members of a joint family, and the Honourable Mr. Tonkinson pointed out the safeguards in the case of members of joint Mitakshara Hindu families. But I do not think the Honourable Mr. Tonkinson has met the case of the members who live in Bengal under the Dayabhaga family, or the Muhammadan members or the Sikhs or Parsees or other communities who live jointly in India and also the case of partnership property. There may be some partners having property in common and one man may commit some offence and he may be punished. Of course the property belonging to the firm also belongs to any one of the partners and the Courts will be justified in issuing a warrant and attaching such property. There will thus be several difficulties and I do not think I need add to what I said on the last occasion. I shall only point out, Sir, that instead of the whole property being attached, it will be safeguarding everybody if the interest of the offender alone is attached. This will meet the objection not only of members of Mitakshara Hindu families but also other members such as Muhammadans, Parsees or Indian Christians who are living jointly. With these words, Sir, I propose my amendment which runs as follows:

"In clause 99, to sub-section (1) of proposed section 386 add the following:

*Explanation:—*When the defaulter is a member of a joint family, property of the defaulter means the specific interest in the property."

The motion was negatived.

Bhai Man Singh (East Punjab: Sikh): My amendment is:

"In clause 99 in the proviso to sub-section (3) of section 386 omit all the words after the word 'offender'."

The proviso in which I want this amendment to be made reads like this:

"Provided that no such warrant shall be executed by the arrest or detention in prison of the offender in any case in which the Court passing sentence upon him has directed his imprisonment in default of payment of the fine."

The Honourable Sir Malcolm Hailey: We are prepared to accept that.

The motion was adopted.

* "In clause 99, to sub-section (1) of proposed section 386 add the following:

*Explanation:—*When the defaulter is a member of a joint family, property of the defaulter means the specific interest in the property."

Mr. J. N. Mukherjee: I ask the permission of the Chair in respect of an amendment I propose, which unfortunately I overlooked before, and which is to the effect that the words in the new sub-section 386 (2) "other than the offender" may be omitted.

Sir Henry Moncrieff Smith: I am afraid I must object to this amendment. The Bill has been under the consideration of this Assembly for over three weeks, and it is rather hard on the Government that when the consideration of the clause is practically complete they should be asked to consider the effect of an amendment sprung upon them without notice.

Mr. President: I must uphold the objection on the ground of notice. The amendment was only handed to me three minutes ago.

Clauses 99 to 103 were added to the Bill.

Bhai Man Singh: My amendment is:

"Omit sub-clause (v) of clause 104."

Sub-clause (v) of clause 104 says

The Honourable Sir Malcolm Halley: We are prepared to accept the amendment.

The motion was adopted.

Clause 104, as amended, and clause 105 were added to the Bill.

Dr. H. S. Gour: Sir, the amendment which I shall move presently is another important amendment and I would ask this Honourable House to indulge me for a few moments when I explain its provisions. The object of my amendment is that in all cases where the District Magistrate or the Presidency Magistrate or a Magistrate of the first class has passed an order for keeping the peace or giving security for good behaviour, the appeal should lie to the Court of Session and not to the Court of the District Magistrate. Honourable Members will find that under the present constitution the District Magistrate is the head of the district police, the District Superintendent of Police being regarded as his police assistant. All cases in the district relating to the breach of the peace and good behaviour are therefore cases in which the District Magistrate is interested officially and it is only fair that any order passed by a Magistrate including himself should be revisable on appeal by an independent tribunal, such as the Sessions Judge. I am only arming the superior court with appellate authority in a matter in which there are obvious objections to the hearing of an appeal by a person interested in the maintenance of peace and order in the district. On *a priori* grounds I do not think there would be any objection. The only objection which is likely to be raised from the Government side would be that you will be crowding the Court of Sessions with additional work and thereby increasing the cost of criminal litigation. That is no doubt an argument which requires consideration, but on the other hand, I would ask Honourable Members to observe that if any justice is to be done to an offender or an applicant against whom an order has been passed for keeping peace or being of good behaviour, is he likely to get fair and even-handed justice at the hands of the District Magistrate or is it not likely that the District Magistrate who peruses case diaries and police reports and hears a good many things which undoubtedly he is bound to hear about the *badmashes* of his district and about people who are disturbers of public peace, is it not likely that

[Dr. H. S. Gour.]

justice will suffer and has suffered in the past by such cases being finally disposed of by him rather than by an independent tribunal such as the Sessions Judge is, who will hear these cases and dispose them off in accordance with law. If there is therefore the question of cost on the one side and the question of justice on the other, I have no doubt that this House will vote for justice and after all how much would be the additional cost. I do not think it would be considerable and even if it were considerable, we are now living in times when the nation demands more and more of justice, and justice which is not open to the objections to which I have adverted. On these grounds, Sir, I move my amendment which runs as follows:

"In clause 106 (1) after the words 'said Code' insert the following:

'the words 'other than the District Magistrate or a Presidency Magistrate' shall be omitted, for the words 'District Magistrate' the words 'Sessions Judge' shall be substituted and '."

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I desire to oppose this amendment. In the first place I must draw attention to a remark made by the Honourable and learned Member who moved the amendment in which he said that, if any justice is to be done, there should be an appeal in all cases from the sentence of a Magistrate to an independent tribunal and not to the Court of the Magistrate who is the head of the district police and who is interested in the maintenance of peace and order. Well, if this is really the opinion of the Honourable Member, I should like to ask him why he has not moved a far more sweeping amendment. How can he tolerate the provisions in the Code which lay down that appeals from Magistrates of the second and third classes should lie to the District Magistrate. It seems to me, Sir, that there is a fault in his logic: and that if he is really of opinion that in all cases there should be an appeal to what he calls an independent tribunal which has no interest in the maintenance of peace and order, then he ought to move a further amendment and provide for all appeals from all Magistrates of whatever grade to lie to the Court of the Sessions Judge.

It seems to me, Sir, that he has selected the weakest possible case in proposing that appeals under this section should go to the Sessions Judge and not to the District Magistrate, because he has overlooked the fact that proceedings under this Chapter VIII are only *quasi-judicial*,—they are of the nature of executive proceedings with the object of preventing breaches of the peace and for maintaining order. Now that is not a matter with which the Sessions Judge should be directly connected. The responsibility of seeing that breaches of the peace of the kind provided for in Chapter VIII do not occur lies upon the District Magistrate. Even if he is not primarily interested in the case, the ultimate responsibility in all these matters lies upon him, and it is therefore proper that an order made by subordinate Magistrates under this section should be referred to him in appeal, and that, I submit, is the logical basis on which this section rests. I trust, therefore, Sir, that the House will not support this amendment.

Dr. Wand Lal (West Punjab: Non-Muhammadian): Sir, I support this amendment. The Honourable Mr. Haigh endeavoured to correct Dr. Gour, saying that since he has not moved another amendment and that since appeals from sentences passed by second or third class Magistrates lie in the Court of the District Magistrates and not in that of the

Sessions Judge, and that since he has moved no amendment as to those, therefore, this amendment should not be appreciated. That is the main argument which he has advanced, namely, because he has made an omission in one direction, therefore, he may not be allowed to correct a provision of law, which is defective on the very face of it. I may tell my learned friend that a District Magistrate is considered to be responsible for the peace and order of the district. As a matter of fact, in some cases, suggestions, as to security under section 110 emanate, in a way, from him, and consequently, on the information given by the Police in some cases, or on the receipt of information given by some other persons, criminal proceedings, under section 110, are commenced. Now, Sir, I place this point before the House. The very District Magistrate whose desire is that all *badmashes* who do not behave properly, may be bound over, that is may be called upon to give security, should be allowed to hear appeals against such order. Should a man, who has been dragged to the Court and has been bound down, file an appeal against the same order before the District Magistrate, when we see that one of the first class Magistrates, subordinate to him, has passed that order. Is there any logic in it? May I ask this of the Honourable Mr. Haig? There is no logic in it I may say; it is iniquitous. For all intents and purposes the object of the law of appeal will lose its force. Therefore, on that ground, I support this amendment.

There is another ground. The Honourable Mr. Haigh failed to see that an appeal to the District Magistrate is competent only from the sentence passed or conviction ordered by a third-class or second-class Magistrate, and not by a first class and besides that an appeal will be instituted in the court of the District Magistrate only in case of a conviction or sentence; but when an order is made by a first class Magistrate under section 118 that is not a sentence or a conviction. He will agree with me that the sentence is quite different from an order passed under section 118 of the Criminal Procedure Code. All these proceedings started under sections 110 are considered preventive measures. They are not part of the substantive law. Substantive law is incorporated and embodied in the Indian Penal Code. If a person commits an offence and he is prosecuted and convicted only by a third class or a second class Magistrate then and then alone, namely, only in those cases, appeals, as I have already submitted, from such sentences or convictions, will lie in the court of the District Magistrate. But here there is no question of a sentence or conviction, or third or second class Magistrates. Here is an order, which only a first class Magistrate can pass, enjoining upon a person, who has been brought before the court, to give security for a certain period, and the person who has been called upon to do so, files an appeal from that order. The recommendation, put forward by this amendment, is that it does not look proper that the same officer, who is in charge of law and order, should be entrusted with the power of adjudicating upon the fitness, or impropriety of the same order. Suppose, Sir, that A is in charge of a certain Department and A offers a suggestion that in a certain village or a certain *ilaga* all *badmashes* may be called upon to give security, so that crime may be reduced. Now A passes an order like that, and then A's subordinate first class Magistrate, after having gone into the evidence which has been produced in that behalf, passes an order appeals against which lie before the same A. Can there be any guarantee that A, though he may be very honest and his intentions may be very good, will not be influenced by the fact that it was he himself who, in a way who was the author of

[Dr. Nand Lal.]

these proceedings upon which the orders for taking security were eventually passed. Is he barring some exceptional cases, likely to set aside those orders? On this ground also I support this amendment, which speaks for itself and deserves the sympathy of the whole House.

The third ground is that on the occasion of framing laws or devising rules we must bear two important points in mind. One is, how will the public take it? Our District Magistrates are honest officers no doubt. Dr. Gour has not attacked their honesty or impartiality. His suggestion is that the public will look down upon this provision with contempt, they will misconstrue it. The attempt which has been made through the medium of this very commendable amendment is that we should not leave any room for avoidable criticism. That is the honest desire and the intention of the Honourable Mover of this amendment. I trust that the Treasury Benches will kindly appreciate this amendment and accept it. I may repeat my suggestion that there is no insinuation against any District Magistrate. They are very capable and able men; but the desire is that they should not be entrusted with the decision of appeals against the very orders which in a way, and in some cases, may be traceable to their honest suggestion as executive officers of the District.

With these remarks I support this amendment.

Mr. C. A. H. Townsend (Punjab: Nominated Official): Sir, the last speaker said that all proceedings under section 110 of the Criminal Procedure Code are ordered by District Magistrates directly.

Dr. Nand Lal: I did not say that; I said that in some cases the suggestions in a way emanate from the District Magistrates or executive officers.

Mr. President: If the Honourable Member wishes to correct a statement he must at least have the courtesy to do it standing.

Mr. C. A. H. Townsend: I leave it at that as Dr. Nand Lal apparently does not adhere to what I thought he said. But in this connection I wish to bring one point before the House which bears, I consider, not only on this amendment but on many others that have been moved in this debate by my friends on the left. Years ago, Sir, I was a Settlement Officer (without any Magisterial powers) in a Punjab district not very far from Delhi. As such it was my duty to investigate the affairs of every individual village. It was a district in which, as is common in the Punjab generally, cattle stealing was a very popular form of crime. In one village, Sir,—the same indeed happened at many other villages, but I remember this one village particularly,—the outcry on the matter was very insistent, the assembled grey-beards of the village all said that they had a very strong complaint against the administration. I asked them what that was. They said: "We cannot keep our cattle, they are all stolen away from us at night and the thieves are never punished, and if any persons are by chance sent to prison, they are let out at once." I pointed out to them that nobody could possibly object to innocent men not being sent to prison. They said: "We are not talking of innocent men: we are talking of men who are known to be guilty in the village of these offences. They should lock them up, and what is more you ought to be able to send them to prison on suspicion." There are, Sir, two sides to every story. I fully admit that much discontent can be caused by innocent men being

sent wrongfully to prison. But I do ask this House to realise that discontent which might in the long run be equally dangerous to the administration can be also caused by men who are really guilty not being sent to prison, and before this amendment or other similar amendments are finally disposed of, I would ask my friends on the left to carefully consider this point. I oppose the amendment, Sir.

Rao Bahadur T. Rangachariar: Sir, many of the remarks made by my Honourable friend who just now spoke are irrelevant to the present question we are considering. We are not now concerned with the order imposing security. That is already passed. We are not concerned with sending a man to prison in case he fails to give security, because the law takes its course after the order, if he fails to give security. I do not see what all these remarks which my Honourable friend just now made have got to do with this amendment. We are now concerned with an appeal against the order which has been passed. There are two questions involved in this amendment. Only one question has been dealt with hitherto. The first question is to whom should an appeal go in a case of this sort. The section provides that an appeal shall lie only in the case of orders by certain Magistrates. The section as it stands provides an appeal in the case of orders by certain Magistrates to the District Magistrates. In the case of the Presidency Magistrate and the District Magistrate the Code as it stands provides no appeal. It is rather a curious lapse. If Honourable Members will compare section 406A as now proposed by the Government with section 406, the Code provides an appeal in the case of a District Magistrate and a Presidency Magistrate where he refuses to accept a surety. If he passes an order for security either for peace or for good behaviour, there is no appeal provided. That is the more substantive order, the more essential order and no appeal is provided in the case of an order by the District Magistrate or Presidency Magistrate. In a purely small matter just as refusing to accept a surety, an appeal is provided. I take it it is an unintentional omission in the Code that no appeal should be provided in such serious orders, when the orders are passed by a District Magistrate or a Presidency Magistrate. Look at the consequence of an order passed by a District Magistrate or a Presidency Magistrate either for keeping the peace or for good behaviour. The man has to go to jail for one year or for three years as the case may be. Now, can such an order remain without an appeal? If a first class sub-divisional Magistrate passes an order, that order is open to appeal. But if it is passed by a District Magistrate it is not open to appeal at all. I do not think, Sir, it is right. Therefore one of the objects of this amendment is a very good and necessary object. As Honourable Members will see you should provide for an appeal in such cases also.

To whom should the appeal go is the next point. Should it go to the executive head of the district or should it go to a judicial officer? The proposal is that it should go to the judicial head of the district. What is the harm in that amendment? An appeal lies; why should not the appeal go to a judicial officer? You have passed an order; the urgency is all gone; an order has been passed; there is no question of any stay or any thing of that sort; peace is not threatened; the vagabond is already bound over; you only give him the chance of an appeal. Give him a fair hearing. What is the good of giving a right of appeal with the one hand and taking away with the other hand? What is this fear of Sessions Judges, I want to know? Here we are accused of distrust of the police; we are accused of distrusting our Magistrates. May I in turn accuse

[Rao Bahadur T. Rangachariar.]

those who oppose these amendments that they distrust the Sessions Judges? They have no confidence in their Sessions Judges. I return that compliment to those who attack us. I say, Sir, that the Sessions Judge is the proper authority to deal with this matter and he will bring a judicial mind to bear upon the case.

Sir, there is an omission in the amendment proposed by my Honourable friend, Dr. Gour, which with your permission, Sir, I propose to make up. Sir, I wish to add the words "in the case of an order by a Presidency Magistrate to the High Court;" because if the amendment proposed by my Honourable friend is left as it is, it would read that in the case of a Presidency Magistrate also the appeal should go to the Sessions Judge. Of course the obvious answer which the Honourable the Treasury Bench would at once come forward with is "Where is the Sessions Judge in a Presidency town?" It is a very legitimate question to put, no doubt; but it is an oversight on the part of my learned friend, Dr. Gour, and I therefore, Sir, say that the words "in the case of an order by a Presidency Magistrate to the High Court" should be inserted. It is admitted these are appealable orders, and therefore I say let us give a fair appeal; no party suffers. I support the amendment and I move this amendment to add the words "in the case of an order by a Presidency Magistrate to the High Court," at the end.

Dr. H. A. Gour: I accept the amendment suggested by my Honourable friend, Mr. Rangachariar.

Sir Henry Moncrieff Smith: Sir, Dr. Gour, with his usual optimism and foresight prophesied that we had only one possible argument against his amendment, and that was that it would add to the work of the Sessions Courts and therefore add to the expense. Sir, that is a very strong argument. I think the House has perhaps overlooked the fact that this House is not going to be called upon to provide money for this additional work that will be cast upon the Sessions Courts. This House is proposing to throw a very heavy burden on the already overburdened Local Governments' finances. But, Sir, that might have been the end of our argument

Dr. Nand Lal: With the permission of the Chair, I submit there are if I mistake not very few cases.

Sir Henry Moncrieff Smith: They may be few, but this House is proposing to make them very many. Dr. Gour went on, and like other Members in this House, proceeded to level an attack against the impartiality of the District Magistrate. I do not think the Government of India can sit down and listen to these remarks without some protest. It is quite true that my friend, Dr. Nand Lal, has said that he intended nothing. He may have intended nothing, but he said a great deal. Dr. Gour, said, justice has got to be done in these cases and is the offender likely to get fair and even-handed treatment from the District Magistrate? Dr. Nand Lal said, that it is the District Magistrate who is responsible for the peace and order of the district and therefore you cannot expect him to be impartial in these matters

Dr. Nand Lal: I did not say so, Sir.

Sir Henry Moncrieff Smith: I have not got a short-hand report. I have got down as much as I could.

Dr. Nand Lal: On a point of personal explanation, Sir. What I said so far as I can recollect was that our District Magistrates are competent, impartial and experienced, but at the same time we ought to be very careful to see that the appeal is not instituted in the Court of the District Magistrate, because it will be more desirable. This is what I had submitted.

Sir Henry Moncrieff Smith: Sir, it is by no means the case that the District Magistrate always institutes the proceedings in these cases. Far from it. I have been a Magistrate myself for years, and I know it is, as a matter of fact, in most cases the Superintendent of Police who eggs on his Sub-Inspectors to help to preserve the peace of the district by using the powers that they have got to bring offenders of this kind before the Courts. I would suggest, Sir, with reference to this point that a District Magistrate can barely be trusted because he is likely to listen to everything that the police say to him. I would suggest to the House that the District Magistrate who sits at his headquarters and swallows everything that is put before him by the police would find something very different from peace and good Government in his district; he will find most hopeless confusion and unrest in his district in a very short time. The District Magistrate, Sir, I think, must be trusted to keep the reins in his own hands and not to allow himself to be used as a tool by the police.

Mr. Rangachariar. Sir, has introduced his new amendment about the Presidency Magistrates. Mr. Rangachariar has given notice of an amendment himself, No. 208, and since he drafted that amendment he has apparently changed his mind, because if Mr. Rangachariar's amendment No. 208 is applied to the Bill it will have the result of providing no appeal whatever against any order of a Presidency Magistrate. Mr. Rangachariar now is proceeding to assist Dr. Gour to correct his mistake and at the same time to get out of his own. Sir, it has been suggested by Dr. Gour that you must not leave the final word in this matter with the District Magistrate, and Mr. Rangachariar would no doubt add now 'with the Presidency Magistrate.' But there is no question—let not the House be deceived by this argument—there is no question of the final word being with either of these Magistrates. There is revision in these cases. My Honourable friend says: "Ah! revision." I hope he remembers that, Sir, when he comes to move some of his later amendments. Revision, Sir, is regarded by many Members of this House as a most essential safeguard. They are pressing for it here, there and everywhere. But when I point out that this safeguard does exist in this particular case, Dr. Gour says "Ah! revision." There is the safeguard, Sir, and I consider that that is quite enough in the case of the Presidency Magistrate and the District Magistrate. There is a good deal of loose talk in regard to this amendment. It has been assumed that first and second class Magistrates are in the habit of passing orders to secure good behaviour and keep the peace. If Honourable Members will look at sections 107, 108, 109 and 110, they will find that it is only a very limited class of Magistrates who have power to pass orders at all.

Mr. J. E. Percival (Bombay: Nominated Official): Sir, I only wish to point out one additional fact, not mentioned by my Honourable friend, with reference to section 125. Section 125 runs:

"The Chief Presidency or District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter, etc."

[Mr. P. E. Percival.]

Now, Sir, if we transfer the appellate power from District Magistrates to Sessions Judges, it seems to me that we shall be putting in a provision contradictory to section 125; for you give the power in one section to the District Magistrate to cancel the bond, and in the other section to the Sessions Judge. If the Sessions Judge rejects the appeal, all the same the District Magistrate can cancel the bond under section 125. The District Magistrate is the sole Appellate Authority dealing with security cases (*Dr. H. S. Gour*: 'Prestige'); and that is the reason of the provision in section 125, Chapter VIII, to that effect.

There is one other point. With reference to my Honourable friend, Dr. Nand Lal's remarks regarding the orders given by the District Magistrate, it has been laid down that:

"Where a District Magistrate is executive head of a District and is actively concerned in the institution of proceedings against a person under Chapter VIII, he is debarred from hearing an appeal under section 406 without the permission of the Sessions Judge."

So that the case of the District Magistrate himself being concerned in the case has already been met.

Mr. Jamnadas Dwarkadas: I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: Before I put the question I want to ask the Honourable Mr. Rangachariar whether the amendment he proposes should not be inserted after the words 'Sessions Judge' rather than at the end of the amendment.

Rao Bahadur T. Rangachariar: Yes, Sir, after the words "Sessions Judge."

Mr. President: The original amendment was:

'In clause 106 (1) after the words 'said Code' insert the following:

'the words 'other than the District Magistrate or a Presidency Magistrate' shall be omitted, for the words 'District Magistrate' the words 'Sessions Judge' shall be substituted and."

Since which a further amendment has been moved:

"To insert after the word 'Judge' the words 'and in the case of an order by the Presidency Magistrate to the High Court'."

The question I have to put is that that amendment be made.

The motion was adopted.

Mr. President: The question is that the amendment, as amended, be made.

4 P.M. The Assembly then divided as follows :

AYES—35.

Abdullah, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Dalal, Sardar B. A.
Das, Pandit R. K.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Huseanally, Mr. W. M.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.

Lakshmi Narayan Lal, Mr.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Singh, Raja K. P.
Srinivasa Rao, Mr. P. V.
Venkatapatiraju, Mr. B.
Wajihuddin, Haji.

NOES—30.

Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cattell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haig, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.

Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Sassoon, Capt. E. V.
Singh, Mr. S. N.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheoperahad.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was adopted.

Mr. President: The question is that clause 106, as amended, stand part of the Bill.

Rao Bahadur T. Rangachariar : I move :

" In clause 107, in proposed section 406-A substitute the following as clause (b) in the places of clauses (b) and (c) :

" (b) If made by any other Magistrate to the Court of Sessions."

The clause is :

" Any person aggrieved by an order refusing to accept or rejecting a security under section 122 may appeal against such order :

(a) if made by a Presidency Magistrate, to the High Court;

(b) if made by the District Magistrate, to the Court of Session; or

(c) if made by a Magistrate other than the District Magistrate, to the District Magistrate."

My proposal is that in place of clauses (b) and (c) we should have the following :

" If made by any other Magistrate, to the Court of Session ",

[Rao Bahadur T. Rangachariar.]

that is to say, that if it is made by any other Magistrate than a Presidency Magistrate it will go to the Court of Session. It follows the previous section and I hope there will be no difficulty in accepting it.

Mr. H. Tonkinson: I oppose the amendment. My Honourable friend perhaps consider that his present proposal is consequential upon the previous proposal. I submit that it is nothing of the kind. In section 406A we are providing for an appeal in cases in which there has been no appeal before and I submit that we provide quite sufficiently when we allow these appeals to the District Magistrate, if the order is passed by a Magistrate other than the District Magistrate. In fact, there is not the least doubt that the last amendment that was carried against us and the present amendment are entirely inconsistent with Chapter VIII of the Code. Chapter VIII of the Code gives the full control in these proceedings to the District Magistrate and there is no doubt whatsoever that he should be the person . . .

Rao Bahadur T. Rangachariar: I do not press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Dr. H. S. Gour: This amendment which I move is consequential. It runs as follows:

"In clause 107 for clause (b) of proposed section 406A, substitute the following:

'(b) if made by the District Magistrate or a Magistrate of the first class to the Court of Session; or .'"

I shall explain to the Honourable Members why it is consequential. In the proposed section 406A it is provided:

"Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,—

- (a) if made by a Presidency Magistrate, to the High Court;
- (b) if made by the District Magistrate, to the Court of Session; or
- (c) if made by a Magistrate other than the District Magistrate, to the District Magistrate."

Honourable Members will see that such an order may be passed by a first class Magistrate, as Sir Henry Moncrieff Smith has pointed out that first class Magistrates are empowered to deal with these cases of security. Now, Honourable Members know that in ordinary cases the District Magistrate has no jurisdiction whatever over a sentence or conviction of a first class Magistrate and the only Court which is empowered to hear appeals from a conviction by a first class Magistrate is the Court of Sessions. I see no distinction in principle between a conviction and an order refusing to take security and I do not see why if in the one case the Sessions Court is the right Court, in the other case the Sessions Court is the wrong Court and why an appeal should lie to the Court of the District Magistrate. That is, I submit, an anomaly which my amendment seeks to remove. I do not think that the Government should oppose this amendment. It will make the Code more logical and more consistent. It will show that the Sessions Court being the ordinary appellate tribunal for dealing with cases disposed of by a first class Magistrate that Court will also hear all cases in which the first class Magistrate passes an order under the preventive sections and, Sir, the objections which I have raised and which the House has just now endorsed by their vote apply equally to this amendment and I trust that the House will support me.

Sir Henry Moncrieff Smith: I must protest against Dr. Gour's assertion to the House that if the Sessions Judge is the right person to hear appeals against orders requiring security, he is therefore obviously the right person to hear appeals against an order refusing to accept a surety because that surety is not a fit person. The two matters are on an entirely different footing. In the one case you are passing an order definitely that may have the effect of interfering with a man's liberty for a long time. It is quite true that by refusing to accept a surety you may thereby interfere with a man's liberty for a short time. But all he has to do is to find another surety. The man whom he has put up in the first instance has been definitely found after a magisterial inquiry on oath not to be a fit person to stand surety—and I would ask the House to remember that this magisterial inquiry on oath is quite a new thing in the Code. We have provided a safeguard here against improper rejection of sureties and in this inquiry on oath, the Magistrate has to find on definite grounds, which the High Courts have laid down for the guidance of subordinate Courts, that the person offered is not a fit person. He has no money. He lives at a distance or he is a bad character himself. Sir, in that case, does Dr. Gour require the Sessions Judge to decide whether the Magistrate's order was a proper one or not. That is a matter that is well within the competence of the District Magistrate. Dr. Gour has not reminded us again this time of our argument regarding expense. But here again the question of expense comes in very seriously. It is not a laughing matter at all. Local Governments will probably find themselves in the position of having to increase the number of Sessions Courts very considerably. They are always having to put on additional Sessions Judges simply because arrears accumulate and the arrears will accumulate to a far greater extent, if it provides, as the House has already done, that all appeals in security proceedings are to go to the Sessions Judge, and also now by this amendment that further appeals are to go to him when a Magistrate passes a preliminary and unimportant order declaring a surety to be unfit to stand security for a person who has already been found to be either a person likely to create a breach of the peace or likely to be of bad behaviour.

Mr. Pyari Lal: Sir, the Honourable Sir Henry Moncrieff Smith has not met Dr. Gour's arguments. What Dr. Gour says is that you must be consistent. When you provide that all appeals from first class Magistrates should go to the Sessions Judge and not to the District Magistrate, why should you make an exception in this particular case? We must be consistent. That is the first thing that we must preserve and in that view I think he is perfectly right. As to the matter of costs, I do not know how the Honourable the last speaker has run away with the idea that the work of the Sessions Judge will be over-burdened because a few more appeals under these preventive sections will go to his Court. I know it for a fact that security cases for bad behaviour you can count on your finger's ends in the whole year. As regards security cases for keeping the peace, their number may be a little more, but they are not half so important as the security cases for bad behaviour. There might be a dozen cases in a year, and these dozen cases surely will not make any difference in the amount of work the Sessions Judges have to do.

Mr. H. Tomkinson: Sir, I would just like to make one remark as regards a question of fact. The Honourable Member who has just sat down stated that there were only half a dozen cases a year of proceedings under this Chapter. I take the statistics for Madras for the year 1921. There were 1,221 persons ordered to give security to keep the peace—I give

[Mr. H. Tonkinson.]

the figures for persons convicted, Sir,—and as regards “security for good behaviour” 1,781, in the same year.

(Voices: “They were non-co-operation cases.”)

Dr. H. S. Gour: May I ask how many cases were there in which a first class Magistrate has refused a surety? That is the only point we are now discussing.

Mr. H. Tonkinson: We have no record, Sir, of these separate cases; I only got up to refer to a point of fact, as my Honourable friend said that there are only half a dozen cases for security under this Chapter in the year.

Mr. President: The question is that the following amendment be made.

“In clause 107 for clause (b) of proposed section 406-A, substitute the following:

‘(b) if made by the District Magistrate or a Magistrate of the first class to the Court of Session; or ’.”

The Assembly then divided as follows:

AYES—25.

Abdullah, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bhargava, Pandit J. L.
Dasa, Pandit R. K.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Jatkar, Mr. B. H. B.
Lakshmi Narayan Lal, Mr.

Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Reddi, Mr. M. K.
Singh, Raja K. P.
Srinivasa Rao, Mr. P. V.
Tulshan, Mr. Sheopershad.
Venkatapatiraju, Mr. B.

NOES—34.

Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davis, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.

Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Jannadas Dwarkadas, Mr.
Ley, Mr. A. H.
Misra, Mr. B. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Singh, Mr. S. N.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Clause 107 was added to the Bill.

Mr. President: The amendment* standing in the name of Bhai Man Singh is outside the scope of the Bill.

Bhai Man Singh: I should like to draw the attention of the Chair to the question whether this amendment is relevant to the subject-matter of the Bill or not. There are some 3 or 4 sections wherein after orders are passed I want the right of appeal. One section is 188. We have, Sir, practically remodelled section 188 in the Bill. If Honourable Members will look at clause 24, they will see that we have practically remodelled the whole section 188 of the Code. The other sections are 187 and 189; they are consequential. If we provide any appeal in section 188, we shall have to provide for appeals in sections 187 and 189 also. Then, my case about 144 is still stronger, because if you look at clause 26 of the Bill, you will find that we provide in sub-section (iii) a new sub-section (5) as follows :

"Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and shewing cause against the order; and if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing."

Mr. President: The Honourable Member has not shown me in the least how his amendment is in order in this place. This clause refers to acceptance of, or objection to, surety under section 122, and as far as I am able to read, it refers to nothing else. The Honourable Member proposes to make it refer to a great many other matters which are not in the clause at all.

Bhai Man Singh: We are now discussing section 406 which refers to appeals from Magistrates to the District Magistrate. Clause 406 refers to appeals. 406-A also refers to appeals. Whether I put my amendment as 406A or B it would not make any difference. We have only to see whether it is relevant to the question of appeal we are now discussing. When we have made important changes in section 144 by providing the right to a man to go and put in his objections and when we have also required the Magistrate to record his reasons in writing for rejecting his application and

Mr. President: Order, order. That is quite good reason for arguing on the merits of the clause itself, but it does not help me to see that it is in order. I think I must rule the Honourable Member out of order.

Clauses 108, 109 and 110 were added to the Bill.

Mr. President: The two new clauses standing in the name of Mr. K. Ahmed (Amendment† No. 813) are also outside the scope of the Bill.

* "After clause 107 insert the following new clause :

'107-A. After section 406-A, the following section shall be inserted, namely :

'406-B. Any person aggrieved by an order passed by a Magistrate other than a District Magistrate or a Presidency Magistrate under section 137, section 138, section 141, section 143, section 144 (7) or section 145 may appeal to a District Magistrate."

† "After clause 110 insert the following clauses :

'110-A. To section 411 of the said Code the following proviso shall be added, namely :

'Provided that any person so convicted by a Presidency Magistrate, other than the Chief Presidency Magistrate may appeal to the latter if he has been sentenced to imprisonment for a term not exceeding 6 months or to fine not exceeding two hundred rupees."

'110-B. In section 413 of the said code the words 'or of whipping only' shall be omitted."

Mr. T. V. Seshagiri Ayyar: Sir, the amendment which stands in my name wants to make this provision in the Code, namely, that where there are two or three persons jointly tried, and against one of them there is an appealable sentence and against the others non-appealable sentences, every one who has been jointly tried should have the right of appeal. I worded my amendment in a particular manner; the Government would like to have it in some other manner; and I am willing, Sir, to move it as it is worded by the Government. It is in these terms:

"In clause 111 in the proposed new section 415-A, for the words 'any of such persons in respect of whom an appealable judgment or order has been passed appeals' the following be substituted, namely:

'an appealable judgment or order has been passed in respect of any of such persons'; and all words after the words 'shall have a right of appeal' be omitted."

Sir, I move the amendment.

The amendment was adopted.

Clause 111, as amended, was added to the Bill.

Clauses 112 and 113 were added to the Bill.

Rai Sahib Lakshmi Narayan Lal: Sir, the amendment which I move is:

"That in clause 114 after the words 'said Code' insert the following:

"In sub-section (1) the words 'empowered by the Local Government in this behalf' shall be omitted."

Under section 435 of the Code only such Sub-divisional Magistrates as are empowered by the Local Government in this behalf have got the power to call for the record of the lower Court. It is only Honorary Magistrates and sometimes Sub-Deputy Magistrates who are subordinate to Sub-divisional Officers, and it is very inconvenient and expensive for people of a sub-division to go to the district headquarters to have a relief like this. It is only Magistrates of mature experience who are placed in charge of sub-divisions and it will be rather lightening the work of the superior officers to empower the Sub-divisional Officers to call for the record of their subordinate Courts. I move this amendment.

The amendment was negatived.

Dr. H. S. Gour: Sir, the intention of this amendment* is to preserve to the High Courts revisional jurisdiction in cases disposed of under sections 144 and 145. Honourable Members will remember that incidentally this question was raised at the earlier part of the debate and the Honourable Mr. Tonkinson pointed out that not only the chartered High Courts but all the non-chartered High Courts, such as the Chief Courts and the Courts of the Judicial Commissioner do, under various local Acts, possess a Statutory power of revision in such cases. It was then pointed out by the Honourable Mr. Tonkinson that those cases were not properly argued. That may be a question of opinion. It may be that those cases were not properly decided. Now, Sir, I ask the House a simple question. If it is a fact, as we have been assured by the Honourable Mr. Tonkinson, that all the High Courts, chartered and non-chartered, possess this power, then I say this clause is superfluous, nay misleading. If it is a fact that they do not possess the power, in that case I ask this House to endorse my opinion that this power is both salutary and necessary. It will not be denied, it has not been denied, by the occupants of the Treasury Benches that this power has in fact been exercised under section 107 of the Government

* "For sub-clause (iii) of clause 114 substitute the following:

"(iii) Sub-section (3) shall be omitted."

of India Act and other local Acts. If so, so far as this clause is concerned, it conflicts with the express provisions of section 107 of the Government of India Act. It creates utter confusion. If the High Courts have power under section 107 of the Government of India Act to exercise the general power of superintendence over the subordinate Courts, what object is served by inserting this clause that orders under these Chapters 143, 144 and 145 shall not be open to revision under section 435? It might be said that though under the Code of Criminal Procedure the High Courts have not been given that power, still that power is exercised otherwise by the High Courts. I have already replied to this argument. I have, therefore, Sir, confidence that this House will vote for my amendment and place the powers of all the High Courts beyond any shadow of doubt, and I hope, as one Honourable Member suggests, that the Government, out of sheer consistency and due regard being had to what they said on the last occasion, will accept my amendment. I move it.

Mr. H. Tonkinson: Sir, I rise to oppose the amendment. My Honourable friend has referred to the powers exercised by Chartered High Courts in connection with the orders dealt with in this section. I submit, Sir, that all the rulings of the High Courts go to show that if a Magistrate has exercised jurisdiction or purports to have exercised jurisdiction under these Chapters or sections which he did not possess then the High Court may interfere. That, Sir, is quite a different thing from giving a general power of revision as the Mover of the amendment proposes to give. He, Sir, is confusing the general power of superintendence under section 15 of the old Charter Act (section 107 of the Government of India Act at present) with powers of revision. It is an entirely different question. These proceedings under section 144, Sir, are really of an executive order and the same applies to proceedings under Chapter XII. Take the case of section 176. I really do not understand why my Honourable friend suggests that there should be a revision of inquest proceedings. We have had similar provisions in the Code all along restricting the rights of revision in these cases, a revision going into the facts of the case and I therefore oppose the amendment.

Mr. President: Amendment moved:

"For sub-clause (iii) of clause 114 substitute the following:

"(iii) Sub-section (3) shall be omitted".

The question I have to put is that that amendment be made.

The Assembly then divided as follows:

AYES—36.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Dass, Pandit R. K.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Ikramullah Khan, Raja Mohd.
Jamnadas Dwarkadas, Mr.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.

Lakshmi Narayan Lal, Mr.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Singh, Raja K. P.
Srinivasa Rao, Mr. P. V.
Subrahmanayam Mr. C. S.
Tulshan, Mr. Sheopershad.
Venkatapatiraja, Mr. B.

NOES—29.

Allen, Mr. B. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Clow, Mr. A. G.
 Crookshank, Sir Sydney.
 Davies, Mr. R. W.
 Faridoonji, Mr. R.
 Haigh, Mr. P. B.
 Hailey, the Honourable Sir Malcolm.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.

Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.
 Ley, Mr. A. H.
 Moncrieff Smith, Sir Henry.
 Muhammad Hussain, Mr. T.
 Muhammad Ismail, Mr. S.
 Percival, Mr. P. E.
 Sassoon, Capt. E. V.
 Singh, Mr. S. N.
 Tonkinson, Mr. H.
 Townsend, Mr. C. A. H.
 Webb, Sir Montagu.
 Willson, Mr. W. S. J.
 Zahiruddin Ahmed, Mr.

The motion was adopted.

Mr. President: The question is that clauses 114, as amended, and 115 stand part of the Bill.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I move:

"To clause 116 add the following:

'In section 437 as re-numbered the words 'or District Magistrate' wherever they occur in the said section shall be omitted'."

Now, the present section 437 is the old section 436, and section 436 of the Code provides that in cases which are triable exclusively by the Sessions Judge, if there is a discharge, the Sessions Judge or the District Magistrate, on examining the record, may order a commitment. Sir, by my amendment I wish to take away the power of the District Magistrate in this matter and give this power only to the Sessions Judge. The Sessions Judge is the only competent authority to find out whether the case, after discharge, was such that it should have been committed to the Sessions Court, and my amendment will put this right. (*An Honourable Member:* "Old section 437 is now section 436.") Yes, the old section 437 which is now section 436. What I provide by my amendment is that such powers should only be vested in the Sessions Judge and not in the District Magistrate. With these few words, Sir, I move my amendment.

Mr. President: Amendment moved:

"To clause 116 add the following:

'In section 437, now section 436, the words 'or District Magistrate' wherever they occur in the said section shall be omitted'."

Sir Henry Moncrieff Smith: Sir, I see no reason why this power, which has been with the District Magistrate so long, should be taken away from him now. The District Magistrate has always had this power to cause the person to be arrested and to be committed for trial if in his opinion the person has been improperly discharged. There is this safeguard in the section that no person can be ordered to be committed for trial until he has been given an opportunity to show cause why such an order should not be made. This is only a preliminary matter. A Magistrate who may only be a second class Magistrate is specially empowered to decide whether a person ought to be discharged or not. Surely, if we allow a subordinate Magistrate to form an opinion on this matter, there is no reason why we should not allow the District Magistrate himself to do it.

Rao Bahadur T. Rangachariar: It is not merely the second class Magistrate that comes within the scope of the section. Under section 437—Honourable Members will remember I am speaking of the old section 437, now re-numbered 436—an inquiry is held by a competent Magistrate, may be a second class Magistrate, may be a Sub-divisional Magistrate, may be a Magistrate of the first class. These people after hearing the whole evidence come to the conclusion that no case is made out for the prosecution and discharge the accused. On the same evidence as held by the different High Courts the District Magistrate says:

"I will come to a different conclusion on the evidence. Not having seen a single witness in the box, on the same evidence I take a different view and I will order a further trial before a Magistrate subordinate to me."

Here the District Magistrate of the District on the same evidence comes to the conclusion saying "I differ from the Magistrate who tried the case. Now I order a further trial." What does it mean? It really means a direction to the subordinate Magistrate, "Now take a different view and come to a contrary conclusion." Therefore, it is not right that such a power should be with the District Magistrate. It should rest only with the Sessions Judge. The object of this amendment is that the Sessions Judge should direct a re-trial and not the District Magistrate. That is the object of this amendment and I support it.

The Honourable Sir Malcolm Hailey: May I ask the Honourable Member (Mr. Rangachariar) whether he is arguing on the present section 436?

Rao Bahadur T. Rangachariar: Yes.

The Honourable Sir Malcolm Hailey: Mr. Agnihotri's amendment refers to clause 437.

Rao Bahadur T. Rangachariar: He corrected it, Sir.

Sir Henry Moncrieff Smith: Mr. Agnihotri's amendment cannot apply to the old section 437. Apparently he proposes to omit the words "or District Magistrate" wherever they occur. I do not find the words "or District Magistrate" in section 437.

Mr. President: May I draw the attention of the Honourable Member that the words "or District Magistrate" occur twice in the old section 436.

Mr. H. Tonkinson: Sir, I should merely like to point out that Mr. Agnihotri was arguing definitely for the amendment of new section 437. He referred entirely to the power of ordering committal. My Honourable friend, Mr. Rangachariar, comes forward with an entirely different argument, an argument applicable to an entirely different section, a section to which the amendment as moved cannot apply in actual words.

Mr. President: Amendment moved:

"To clause 116 add the following:

'In section 437 the words 'or District Magistrate' wherever they occur in the said section shall be omitted'."

Dr. H. S. Gour: May I suggest a verbal correction with the permission of the Honourable Mover of the amendment? What his intention was, was to take away the power of ordering further inquiry by the District Magistrate under the old section 437.

Sir Henry Moncrieff Smith: It could not have been the Honourable Member's intention for he has moved for the deletion of the words "or District Magistrate" wherever they occur. The words "or District Magistrate" do not occur at all in the old section 437.

Dr. H. S. Gour: I am surprised that the Honourable Members, being deprived of good arguments have taken to quibbling. Everybody knows what the object of the Honourable Mover of the amendment was. In the old section 437, now section 436, the object, as he has explained, was to take away the power of revising an order of discharge or dismissal of a complaint under section 203 from the District Magistrate and transfer it to the Court of Sessions. That is the sole object.

The Honourable Sir Malcolm Hailey: If that was his object, his speech was curiously silent on the point. If I am right, he referred to commitment, and I would appeal to him to tell us whether he was not arguing on a question of commitment. I refuse to accept Dr. Gour's version of what the Honourable Member said and I believe the Honourable Member himself will refuse it.

Mr. President: The Honourable Member has himself disappeared. The question is that that amendment be made.

Dr. H. S. Gour: There is a clerical mistake. That mistake has arisen owing to misapprehension and the Honourable Member just now asked me to correct that mistake. I am told he has gone to refer to some books.

Mr. President: As has been pointed out by Sir Henry Moncrieff Smith, the section, as re-numbered, will be 436 if you leave out the word 'or.'

Dr. H. S. Gour: We are prepared to drop out the word 'or.'

Sir Henry Moncrieff Smith: Otherwise the whole section 437 become nonsense.

Mr. K. B. L. Agnihotri: There is no doubt that a confusion has been created and the word 'or' is confusing enough but my meaning was the old section 436, which is now 437, though it is not clear in the amendment as it is. There is no doubt about it.

Rao Bahadur T. Rangachariar: The words to be omitted will be "and the District Magistrate may himself make or direct any subordinate court to make."

Mr. President: That is a different amendment at all events in form. Will the Honourable Member tell us what his intention was. If the Honourable Member will take the Code as it stands, which clause does he wish to refer to.

(Mr. Agnihotri stood up but did not speak.)

Mr. President: If the Honourable Member does not know, I must rule the whole discussion out of order.

The question is that clause 116 do stand part of the Bill.

The motion was adopted.

Clause 117 was added to the Bill.

Rao Bahadur T. Rangachariar: Sir, I move the following amendment:

"To clause 117-A, add the following:

'and to sub-section (2) the following shall be added, namely: 'and the accused person shall be entitled to establish his innocence and ask for acquittal in showing cause against enhancement'."

What happens, Sir, is this. Under the Code as it stands the High Court have been given the power to enhance the sentence in the case of persons who have been convicted by lower Courts. Now, Sir, the accused person takes the conviction, and he does not care to appeal. Rather than undergo the expense of going to the High Court and appealing against the sentence, he rather suffers the sentence and keeps quiet. But the police are not satisfied with the sentence imposed by the Magistrate or Sessions Judge who tried the case. They say, he should have been given a longer sentence or a larger punishment, and therefore, they drag the poor man to the High Court. When he appears before the High Court, it stands to reason that he should be able to say, "Well, I have been wrongly convicted, but you want to impose a heavier penalty now. I was content to let things alone, but here the police won't leave me alone, they have dragged me to the High Court, now let me establish my innocence, the case is not proved against me, the evidence is false, I want to establish that." Sir, there are Judges and Judges. Here unfortunately the luck of the accused comes into play. It depends upon the particular Judge—as we all know, the High Court contains 5, 6, 8, 9, 12 or 15 Judges. It all depends upon the particular Judge who hears the particular case or the particular Bench which hears the case. If he is a Judge who is leniently disposed, who is merciful, combines justice with mercy in the discharge of his functions, he will say, "if you are not guilty, I am prepared to hear it", but there are other Judges—I have been frequently told, when I had to defend cases, I have been told, "no, no, the conviction stands, you have not appealed, or the time is up, you have got 30 or 60 days for you to appeal, you have allowed the conviction to stand, show cause why I should not inflict the heavier penalty which the police want. I have to ask you to show cause against enhancement." Sir, I have been told so dozens of times; it is an injustice to do that. We must not leave it to the sweet will and discretion of particular Judges to say, whether they will hear that point or not. If the man is able to satisfy the revising authority, if the man is entitled to acquittal it is only right that the High Court should do so. I understand the Government Benches might say, "who ever said no." As I stated, there are Judges who have said that, in my own experience. Therefore, the principle is accepted, and all that they say is that it is unnecessary to provide it. I say it is necessary not only in my experience but in the experience of other friends who have practised in the High Courts, and I therefore think, Sir, it is a just provision, it is a necessary provision, we should make, and I hope the Government will not oppose it. I move it.

Mr. President: Amendment moved:

"To clause 117-A, add the following:

'and to sub-section (2) the following shall be added, namely: 'and the accused person shall be entitled to establish his innocence and ask for acquittal in showing cause against enhancement'."

Sir Henry Moncrieff Smith: Sir, I must oppose this amendment, because I consider it to be entirely superfluous and an attempt to introduce

[Sir Henry Moncrieff Smith.]

an excrescence into the Code. Mr. Rangachariar spoke of accused persons, convicted persons, who themselves did not want to appeal being dragged before the High Court by the Police. I ask whether any Member of this House has known of an accused person being dragged before the High Court by the police.

Rao Bahadur T. Rangachariar: I said so metaphorically.

Sir Henry Moncrieff Smith: The police never go to the High Court and ask for enhancement of a sentence. Occasionally, very occasionally, the Local Government may move the High Court to enhance sentences, but what happens in 90 per cent of cases, or even more than that, is that the High Court, in examining the statements that come up from the Sessions Courts, see what they consider to be an inadequate sentence, and they send for the record themselves, and then they cause a notice to be issued. There is no question of the police in this matter whatever.

Rao Bahadur T. Rangachariar: It does not matter who does it.

Sir Henry Moncrieff Smith: Now, Sir, I say this amendment is quite unnecessary for the following reason. Under section 439, it is definitely laid down that the High Court may in its discretion exercise any of the powers conferred on a Court of Appeal by section 423—I only refer to section 423, that is the only one that is relevant here—and in section 423, sub-section (1), clause (b); you find that one of the powers the High Court can exercise on appeal—and therefore can exercise in any case of revision when it sends for the record itself—is the power to reverse the finding and the sentence and acquit or discharge the accused or order him to be re-arrested, and so on. When the High Courts have there got that power distinctly thrown at their heads in the Code, I do not see any necessity for the Legislature to throw it at their heads again.

Dr. Nand Lal: Sir, I support this amendment which commends itself. It happens in many cases, Sir, that the accused is a poor man who has been wrongly convicted. He has no money, in his pocket, to engage a good Counsel, who in some cases charge somewhat heavy fees. Therefore justice is denied to him on account of poverty. He does not go to the appellate court. To illustrate what I mean, let us take a hypothetical case. An accused is prosecuted and convicted under section 325 by a first-class Magistrate and is sentenced to three months imprisonment. He is sent to jail and undergoes the imprisonment. After that he returns to his village and accosts his accuser: "I was innocent indeed; you put me in jail; however I am out now." That opponent feels jealous of the poor man's freedom and is annoyed. He approaches the police or some executive officer and then a petition for revision is filed in the High Court and notice is issued calling upon the man to shew cause why the sentence should not be enhanced. The man is very much surprised when that notice is served upon him, and he regrets that he has not filed any appeal. He, however, in obedience to the notice, appears, and explains that there is no evidence against him at all, that the conviction is altogether illegal and that the very section 325 does not embrace the injury which he is alleged to have caused to the complainant. The High Court Judge is convinced of the force of his arguments and finds that a real injustice has been

done. What should he do in such a case? Should the High Court Judge, custodian of the justice of the province, not interfere? That is the recommendation, Sir, which has been made in this amendment, a very wholesome amendment, in the interests of justice, namely, that where there has been a miscarriage of justice and an unfortunate man, on no evidence at all, has been convicted but has not appealed against his sentence, that man may be helped by the High Court. Of course only the High Court has got the power of enhancing a sentence, not the Sessions Judge or other court. I think Sir Henry knows that, I think moreover that the Mover of this amendment should be thanked for trying to assist Government in seeing that injustice may not be done. I very strongly support this amendment and I hope the Government Benches will accept it.

Dr. H. S. Gour: Sir, the Honourable Sir Henry Moncrieff Smith has opined that the amendment of my Honourable friend, Mr. Rangachariar, is superfluous. There is no opposition to it on principle. I have only to dispel the doubt which lingers in the minds of the gentlemen on the Treasury Benches and if I can convince them that the amendment is not superfluous, I hope they will then see their way to support this amendment. This appeal against an acquittal is made under section 417 of the Code of Criminal Procedure and the High Court sits as an appellate Court and the sole question which arises is as to whether the sentence passed upon a person should not be enhanced or an acquittal for a graver offence should not be converted into a verdict of guilty and conviction. The provisions of section 439 to which Sir Henry Moncrieff Smith referred are provisions embodied in Chapter XXXII which relates to reference and revision, and section 439 to which my friend referred is a section relating to revision. His argument is that a Court under section 439 is empowered to acquit a person if it comes to its knowledge that the accused is not guilty. Now, let us examine this statement. I have no doubt that my Honourable friend will admit that it is the established practice of all the High Courts formulated in a series of cases that the High Court will not interfere on a question of fact. Consequently, acting under section 439 the High Court cannot revise a finding of fact, or rather it refuses to do so. Therefore, I submit, that when the Court is examining the proceedings under section 439 it will not go into a question of fact. Whereas, assume the case of an appeal against an acquittal or for the enhancement of a sentence already passed. There the Court exercises larger jurisdiction and examines the whole record and can revise both findings of fact and law. That is a distinction between my Honourable friend's amendment and the explanation given by the Honourable Sir Henry Moncrieff Smith. His explanation, I submit, opens an extremely narrow door through which many an accused has failed to get through. It is for the purpose of giving a person who has been brought to the bar of the High Court to answer why a sentence passed upon him should not be enhanced the right of showing by arguments *a fortiori* not only that the sentence should not be enhanced but the whole conviction is wrong and should be set aside. Should he be prevented from doing so? My learned friend says that no Court will ever prevent an accused appearing before the bar of the Court from showing this. He has testified to his own experience; and I regret to say, Sir, that in my long practice at the bar I have known Judges who are blood-suckers and who will strain every point against the accused and who will say surely

Mr. President: Order, order. I do not think I can allow that phrase to pass.

Dr. H. S. Gour: I withdraw it, Sir. I have known judges who are of a convicting predisposition and who will not allow the accused to show that the conviction should be set aside unless they are expressly given the power under the Statute to interfere with a conviction. My friend, Mr. Rangachariar, has referred to the case of a person who did not appeal after his conviction. May I point out to the House that there are cases in which an appeal might have been dismissed against the conviction and the Judge concerned might have reported the case for the enhancement of sentence. And when that case comes up before the High Court the High Court may find that not only the enhancement is unjustifiable but the conviction is equally unjustifiable. In that case what is the High Court to do? There is a conviction, a wrong conviction; there is a motion for enhancement and that enhancement is under trial when the Court comes to the conclusion that both the enhancement and conviction are unjustifiable. Mr. Rangachariar's amendment enables the Court not only to refuse an enhancement but also to set aside a conviction. That, I submit, is a case which is not met by any express provision of the Code of Criminal Procedure, and I therefore submit that this House should support the amendment. One word more, Sir; the circuitous provisions to which Sir Henry Moncrieff Smith has drawn the attention of the House, may I point out, have not been usually used for the purpose of acquitting people in cases covered by Mr. Rangachariar's amendment; and in defining a criminal procedure I would rather err on the side of superfluity and make a matter clear upon which any doubt existed than let matters remain in doubt and suspense and trust the Judges to read section 439 more liberally and use these provisions for a purpose for which they are not normally used and intended to be used. I support the amendment.

Mr. H. Tonkinson: Sir, I rise to offer a few remarks with reference to those words which have just fallen from my Honourable and learned friend, Dr. Gour. It is very difficult, Sir, to follow that portion of his argument which related to appeals from acquittals. That, Sir, has nothing to do with the present question. We are dealing with an application for revision for enhancement of sentence. My Honourable friend suggests that in such cases the High Courts hold that they should not go into questions of fact. That may be true, Sir, about general revision proceedings; but is it true, I ask my Honourable friend, as regards proceedings for enhancement of sentence?

Rao Bahadur T. Rangachariar: Sometimes.

Mr. H. Tonkinson: Most certainly not, as my Honourable friend knows.

Rao Bahadur T. Rangachariar: I know the High Court much more than you do.

Mr. H. Tonkinson: When going into the question of enhancement of sentence you must clearly go into the facts.

Dr. Nand Lal: I think in some fit and deserving cases they go into the question of facts too.

Mr. H. Tonkinson: My Honourable friend, Sir, suggests that there is no express provision enabling the High Court to take this action. Well, Sir, he certainly cannot, I should imagine, have read section 439 with section 423. If he does so he will find that there is a definite express provision of the law enabling the High Court to take the action which is proposed by the amendment of my Honourable friend. I oppose the amendment.

Mr. T. V. Seshagiri Ayyar: Sir, you have very rightly called to order Dr. Gour for the very unparliamentary language he has used regarding High Court Judges. As one, Sir, who has been connected with the High Court, I think it my duty to resent the language which has been used; I believe, in the heat of the moment he allowed himself to be . . .

Dr. H. S. Gour: Is my Honourable friend in order in referring to an expression which I have already withdrawn? It is as good as if I never used it.

Mr. President: If an Honourable Member withdraws an expression and the Chair accepts his withdrawal, the incident is usually regarded as closed; but the Chair has no power to prevent any other Member from referring to it.

Mr. T. V. Seshagiri Ayyar: I only wanted to say further as one who has been connected with the High Court, I am glad that you asked this expression to be withdrawn and I am glad that my Honourable friend has done so.

With regard to the matter which has just been referred to by Mr. Tonkinson, I would like to say a word. When a case comes up by way of revision before the High Court, the Judges consider that in disposing of that matter they are bound by what are called findings of fact. For example, a matter may have been before a second class Magistrate, then on appeal before a District Magistrate or a Sessions Judge; and it would come by way of revision to the High Court. What the High Court Judges do say often is that they will not interfere. But supposing on the findings of fact on examining the records the Judges think it necessary to call upon the accused to show cause why his sentence should not be enhanced; then the High Court Judges may very well say 'we are only giving you notice to show cause why the sentence should not be enhanced and we shall not allow the whole inquiry to be re-opened. That very often happens. I have argued cases, and I have been told by Judges that this is practically what is known as second appeal, that it is not open to the Court to go into questions of fact; and that they must take the findings as they are and pass a sentence which is adequate to the findings which have been recorded. That is what has been said very often, and it is against that Dr. Gour has raised his voice and it is against that the amendment of Mr. Rangachariar is directed. There is nothing wrong in the High Court Judges doing it, because the general power in regard to revision is after accepting the findings of fact to come to a decision on law or on the question of sentence; and very often Judges refuse to re-open the case. But where an accused is called upon to show cause why his sentence should not be enhanced, we want powers to be reserved to the High Courts to enable them to exercise powers of re-opening questions of fact and to find whether there has been a proper conviction or not. It is for that purpose this amendment has been brought in, and I think the Government ought to accept it.

Rai Bahadur D. C. Barua (Assam Valley: Non-Muhammadian): Sir, I beg to support this amendment. I do so among other grounds on the question of economy also. Sir, if a person is really innocent, why should the tax-payer be compelled to pay his expense in the gaol? From the point of view of economy also, I should think that it should be open to an accused person called upon to say why his sentence should not be enhanced to show that he was innocent. Sir, I can imagine cases in which no appeals are allowed. Appeals are not allowed ordinarily in those cases in which a person is sentenced to a month's imprisonment by a Magistrate of the

[Rai Bahadur D. C. Barua.]

first class, or in the case of a person who is sentenced to undergo three months' imprisonment when he is tried summarily or six months by a Presidency Magistrate. Sir, if a person is really innocent why should the taxpayer be compelled to pay expenses for the maintenance of that person in the gaol? Of course, when the High Court or any Court whatsoever revises a case and attempts to find out whether the accused was guilty in a certain manner, it is certainly in a position to find out that he was not guilty also. If the Court really comes to this conclusion, that he was not guilty, then in all fairness he should be acquitted, although a subordinate Court came to the conclusion that he should be convicted. Sir, for these two reasons generally I beg to support the amendment, because in those cases in which the case is not appealable and the accused could not appeal and consequently suffered imprisonment, and if that case goes for revision before a higher tribunal, then it is clearly the duty of that higher tribunal to act in this way or that way—if he is really innocent to acquit him or if he is really guilty or deserves a severer sentence, then to enhance the sentence. Under these circumstances, Sir, I beg to support the motion.

Mr. President: Amendment moved:

"To clause 117-A, add the following:

'and to sub-section (2) the following shall be added, namely 'and the accused person shall be entitled to establish his innocence and ask for acquittal in showing cause against enhancement'."

The question I have to put is that that amendment be made.

The Assembly then divided as follows:

AYES—30.

Abdulla, Mr. S. M.
Aqihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Chandhuri, Mr. J.
Cotelingam, Mr. J. P.
Dass, Pandit R. K.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Ikramullah Khan, Raja Mohd.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.

Lakshmi Narayan Lal, Mr.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Nand Lal, Dr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—27.

Allen, Mr. B. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.

Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Moncrieff Smith, Sir Henry.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Rhodes, Sir Campbell.
Singh, Mr. S. N.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Webb, Sir Montagu.
Willson, Mr. W. S. J.

The motion was adopted.

Mr. President: The question is that clause 117-A, as amended, stand part of the Bill.

The motion was adopted.

Clauses 118, 119, 120, 121, 122, 123, 124 and 125 were added to the Bill.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadar Rural): Sir, with your permission, I wish to move the following amendment in lieu of the one which stands in my name on the printed list:

"That in clause 126, in sub-section (1) of proposed new section 476, for the words 'order the offence to be inquired into' the words 'record a finding to that effect' be substituted."

This amendment is made in the interests of improved drafting and I leave it for the acceptance of the House.

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, in lieu of the printed amendment, in order to make the matter clear, I move, Sir, that:

"In clause 126, in sub-section (1) of proposed new section 476, for the words 'and may, if the alleged offence is non-bailable, send the accused in custody to or in any other case may take sufficient security for his appearance before such Magistrate' the following be substituted, namely:

'and may take sufficient security for the appearance of the accused before such Magistrate, or, if the alleged offence is non-bailable, may, if it thinks it necessary so to do, send the accused in custody to such Magistrate'."

(At this stage Mr. President vacated and Sir Campbell Rhodes took the Chair.)

The object of this is not to make it compulsory on the Magistrate to send the accused in custody even in non-bailable cases. I want to leave a discretion to the Magistrate to come to a conclusion that it is necessary for him to do so. Otherwise he may take security for his appearance. This is a section dealing with complaints made by Courts. With these words I move the amendment.

The amendment was adopted.

Mr. K. B. L. Agnihotri: Sir, I beg to move the following amendment:

"In clause 126, in sub-clause (3) of section 476, substitute 'shall' for 'may if he thinks fit'."

Under the clause as it has been provided in the Bill, if a civil, revenue or criminal court files a complaint under section 195, sub-section (1) clause (b) or clause (c), the Magistrate has been given discretion to proceed with the case even if the accused has filed an appeal against the decree or order of such Court. This by itself seems an anomalous procedure. If we refer to section 195 (1) (b) and (c) we find that the offences for which such complaints could be filed are such as giving false evidence, producing false or forged documents in evidence, or using false documents as genuine, or filing false complaints, or cases of perjury,—and these are the offences which come under section 195. If the man is to be prosecuted before the appeal in the original case is decided, there will be much injustice done to that man, as the appellate court may afterwards find the very documents to be true and genuine and which the lower Court found to be

[Mr. K. B. L. Agnihotri.]

forged or false. The very evidence which the original Court found to be false or a perjury, the appellate Court may find to be true and genuine; and on that very evidence the appellate Court may set aside the order or the decree of the Lower Court. What will then be the position of such a person who on the basis of the original Court's order had been prosecuted under section 195 or against whom a complaint had been filed? What will be his fate? He would not suffer if the Court was reasonable enough to have adjourned the case when the appeal was filed and had not proceeded with it. At the same time if the Court had proceeded with the case and perchance convicted him, the result would be that the accused might have suffered the penalty before the decision of the appeal in the original case. There will be many cases of such injustice and hardship. It may be questioned that the appeal might take a year or two and should those cases be kept pending so long? I would say that there should be no objection even if the appeal were to take one or two years. Suppose a case is filed before a Magistrate and the Magistrate were to convict the accused and sentence him with imprisonment which may range from one or two to six months, and the appeal is decided after a year, and the appellate court finds that the alleged forged document on which the original complaint was based was a genuine one. What is the fate of this poor accused who was not only convicted but has also served the full sentence passed on him for that offence which subsequently has been found to be no offence at all. It is a very salutary rule that until the appeal is decided the Magistrates should not proceed with the trial of such persons against whom complaints have been filed. I may give a concrete instance. Under the old section 195, a document was found to be forged by the civil court and on that basis that court ordered the prosecution of a person under section 195. The case was prosecuted before a first class Magistrate. I happened to appear for the complainant in that case, who had obtained the sanction, from the Additional District Judge to prosecute that man. The accused put in an application in revision before the Judicial Commissioner's Court; and the accused applied for the postponement of that case, but the learned Magistrate was not pleased to postpone it. He proceeded with the trial of the case. Fortunately for the accused in the revision court the application was soon decided and the revision court, that is the Judicial Commissioner's Court held that the sanction was improper and that the document was not forged. Now, the House can realise what would the fate of the accused have been if the revision court had not passed an early order in that case. This Magistrate may have considered that a District Judge or Additional District Judge who has given such a sanction must have given it on proper and reasonable grounds and may have himself come to the same conclusion as that of the Additional District Judge and may have convicted that man before that revision petition was decided and the accused may even have suffered the punishment. Such a case would have been very hard for that poor accused. In order to safeguard such cases I submit that the amendment which I propose will be a salutary one. I do not mean to say that ordinarily the Magistrates do not allow time. They do allow time but as in the case I have mentioned there are also cases in which the postponement is not allowed. The Magistrates have to explain to the Sessions Judge and the District Magistrate in their calendar statements the reason of the delay in trial. They are anxious to avoid increase of the average duration of trial in their Courts. I submit that if my amendment is accepted it will not hamper justice in any way. I therefore put forward my amendment for the consideration of the House.

Mr. Chairman: The question is:

"That in clause 126, in sub-section (3) of section 476, substitute 'shall' for 'may if he thinks fit'."

Dr. H. S. Gour: The question may be put.

Mr. P. E. Percival: I do not know what the attitude of the Government will be in regard to this amendment, but I prefer Mr. Seshagiri Ayyar's amendment. It is better worded.

Mr. Chairman: The question is that that amendment be made.

The motion was negatived.

Clause 126 was added to the Bill.

Mr. K. B. L. Agnihotri: I propose, Sir, that this section 127 may be taken up later, because at the informal meeting which we had this morning I was told that the Government was prepared to accept the principle and would give us a redraft. The redraft has just been handed to me, but I am not in a position to go through it properly, therefore I request that the consideration of this clause may be taken later.

Dr. H. S. Gour: In view of the lateness of the hour, I move the adjournment of the House; I also have a motion, No. 342,* which will require discussion

Mr. Chairman: Is it the decision of the House that Amendment* No. 339 should not be taken up but deferred? (Voices: "Yes".)

Mr. K. Ahmed: Sir, I was thinking that this section, amendment No. 341* covers one of those matters in which the racial distinctions question is involved in the Bill which was placed before us the other day and Government, I understand, is going to put it up again, and to see whether they can revise it. If so, I do not like, Sir, to press the amendment, but if that is not so, I suppose there will be a clear understanding from the Government Bench that the matter will come up; if not, Sir, I am afraid I shall have to move it in the ordinary course.

The Honourable Sir Malcolm Hailey: It will come up in the course of the discussion on the Bill referred to.

Mr. K. Ahmed: On that understanding I do not move it, Sir, at present.

Mr. Chairman: The question is that the consideration of clauses 127A and 127B be deferred.

The motion was adopted.

Dr. H. S. Gour: I have already moved, Sir, for the adjournment of the House; I have said that this clause requires discussion, and perhaps it will take some time; I therefore move that the House be now adjourned.

Mr. Chairman: In the temporary absence of the President, I am not prepared to adjourn the House. The motion can be renewed on his return.

Dr. H. S. Gour: Sir, I was given an assurance by the President that this clause would not be taken up to-day, but if you, Sir, insist upon my moving it, I shall do so.

* In the List of Amendments.

Mr. Chairman: If it is the wish of the House that it should be taken up later, I am willing to pass on to the next amendment.

(An Honourable Member: "It follows the other.")

Mr. T. V. Seshagiri Ayyar: I may mention, Sir, that the President told us that he would not take up any case after 5-30, that as far as possible he won't take up any case, that unless it was absolutely necessary to continue the discussion, he won't do so—that is what he told me.

Dr. H. S. Gour: If it is the desire of yourself, Sir, that we should continue the discussion, you must allow us to go home and take our supper, and we shall return.

The Honourable Sir Malcolm Halley: I was not prepared to hear, that any Member of the House should give directions to you, Sir, as to what you should do or think proper. As far as the adjournment is concerned, we are entirely in your hands. If Honourable Members opposite think that they are not able to continue this discussion, and if you are persuaded that their case is reasonable we shall not oppose it. I prefer that these proposals should come entirely from the opposite side of the House. We do not get tired of the good work.

Mr. Chairman: Do I understand that Dr. Gour does not wish to go on with this amendment?

Dr. H. S. Gour: No, Sir. I wish to go on with the amendment but not at the present moment. But if it is the desire of the occupants of the Treasury Benches that the discussion should continue I only wanted a few minutes respite for the reason I have already given. The Honourable the Home Member thought that my suggestion was improper, but I have no doubt that he also occasionally indulges in that impropriety himself.

The Honourable Sir Malcolm Halley: I said, Sir, that I left it entirely in your hands. The suggestion which I said was improper was that you would have to allow the House to go away to supper.

Mr. K. Ahmed: Sir, only yesterday there was no reason why the House should be adjourned after four o'clock. It was neither left to the discretion of the Honourable the President of the Assembly nor to the discretion of the Honourable Members who wanted . . .

Mr. Chairman: The Assembly now stands adjourned till Eleven of the Clock on Saturday, the 10th February, 1928.

LEGISLATIVE ASSEMBLY.

Saturday, 10th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

MESSAGES OF CONGRATULATION ON THE BIRTH OF H. R. H. PRINCESS MARY'S SON.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Before the regular business of the day begins, I ask your permission, Sir, to move a Resolution which I am quite sure will be carried with acclamation by the whole House. We saw an announcement in the papers the other day that Her Royal Highness Princess Mary had a son born to her. That makes the first grandson to His Imperial Majesty the King Emperor. Sir, according to Hindu ideas the very name of a king signifies that he gladdens the hearts of people and a true subject is he who rejoices in the success and happiness of the Royal household. Sir, we are very happy that His Imperial Majesty has the first grandson through his daughter, Princess Mary. We wish you, Sir, to convey to the Princess our hearty congratulations on the birth of a son and to His Imperial Majesty our felicitations on the birth of a grandson.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, I associate myself with what has fallen from Mr. Seshagiri Ayyar, and I have been asked by the National Party to request you to convey the same message to His Imperial Majesty the King Emperor.

Sir Campbell Rhodes (Bengal: European): Sir, on behalf of the non-official European community, I have much pleasure in endorsing the Resolution proposed in such eloquent terms by my Honourable friend, Mr. Seshagiri Ayyar. The general rejoicing throughout the Empire at the birth of a son to the daughter of our beloved Emperor will be echoed widely throughout this land, where the advent of a son and heir is not only a happy social event but is also an event of deep religious significance. I heartily support the proposal.

Dr. Nand Lal (West Punjab: Non-Muhammadian): Sir, I most heartily share the view which has been placed before this Assembly by my learned friend, Mr. Seshagiri Ayyar. The birth of a son is an indication of great happiness, and I think the whole Empire will rejoice in it. With these few remarks I support the motion.

Mr. President: The question is that the President be instructed to convey an expression of the profound pleasure and thankfulness of the Legislative Assembly at the birth of a son to Princess Mary; and that a dutiful and loyal message be conveyed to His Majesty the King Emperor of the pleasure of the Legislative Assembly at the birth of a grandson.

The motion was adopted.

THE MALABAR (COMPLETION OF TRIALS) SUPPLEMENTING BILL.

The Honourable Sir Malcolm Halley (Home Member): Sir, I ask leave to introduce a Bill to supplement the Malabar (Completion of Trials) Act, 1922.

It may be as well perhaps that I should explain to the House the exact purport of this small Bill.

There have been a series of special Ordinances issued by the Governor General in connection with the Malabar Rebellion; I need deal only with that aspect of these Ordinances which provided for the special trial of prisoners. The original Martial Law Ordinance established courts under the authority of the Military Commander, and subsequently a special tribunal was instituted. That Ordinance expired in February last. At the time it lapsed there were still a very large number of pending cases with which the ordinary courts of the districts were not able to deal. A further Ordinance was thus necessary and under the Malabar (Restoration of Order) Ordinance, 25th February, 1922, the Local Government were given authority to appoint special courts, special Judges, special Magistrates and summary courts. That Ordinance, in its turn, expired in August last and on its expiry the Madras Government still found itself confronted with a considerable number of cases. In some instances trial had already begun, in others the accused were arrested and were awaiting trial, and in a large number of other cases the accused had not even been arrested. It was felt in regard to the part heard cases, and those in which the accused were already under arrest that delay must be avoided, and the Governor General in Council, at the instance of the Local Government, passed a still further Ordinance, the Malabar (Completion of Trials) Ordinance, 1922, of 19th August last. Under this special Magistrates and special Judges already appointed were enabled to continue the trial of these cases. Arrangements were thus made for the definite class of cases to which I have referred, namely, those in which trial had begun or accused had already been arrested. A large class of cases however still remained for disposal in which, though information had been lodged and inquiries completed, or were well on their way, the accused had not been arrested. There were limits to the capacity both of the investigating authority and of the courts, and these two causes combined to make it impossible to take steps against a large number of persons who were nevertheless believed to be guilty of crimes so serious that with every desire to arrive at a speedy end of the proceedings, the Local Government could not overlook them. The Madras Government therefore in December last placed before their Legislature and passed a Bill known as the Malabar (Completion of Trials) Bill, the principal effect of which was to extend section 30 of the Code of Criminal Procedure to special Magistrates in the district of Malabar, with power to try under the provisions of that section offences certified to be offences connected with the events which necessitated the enforcement or continuance of Martial Law in the district of Malabar. That Bill further provided a remedy for a technical difficulty arising from the Completion of Trials Ordinance which was passed in August last, and which will expire in a few days time. When it expires there will undoubtedly be some cases in which an appeal has not been finally decided or has not yet been lodged. There will then be left no successor to the courts which will have disappeared along with the Ordinance, and there will therefore be no court to which the appellant could apply for records

or to which the appellate judgment could be notified. Section 4 of the Madras Act rectified this position by laying down the courts which should have authority for taking action in order to give effect to the sentences passed by the expiring special courts or by any court in appeal regarding the judgments or orders of such courts. Section 5 further provided that notwithstanding such expiration an appeal should lie in any case in which an appeal would have lain but for such expiration, and that such appeal should be heard and decided by the High Court in cases in which under the Ordinance an appeal would have lain to the High Court, and that in other cases appeal should lie to the Sessions or Additional Sessions Judge, South Malabar. Now comes in the purpose of our present Bill. Section 5 of the Madras Act, to which I have referred, so far as it purported to give appellate jurisdiction to the High Court, was *ultra vires* of the local Legislature, and it is therefore necessary that the central Legislature should pass an Act giving the required jurisdiction to the High Court. The purpose of our Bill is therefore to supplement the lack of statutory authority in the Madras Legislature and its effect will merely be to confirm the action of that Legislature in making a provision for appeals to the High Court in cases where but for such provision no appeal would legally lie.

In the circumstances I have explained I have no doubt the Assembly will not only agree to the introduction of this measure, but will have no objection to further consideration being treated as a matter of urgency. The effect of the Ordinance lapses on the 18th of this month, and I propose therefore, if leave is given to-day, to put the further consideration of the Bill down for Monday next.

The motion was adopted.

The Honourable Sir Malcolm Hailey: Sir, I introduce the Bill.

THE INDIAN STAMP (AMENDMENT) BILL.

The Honourable Mr. O. A. Innes (Commerce and Industries Member): Sir, I move for leave to introduce a Bill further to amend the Indian Stamp Act, 1899.

The facts of this case are clearly stated in the Statement of Objects and Reasons. Non-judicial stamps are at present a provincial source of revenue; but they are subject to all-India legislation. Last year the Bengal Government submitted proposals to us for the enhancement of the stamp duty on these instruments; but on looking through their proposals we saw that there were certain instruments on which the stamp duty must be uniform all over India. Accordingly we reserved those instruments—a list of them is given in the Statement of Objects and Reasons—for all-India legislation, provided that Local Governments, after they were consulted, agreed that such legislation was necessary.

We have now consulted all Local Governments, and as a result of that consultation we have decided that we do not desire to enhance the duty on certain of these instruments such as acknowledgments, bills of exchange, cheques, delivery orders, receipts and shipping orders; but we propose—that is the object of this Bill—we propose to enhance the duty on the remaining instruments—share certificates, letters of allotment of shares, letters of credit and proxies. We also propose to enhance the

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duty upon demand promissory notes and we also desire to make certain changes in regard to policies of insurance such as annual earthquake insurance. As the Act is now drafted they pay the same duty as live assurances, which is a heavy one. We want to bring that class of policy under the same head as fire insurance. The revenue which will accrue from these proposals, if they are accepted by the House, will of course go to the Local Governments.

I move for leave, Sir, to introduce the Bill.

The motion was adopted.

The Honourable Mr. C. A. Innes: I introduce the Bill.

THE INDIAN FACTORIES (AMENDMENT) BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I beg to move that the Bill further to amend the Indian Factories Act, 1911, be taken into consideration. I explained very fully, Sir, the objects of this Bill when I introduced it last week, and at this stage I do not think it is necessary for me to say more. I move, Sir, that the Bill be taken into consideration.

The motion was adopted.

Clause 1 was added to the Bill.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I beg to move the following amendment:

"For clause 2 of the Bill substitute the following:

'In clause (a) of sub-section (1) of section 22 of the Indian Factories Act, 1911, (hereinafter referred to as the said Act) the words 'has had or' shall be omitted, and for the words 'one of the three days immediately preceding or succeeding the Sunday' the following shall be substituted, namely:

'any other day in the week consistently with this Act'."

Sir, before I ask the House to accept my amendment, I should like the House to consider what were the intentions of the Legislature when the Factory Act was passed last year. The object, the apparent object, with which Government have introduced this Bill and this section is that they wanted to give effect to the intentions of the Legislature. Therefore, it is necessary for us to see what the real intentions of the Legislature were when they passed the Factories (Amendment) Bill last year. I would like the Members to refer to the wording of the section and see what it intends to do. What the section intends to do is that a particular Sunday belonging to a certain week should be transferred from that week into another week for the purpose of calculating the hours of work. In the first place, Sir, I consider this drafting to be not a proper drafting. The other day my friend Sir Henry Moncrieff Smith found fault with some Members for bringing into existence unmarried grandfathers. Now, Sir, I want to congratulate his department on bringing into existence a week of 8 days and a week containing 2 Sundays. That is what the expert draftsman of this Bill has done. Let the Members carefully read the words. I will draw their attention to the wording:

"For the purpose of calculating the weekly hours of work of such person the Sunday be deemed to be included in the preceding week."

That week should be deemed to have 8 days and that week should be deemed to have two Sundays. This is the drafting of the Bill, but, Sir, I do not mind the drafting at all. What I want the House to do is to give effect to the intentions of the Legislature. Now what were the intentions of the Legislature? Sir, not being a lawyer I cannot discuss with such great skill as some of my friends did discuss that question of the intention of the Legislature last year about the votable and non-votable items. A great deal of skill was exhibited by our friends; I do not propose to do that. Now how are the intentions of the Legislature to be judged? The original section in the Bill which deals with this subject is this:

"No person shall be employed in any factory on a Sunday unless he has had or will have a holiday for a whole day on one of the three days immediately preceding or succeeding the Sunday."

This is the wording of the original section. Now what is found in practice is this, that you cannot under certain circumstances, if you observe all the sections of the Factories Act, substitute the Sunday for every other day in the week, especially you cannot substitute a Sunday by a Thursday or Friday or Saturday. Now my Honourable friend Mr. Innes and his department will say that "if you observe all the rules of the Bill you cannot substitute a particular Sunday by a Thursday, Friday or Saturday; and therefore the intention of the Legislature was to break the other rule." My point is that what the Legislature intended was this, that this clause about the holiday should be followed as far as it could be followed by observing all the other sections of the Act. It did not mean that in each case the employer should be able to substitute for Sunday any one of the days in the week. That was not the intention of Legislature at all. The intention of the Legislature was that the employer should be able to substitute for a Sunday some other day if it was permitted by the other sections of the Act. I think, Sir, this is the ordinary interpretation which laymen like myself can put upon any section of any Bill.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): There are two holidays per week?

Mr. N. M. Joshi: It may be two holidays, sometimes three holidays. My friend Mr. Jamnadas is surprised to see . . .

Mr. Jamnadas Dwarkadas: I am only asking. . .

Mr. N. M. Joshi: My friend, Mr. Jamnadas, is surprised to see that there should be two holidays in a week. I will draw his attention to the list of holidays which the Mill Owners' Association of Bombay have printed and circulated. In that list at least there are two occasions on which there are not only two holidays in a week but three consecutive holidays. So he need not be surprised. I have got the list. If he wants it I can supply him a copy.

Sir, that was the intention of the Act. The Legislature never intended that the other important sections of the Act should be contravened in order to enable the employer to substitute a holiday for a Sunday. If that had been the intention the Legislature would have made it quite clear. Sir, I admit that the wording of this section is not happy, and if the Legislature had been careful the wording would have been changed. But let the Legislature know how the wording came to be here. I want to explain to Members the circumstances under which this defective wording came into this Act. The original intention of the Government of India was to make Sunday compulsory. The wording was "that Sunday shall be a

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holiday," and there was no option given to the employer to substitute any other day for Sunday. That was the intention of the Government of India; that was the original Bill. The Joint Committee thought that the employer should be given option to substitute some other day for that Sunday. But I accept this that the Joint Committee intended that power should be given to the employer to substitute any other day for Sunday, but it was never the intention of the Joint Committee or of this Legislature that employers should be enabled to do this even by breaking the other rules. No mention was made either in the Joint Committee or in the Legislature that employers should be given the power to substitute any other holiday by even breaking the other rules. Now, Sir, the Objects and Reasons of the Bill make it clear which rule is contravened by the Bill. The rule contravened is that of 60 hours a week. This is not an ordinary small rule. This is one of the main principles of the Act that there should be no more than 60 hours a week. Now what Government tries to do is this. Whenever in such a case where the employer wants to substitute one particular day for a Sunday and where this rule of 60 hours a week is contravened, the Legislature gives him power to calculate this Sunday into the previous week. That is to say, the Legislature gives the power to the employer to give a go-by to the principle of 60 hours a week and introduces another principle, namely, of 120 hours in a fortnight. If, Sir, the employer is to be given the power of substituting another principle, namely, of 120 hours for a fortnight instead of 60 hours a week, the Government can go one step forward, and instead of making 120 hours for a fortnight, let Government say once for all that the employer should have the power of observing 3,120 hours in a year instead of 120 hours in a fortnight. But let the House know that when you substitute for 60 hours a week 120 hours a fortnight, you are making a change in the principle. Sir, moreover, when you make this change of principle of substituting 120 hours a fortnight for 60 hours a week, you are tampering with the International Obligations. They had ratified the convention for 60 hours a week, not 120 hours for a fortnight or 3,120 hours for a year. They had ratified a convention for 60 hours a week and in order to tamper with that convention and that ratification, Government proposes that that Sunday should be transferred into the previous week. I do not think, Sir, that this will be considered to be a very straightforward conduct in a very great Government. Now, Sir, I think the mistake of the Legislature or of the Joint Committee was that, when they changed the original Bill as drafted by the Government of India, instead of making their own draft they lifted up from the original Factories Bill the old clause and put it in the new Bill without knowing that that old clause would contravene the other amendments which are made to the Factories Act. That was the reason why the mistake was made. The draftsman or the Joint Committee, I do not know which, put in the Bill a clause which belonged to the old Act without considering whether that Act would break any other rule, and therefore the mistake was caused. Now, what the Government say is this: As the Legislature have passed these words, therefore the Legislature must have intended that the other rules should be broken in order that effect should be given to these words. What I say is this: That, as these words cannot be given effect to, the Legislature never intended to pass this rule as it is. The Legislature intended to put in some words which could be put in here consistently with the other provisions of this Bill. Now, Sir, I want to know from Government why they are making this change. Is it because they want only to make

the Act consistent or because there is a demand from some people for this change? As far as I know, there is not much widespread demand from the country. I have not seen Calcutta Chambers of Commerce or any other Associations asking for this change. At least Government have not told us that. As far as I know, the Mill Owners' Association of Bombay did want this change in order that they should be able to cut down the holidays which the employees would get according to the present Act. According to the present Act, I think they will have to give about 62 holidays. They are prepared to give 55 or 56 or 57 holidays. The Act gives the employees a few more holidays. The Bombay Mill Owners' Association do not propose to do that. Therefore, they go to the Government of India and ask them to make this change. I want to know, Sir, whether the government of this country is to be conducted by the real Government of India or by the Mill Owners' Association or the Chambers of Commerce or the Landholders' Association. I do not think it was right for the Government of India to have yielded to this demand of the Mill Owners of Bombay in this fashion and introduced an absurd provision in the Act altogether, making the week consist of 8 days and of 2 Sundays. After all, what is the real substance involved in this change?—4 or 5 more holidays which will have to be given to the employees—if you keep the Act as it is or if you accept my amendment in order to regularise the whole Act. Now, is it really worth doing? Even if the Legislature considers that the intention of the Act was to do this. Suppose I do not admit for a moment that the Legislature intended to do what the Government is proposing to do—but suppose, by chance, it is done, is it right for you to take away the holidays from the employees in this fashion? Sir, I do not think the Legislature will accept that proposition, even if the Government of India has brought it forward.

There is one thing more, Sir. It may be said, when my friend Captain Sassoon begins to defend his position or the Government of India's position, that the piece-workers in the factories will suffer, that, if you give them two holidays, they will get less wages. That is an argument, Sir, which has been used always, not on this occasion only. When the Factories Act was amended and the hours of work were reduced from 12 to 10 or from any number of hours to 60 hours a week, the same argument was used. At any time, whenever there is going to be a change either in the hours of work or in the holidays, the same argument will be used that the piece-workers will suffer. But, Sir, no disaster has yet fallen upon the country on account of the several changes that we have made so far in our Factories Act. And by giving a few more holidays to the employees, no very great disaster will follow either. Therefore, Captain Sassoon or my Honourable friend, Mr. Innes need not very much worry themselves about the great loss which the working classes will suffer by enjoying 4 or 5 more holidays in the year. I, therefore, think that my amendment, which gives effect to the real intentions of the Legislature, namely, that the employer should be able to substitute 8 days in the week for the Sunday, should be accepted by the House.

The Honourable Mr. C. A. Innes: Sir, I feel that I am somewhat protean in my incarnations in this Assembly. A fortnight ago, when the Mines Bill was being considered, I was held up to the Assembly by Mr. Joshi as a hardened reactionary. Last week, when I, with the assistance of this House, passed the Workmen's Compensation Bill, I am afraid that some of the employers were inclined to look upon me as a crack-brained idealist. Mr. Joshi for his part regarded me as a pilgrim on the path of progress but

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with frequent backslidings from which he endeavoured to dissuade me. Again, to-day, I stand before you as the henchman of the millowners of Bombay. Sir, I decline to accept that characterisation. If the House wishes to know why I introduced this Bill, it is because I take a different view of my responsibility from Mr. Joshi. Mr. Joshi stands before the House as a picker-up of unconsidered trifles; he stands before the House as a man who wishes to take advantage of an obscurity and defect in the Bill in order to get for labour a few more holidays which the House never intended to give them. I, Sir, stand before the House as a man who does his very best to hold the balance evenly on either side, to do justice both to the employer and to the workman. Now, Sir, let me read the Act. The Act as it stands at present says:

"No person shall be employed in any factory on Sunday unless he had or will have had a holiday for a whole day on one of the 3 days immediately preceding or succeeding the Sunday."

The intention of that section, whatever Mr. Joshi may say, was to enable the employer to substitute for a Sunday an important religious festival whether that religious festival preceded or succeeded the Sunday. And as I explained when I introduced this Bill, we have not been able to carry out that intention because, when we passed the Act, we did not realise what the cumulative effect would be of this clause, read together with the definition of week and read with section 27 which prescribes that no person shall be employed in a factory for more than 60 hours a week. Now, the result of the section as it stands at present is that, if an important religious festival occurs on Friday or Saturday and if the employer gives his workman that holiday instead of the following Sunday, then, if he works for 9 or 10 hours a day in the succeeding week, he will have infringed section 27 of the Act because then he will have worked more than 60 hours a week. That was the point which we had overlooked and that is the point which we now wish to correct by this simple expedient which I have placed before the House. Mr. Joshi has held that up to derision, but I defy Mr. Joshi or anybody else in this House to find a more simple or more convenient way of remedying what is an undoubted defect in the Act. I can speak with feeling on this point for my Honourable friend Mr. Chow and myself spent a whole morning in trying to find out the best way of dealing with that defect. Now, Mr. Joshi has attempted—or I will say he has laboured at the attempt—to prove that the intention of the Legislature was that section 22 (a) should be subject to section 27; that is to say, the employer might substitute a religious festival day for a Sunday provided that he did not exceed the sixty-hour week. Mr. Joshi, I think, has not looked at the proviso to section 22. The proviso to section 22 says.

"Provided that no such substitution shall be made as will result in any person working for more than ten consecutive days."

It is perfectly clear, therefore, that the Legislature did contemplate that a man should work for ten consecutive days and that in these circumstances the sixty-hour week should not be adhered to. Mr. Joshi has also said that my proposal involves an infringement of the International Convention. That is entirely a mistake. The International Convention provides a weekly rest day. Well, Sir, even under my proposal, we do give a weekly rest day. We do give a sixty-hour week. It is true that in certain cases we do not give a sixty-hour week if the week be taken as a week from Sunday to Saturday. But the effect of our proposal will be that in the seven days beginning with Thursday and ending in the following Wednesday the man will not work more than sixty hours. He will always get

one holiday and so, though in a different way, we have entirely carried out our International Convention. The trouble has merely arisen from our definition of 'week.'

Now, let me take Mr. Joshi's amendment. Mr. Joshi says that 'no person shall be employed in any factory on a Sunday unless he will have a holiday on any other day in the week consistent with this Act. The effect of that amendment will be to make the Act even more restrictive than it is at present, for it will mean that an employer will not be able to substitute for a Sunday any but the first three days of the week. I should like the House to note this point. It means that the employer will not be able to substitute as a holiday for Sunday any but Monday, Tuesday or Wednesday, because, normally, the week begins on a Sunday. We will take it that the first Sunday is given as a holiday. Then the man works six days, then works again on Sunday and then works on Monday, Tuesday and Wednesday. He will then have worked ten days consecutively. The House will therefore see that it will be quite impossible for the employer to substitute Thursday, Friday or Saturday in any circumstances for a Sunday, because he infringes against the ten days' rule. Now, the object of my amendment is to give that elasticity to the employer which is necessary in order to enable that employer to substitute religious festivals for the English Sunday. It suits the convenience of the workman and it suits the convenience of the employer. There is no reason at all why, if the workmen prefer to have a holiday on an important religious festival day, they should not do so. There is no reason why, against their own will and their own convenience, they should be tied down to the Sunday. Mr. Joshi says "Let them have these extra holidays." If that is Mr. Joshi's point, let him make a frontal attack. Let him propose to amend the Act so that they have not 52 holidays in the year but 60 or 62, whatever it may be. You need not take advantage of this hole in the Act in order to say that they ought to get these extra holidays. What will be the result of this? The result, I imagine, will be that the employers will refuse to substitute important religious festivals which fall on a Thursday, Friday or Saturday for the Sunday. They will say to the workmen, "No, we cannot give you this holiday. You must take it on the Sunday." What is going to be the result? Friction all round and strikes merely because Mr. Joshi wishes to get these men a few more holidays and merely because Mr. Joshi is not prepared to carry out what I say was always the intention of the Legislature, merely because Mr. Joshi is not prepared to play fair with the employers. I say, Sir, that this Assembly, this Legislature, has a very real responsibility in this matter. We are not here to be led away by Mr. Joshi's eloquence. We are here to try and do justice to both sides. We are here to try and correct the mistakes that we have made, and that, Sir, is the reason why I have introduced this Bill. Sir, I oppose Mr. Joshi's amendment.

Mr. Manmohandas Ramji (Indian Merchants' Chamber and Bureau: Indian Commerce): Sir, I have followed very closely Mr. Joshi's arguments and he has tried to put the case in a manner which is not fair to the employers and not fair to the workmen even. Mr. Joshi says "Give them 5 days more holidays. What does it matter?" He ought to have more information of what the practice in Calcutta is. I am told that in Calcutta the workmen get holidays on Sundays but they are not allowed a holiday on religious days. What will be the effect? As the Honourable Mr. Innes has rightly pointed out, there will be dissatisfaction. The millowners of Bombay do not wish to curtail even a single holiday. What they wish

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to do is to comply with the wishes of the workpeople and give them holidays on their festive occasions. Then again, there is this important point that the industry has to stand competition from other parts of the world. If workmen are given holidays after holidays as Mr. Joshi would have, it means greater cost of production. The workmen, as it is, get more than sixty holidays in a year. That means two full months of thirty days. But taking 25 or 26 working days for a month, it means more than two months. Further, some people are paid monthly wages and others are on piece work. Who will suffer? The workmen themselves; and if they draw less by this arrangement, they will ask for more wages, and more wages means more cost of production. In these circumstances, I think it is not wise on the part of this Legislature to accept Mr. Joshi's amendment.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, Mr. Manmohandas Ramji has referred to the practice in Calcutta. So far as I know, the mills and factories close on important festival days such as, for instance, the *Id* or the *Dushera* which is called the *Durga Puja* holidays, and other important festival days. The workmen do get holidays on these days. I also appreciate the objection that was raised by the Honourable Mr. Innes. If a holiday is to be substituted for a Sunday, sometimes I know that it may be a Muhammadan festival day, and they are let off on that day. But the Hindu workmen are not let off on that day and a Sunday is substituted for the day that is taken off from the week of the Muhammadan community. In this way sometimes it happens on a Friday you have to substitute a Sunday for the Friday. I would think that it would be better if we leave elastic the point for the employers to arrange with their workmen instead of putting in a hard-and-fast rule that if they are made to work on a particular Sunday this day is to be taken off during the next three days and it cannot be taken off the week on a later day. I think that will not be either to the advantage of the employers or of the workmen. Of course, I am not very familiar with the working of factories, but I know that in newspapers sometimes, when the paper is issued on Monday the workmen have to work on the Sunday, and then either an off day has to be given during the week or they have to be paid extra wages. In this particular newspaper business, many of the newspapers are issued on Mondays and some are issued on Sundays. Those newspapers which are issued on Sundays have to work on Saturday, but in the case of the paper which is issued on Monday, Sunday is practically a working day. So, I should not adopt any hard-and-fast rule with regard to this matter but I would make it elastic so that the matter may be arranged amicably between the employers and the workmen.

The amendment was negatived.

Mr. President: The question is that clause 2 stand part of Bill.

Mr. H. M. Joshi: I rise to oppose this section altogether. Sir, it was said by the Honourable Mr. Innes that I wanted to give a few more holidays to the employees by an underhand manner. As a matter of fact, I did not want to do that at all. I did not introduce the Bill. It was my Honourable friend who has introduced the Bill and he is responsible for this change, if there is any one, and not I. He brought forward the Bill to reduce the holidays and I want to prevent that. That is all. I do not want to increase the holidays by any underhand manner.

Sir, I do not think this section gives effect to the real intentions of the Legislature at all. The Legislature intended that the other sections of the Act must be observed if the holidays are to be substituted for Sundays. My Honourable friend Mr. Ramji said, "Why should not the holidays be substituted?" As a matter of fact, that is my amendment that the employer should be given the right to substitute any other day for a Sunday, but the intention of the Legislature should not be contravened, namely, that the other sections of the Act should not be broken at all.

The Honourable Mr. Innes in defending his section said that he was giving effect to the real intentions of the Act and he quoted a section in the Bill newly introduced that the workmen will not be allowed to work continuously for more than ten days. The existence of this clause is an argument in my favour. As a matter of fact, if the intention of the Legislature was to retain the old clause, namely, no person shall be employed in any factory unless he has had or shall have a holiday for a whole day on one of the three days immediately preceding or succeeding the Sunday, then there will be no necessity of having this clause at all, because according to the old Factory Act, automatically there was the necessity of a holiday at least once in 12 days; that was the ultimate effect of the old Act. My Honourable friend Mr. Ramji has got experience of the working of the old Factory Acts and he will tell you that even under the old Act it was not possible for any one to work for more than 12 days without being given a holiday. If the old section was to be retained and if that was the intention of the Legislature, then certainly this section was not necessary at all, because according to the old Act it was not possible to continue working a factory for more than 12 days without giving a holiday. It was on account of that, there was no provision in the old Act about continuous working for more than 12 days or 10 days or 15 days. Otherwise the old Act would have provided for this contingency. That was not put in the old Act because it prevented the working of a factory for more than 12 days automatically. It was on account of that there was no provision regarding continuous working for more than 10 days. When the Legislature intended to give this facility to the employer, namely, to substitute another holiday for a Sunday, they thought the employer may be able to go on working for more than 10 or 12 days and that section was put in. As a matter of fact, the argument which was used by the Honourable Mr. Innes is in my favour. The mere fact that a clause has been inserted in the Bill prohibiting working a factory for more than 10 days continuously shows that the Legislature never intended to put in the old clause about holiday in the old Act. Therefore, that argument is altogether in my favour.

Then, my Honourable friend Mr. Ramji said, why should there be two holidays, as if two holidays should never be given. (Mr. Manmohan-das Ramji: "Why"?). Then if you pass this Bill you shall have to give two holidays in certain weeks. I am sorry to have to discuss these details in the Assembly. But I shall give an example. Take a holiday on the 5th of any month, Thursday. Sunday will be working. Take a holiday on the 18th of the month, Wednesday. Wednesday will be substituted for Sunday. You cannot do it. You have to give two holidays. Even if you pass this Bill you are not preventing the giving of two holidays once in two weeks at all. If that had been your object I could have understood it. I also pointed out in answering my Honourable friend Mr. Jamnadas Dwarkadas that as a matter of fact—not of law or rule—

[Mr. N. M. Joshi.]

here is a list of the holidays given by the Bombay Millowners' Association. There are these holidays—14th, 15th and 16th March, Tuesday, Wednesday 12 Noon. and Thursday—three consecutive holidays. Where was your consideration for the wages of the employees then? Did you object to this? Then, Sir, there is another instance—20th October, 21st October and 22nd October—three consecutive days. Did not the piece-workers suffer? Did you ever take that into consideration? You do not take that into consideration when it suits you and you are afraid of giving two holidays when it does not suit you. If the argument is to be considered that the workman should not have more than two days simply because their wages will suffer, you are not preventing that. I showed that even if you pass this Bill there will be several cases in which you will not be able to substitute that holiday for a Sunday. I have quoted one case. I can quote several. Again I do not think it is right for me to take up the time of the House by putting before them these conundrums and riddles. I therefore hope that this House in the interests of its own integrity as regards the intentions of the Legislature will not pass this. The Legislature never intended that the section about the 60 hours week should be broken or should be tampered with in the fashion in which Government has done.

The Honourable Mr. A. C. Chatterjee (Education Member): I had no desire to intervene in this debate though I feel that I had some responsibility both for the framing of the present Bill and in connection with the passing of the Indian Factories (Amendment) Act last year. I did not wish to take up the time of the House because the facts had been very lucidly explained by my Honourable friend, Mr. Innes. As Mr. Joshi has not been able to overcome his desire to get in a reply to the remarks of Mr. Innes on the amendment, I feel bound to say a few words. Mr. Joshi has referred to the intention of the Legislature. As I said, I had the privilege of conducting through this House the Bill which is now the subject of discussion. I remember perfectly well the discussions that took place in the Joint Select Committee on that occasion. My Honourable friend, Mr. Joshi, was present throughout those discussions. He was not present in the Assembly when the Act was passed. Therefore I think I have as much authority, perhaps a little better authority, than Mr. Joshi has with regard to our intentions when we passed the Bill. I confess it was my mistake as well as that of the draftsman of the Bill that when we changed the original phrasing of the Bill and introduced the present phrasing we overlooked the new provision with regard to the weekly limit of work. It was perfectly plain to everybody during the discussion in the Joint Committee on the motion of Sir Vithaldas Thackersay that we wanted to restore the old system that prevailed in Bombay and in some other parts of the country with regard to holidays. Mr. Joshi is perfectly well aware of that fact and I am very much surprised that he neither made a reference to it when the report of the Joint Select Committee was presented last year nor did he argue against it in the proceedings of that Committee.

Mr. N. M. Joshi: I accepted the Act as it was.

The Honourable Mr. A. C. Chatterjee: I therefore entirely repudiate Mr. Joshi's assertion that it was the intention of the Legislature at that time to give the 60 hours and that at the same time the holidays should

be on the basis which Mr. Joshi now contends that they should be. Then again Mr. Joshi says that the present Bill does not provide that there should never be two holidays in the week. That is quite true. We do not intend that on no occasion at all should there be two holidays in the week. The proviso still exists and we are not proposing to make any alteration in the proviso. On no occasion whatever will a man be compelled to work for more than ten days continuously. That is the continued intention of Government. I therefore hope that Mr. Joshi's objection will not prevail.

Mr. President: The question is that clause 2 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clauses 3, 4 and 5 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that the Title of the Bill and the Preamble of the Bill do stand part of the Bill.

The motion was adopted.

The Honourable Mr. C. A. Innes: I move that the Bill be passed.

Mr. President: The question is that the Bill further to amend the Indian Factories Act, 1911, be passed.

The motion was adopted.

THE INDIAN PAPER CURRENCY BILL.

The Honourable Sir Basil Blackett (Finance Member): Mr. President, I beg to move for leave to introduce a Bill to consolidate the law relating to the Government Paper Currency.

After the astronomical and mental gymnastics through which we have been passing, the House will, I am sure, turn with relief to so simple and lucid a subject as the paper currency in India. I feel that I am really doing a public benefaction. This is a purely consolidating measure and makes no change of any kind in the existing law. It is really a measure to give one day's holiday a week to the hard worked people who deal with Paper Currency Acts. As the House remembers, the Paper Currency Act now in force was passed in 1910. Since that date there have been various amendments—numerous amendments of provisions relating to the constitution of the Paper Currency Reserve passed mostly during the War or just after it. The last series of amendments was made by the Act No. XLV of 1920. I need not dilate on what the provisions of that Act were. It introduced certain permanent provisions and certain temporary provisions to last so long as the created securities, so called, in the Reserve remained created. These temporary provisions were not incorporated in the Act. They did not take the form of specific amendments to the Act and in consequence it is almost impossible to understand the existing Acts in the form in which they are printed. One of the first things that happened to me when I found myself in the Finance Department was that I asked for a copy of the Paper Currency Act in its present form and after a day's hard labour I gave it up. I was then told that I was expected to introduce a Paper

[Sir Basil Blackett.]

Currency Bill. As I knew how controversial a subject it was, naturally I was relieved to find that it was merely a Bill to consolidate the existing Paper Currency Acts in order that they may be printed in a consecutive and intelligible form. The present Bill is intended to bring all the existing provisions together in a clear form and as I have already explained it makes no kind of change in the existing law. I beg to move for leave.

Mr. President: The question is that leave be given to introduce a Bill to consolidate the law relating to the Government Paper Currency.

The motion was adopted.

The Honourable Sir Basil Blackett: Sir, I introduce the Bill.

RESOLUTION RE EMIGRATION OF UNSKILLED LABOURERS TO CEYLON.

Mr. President: The House will now resume consideration of the Resolution moved by Mr. Hullah on the 1st February this Session in the following terms:

"This Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Ceylon, and recommends to the Governor General in Council that the notification be published in the Gazette of India."

Mr. J. Hullah (Revenue and Agriculture Secretary): I only wish, Sir, with your permission, to make a very brief statement regarding the papers that we have placed in the hands of Honourable Members. The arrangement of these papers, the bringing up to date of certain notes which were placed before the Standing Emigration Committee, and which we have now placed before the House, and the printing of these papers involved heavy and very rapid work. The Honourable Mr. Sarma promised to supply to Members all papers of a non-confidential character. We have gone much further, and have placed in Members' hands papers which have hitherto been regarded as confidential. It will be seen that among them are the full proceedings of the Standing Emigration Committee. These have hitherto been regarded as confidential; and since we informed the Deputations that came from Ceylon and Malaya that these proceedings were confidential, it was necessary for us, after the last debate, to telegraph to the Colonial Governments and ask whether they had any objection to our laying them before the House. We also asked them whether we might lay before the House the correspondence with them. They replied at once that they had no objection. I hope, then, that the House will feel satisfied that this is a set of papers sufficiently full to enable it to take cognizance of all the considerations that are relevant to the subject.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): Sir, Mr. Hullah in a very full, lucid and eloquent speech has clearly explained to the House the relations which have existed hitherto between Ceylon and India with regard to emigration and the history of the proposals which have led to the Notification being laid on the table of this House. If I rise to intervene in the debate at the present stage, it is because I have felt that, having regard to some of the observations made by Honourable Members when they asked for time to consider the question

more fully, a further exposition of the policy of the Government, its position and attitude towards this question might help in a speedy termination of the Resolution before the House. The House may rest assured that it is not the desire of the Government to encourage, or encourage unduly, emigration from India either to British possessions or to other countries. The Government know and realize that it is their duty to make the conditions of life in India as easy and comfortable as possible. They realize that, in the interests of agricultural prosperity as well as economic and industrial development, it would be a short-sighted policy to denude the country of labour, and they have been taking and propose to take all steps that may be necessary to improve the conditions of labour prevailing in the various parts of India. But there is no use disguising from ourselves the fact that in certain parts there is an undue congestion, that labour conditions are unsatisfactory, and we have also to recognize the fact that it is the freedom of the individual that we have to respect, that a man should be able to go where he pleases to make the best of the conditions and opportunities which are possible to him. So subject to reasonable exceptions, the freedom of the individual has to be promoted and safeguarded. But the Government have recognized and do recognize that there are essential safeguards to be taken when they are dealing with an ignorant population who are unable to protect their own interests and may be seduced or rather may be induced to go abroad in search of a comfortable living without a full appreciation of the conditions. It is under those circumstances that the Government have passed the emigration law which has been placed on the Statute Book last year and propose to provide suitable safeguards to protect assisted emigrants to foreign countries. But in making rules and in imposing conditions, the House will remember that the relations between India and Ceylon are peculiar. Mr. Hullah has laid stress upon this aspect of the question, and I propose to add only a very few brief remarks. We may treat Ceylon as practically an annexe to or a district of India from the standpoint of proximity and facility of communication and, viewed geographically or ethnologically, we may say that the conditions are so similar that distinctions, such as can be drawn between the overseas possessions of His Majesty, the distant overseas possessions and India, cannot be drawn in the case of Ceylon and India. There is only a very narrow stretch of sea, 22 miles long, which separates the two. There is a large inflow, interchange, of labour between Ceylon—200 or 300 passing from Ceylon.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): There is no interchange of labour.

The Honourable Mr. B. N. Sarma: There is no interchange of labour proper but interchange of population though on a small scale. The Government as far back as 1847 recognized that it was essential—and I lay particular stress upon it—that it was essential to secure the good will of Ceylon to render their emigration policy effective. They have also recognized that the apprehensions which may exist in the case of other Colonies need not be entertained in the case of Ceylon. Honourable Members will recognize also that 25 per cent. of the population, including the emigrant population, are closely allied by affinity to the South Indian Tamilian population, are Tamilians, and even with regard to the vast majority of the Singhalese, if tradition is to be relied on, they come from an Upper India stock which is said to have emigrated more than 2,000 years ago; so that, in substance, you can look upon Ceylon as practically a country peopled with Indian races. We

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shall also have to recognize that with the prosperity of Ceylon is intimately connected the prosperity of South India. The trade relations are very extensive and I would therefore ask the House to remember these peculiar conditions which subsist between Ceylon and Southern India. I am not going to minimise in the slightest degree the fact that there has been anxiety or that there is room for anxiety that ignorant villagers in Southern India may go to Ceylon to better their conditions under various inducements only to find that the conditions are no better there than those prevailing in Southern India. The Government propose in this connection to take effectual safeguards and the Committee has been of very great assistance in formulating proposals as to what may be necessary in this behalf. Now, Sir, if we treat Southern India and Ceylon as practically one country for general trade and labour purposes, if we remember that in the past Ceylon was governed from Madras and was part of Southern India—the Chola Kings ruled that tract for a long time—if you remember all these facts, I suggest that you should treat emigration to Ceylon on a somewhat different footing from emigration to other distant countries. The Government of Ceylon have pressed very seriously and very strongly upon the Emigration Committee their view that there should not be any obstacle whatsoever in the way of a free interchange of populations between Southern India and Ceylon. They have pointed out that no great evils had entered into the body politic of either country by reason of such free interchange in the past and that it would be hard to enforce any restrictions upon such emigration without seriously handicapping the skilled or free unskilled emigrant. Their views are supported by a certain section both in Southern India and in Ceylon, but the Government as well as the Emigration Committee have felt, and I think rightly, that it would be impossible, having regard to public feeling on the subject and the necessity for safeguarding the interests of the labour population emigrating to Ceylon, to accede to these demands, and we therefore propose not to except unskilled labour emigration from the purview of the Act. We have proceeded further and wish to ensure that whenever a labourer goes across this 22 mile stretch of sea to Ceylon and finds himself in uncongenial surroundings or finds that he has been induced to go there under unfulfilled promises or the conditions do not suit him, either by reason of the work he has to do being unsuitable or the wages he is paid being inadequate or for any other satisfactory reason is able to convince the Emigration Agent that it is fair he should be helped, he should be sent back to his home at the expense of the Colony; and the Government of Ceylon have agreed to it. The Government and the Committee have felt it incumbent upon them further to press upon the Ceylon Government to remove all penal restrictions, and whether willingly or unwillingly—let us be charitable and say willingly—the Ceylon Government have removed all such restrictions. But the Emigration Committee were not satisfied—and I do not blame them for it—with regard to the wages that are being paid in Ceylon. I am not going to trespass upon the ground to be covered by the amendments, but that was the one point upon which the Emigration Committee had grave doubts. It was not originally intended to press upon the Ceylon Government the fixing of a basic wage subject to a minimum. I shall have to briefly explain to the House the various stages through which this aspect of the problem presented itself to the Emigration Committee and the Government. In the beginning the idea was faintly hinted at but was set aside on the advice of Mr. Marjoribanks who was deputed by the Madras Government to assist

us and who was one of those who went to study the conditions in Ceylon and the Straits Settlements. They were induced to drop this question on the ground that the labourer was a free labourer and entitled to repatriation when he found that the conditions were unsuitable, and the Tundu having been abolished the conditions of the labour market would adjust themselves and that it was not desirable to fix a minimum which might easily become a maximum. Rightly or wrongly, they at first hesitated to ask that any minimum wage should be fixed. We pressed certain other conditions upon the Ceylon Government which were partially accepted. Then a deputation waited upon us and the question was again raised in the Committee because the Committee has always felt unhappy about this wage question. It was then suggested to the deputation that this problem should be solved at an early date in order to ensure harmonious relations between the two countries. The deputation very strongly pressed upon Government and the Committee the practical difficulties in the way of concluding any investigation in a short space of time, and undertook to inquire into the subject to find a solution so that the position may be made easy for all parties concerned. Then the Committee sat specially to consider this point on the 21st September and resolved to ask the Government of India to negotiate with the Ceylon Government for the purpose of making this inquiry as speedily as possible and for improving meanwhile the conditions of labour; but they did not make it a condition precedent because they recognized that some time must elapse before the inquiry was concluded and its results made known. They further stipulated that any results which might be tentatively arrived at should be placed before them, so that with their suggestions before them the Government may be able to negotiate further before final conclusions are come to and the matter is placed before the Ceylon Legislative Council. Therefore in our last letter to the Ceylon Government we expressed the hope that they would at once take steps to see that the conditions of labour were improved. (A Voice: "When was that?") In October, I believe. The last meeting was on the 21st September and in October we wrote to Ceylon asking them to undertake an inquiry, and they wrote back at once saying that they would undertake an inquiry and pointing out the various stages through which that inquiry had to pass, and, having regard to the fact that there were 1,230 estates with varying wage conditions prevailing in different places, they said that some time was required but that they would conclude the matter as early as was practicable. That is where that question stands, and I hope that it will be settled speedily to the satisfaction of this House and to the satisfaction of the whole country. But I ask you, Sir, if we had waited from 1847 up to date without, I will not say any hardship, but if we had waited patiently for the amelioration of the position so long, would it be too much to ask the House to wait a little longer and allow the Government to negotiate with Ceylon wage? The Government has the interests of the labourer at heart. The Government recognises the difficulties in the way of the Ceylon Government. They recognise that the conditions in Southern India are not altogether dissimilar to those obtaining in Ceylon. The conditions of labour in Southern India have to be ascertained to a certain extent, because we have asked the Ceylon Government to fix the wage in such a way as to enable the labourer when he comes back to Southern India to live happily on his savings, which might serve as a pension for him; and, therefore, having regard to those limitations which we have imposed, I would ask the House to recognise that the Government and the Committee have placed as many reasonable conditions as conditions precedent to emigration being

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allowed as are practicable. I lay once more stress upon the fact that confidence begets confidence, and that if we allow this matter to lie at this stage for a little while longer, the Ceylon Government, recognising that we have placed implicit trust in their good faith, in their desire to improve the conditions of labour settled there, would co-operate with our Emigration Agent, if we are so fortunate as to find funds to appoint one there; with his co-operation and the co-operation of the Government of India, I hope that the Ceylon Government would be in a position to place this vexed question on such a satisfactory basis that they and we may be able to co-operate fully for the betterment of the conditions of Southern India as well as Ceylon. And, mark you, Sir, let us not expose ourselves to the charge that by enforcing unduly hard conditions in the desire, in the natural desire, in the just desire, to improve the conditions of our countrymen who may be going abroad, that we shall be unduly depressing the labour market in Southern India; because that outflow, be it on a small scale or on a large scale, is helpful, is good, in the interests of the labourers of Southern India, inasmuch as it naturally raises the position of the labourer and his value in the market. I, therefore, hope that the House would take a very generous view of the difficulties of the Ceylon Government—I am not trying to overdraw the picture, I am not trying in the slightest degree to minimise the difficulties to which labour is subject or the public opinion which faces us and I do not say that public opinion has been unduly exercised having regard to the stories which have been rightly or wrongly propagated with regard to the condition of labour in Ceylon—well, Sir, having regard to the peculiar relations subsisting between us and Ceylon, the fact that their prosperity and our prosperity are bound up together and that we cannot afford to see the planting industries in Ceylon rudely affected, let us trust them a little more; and we have got the power, we have got the will, to enforce and we shall be firm in enforcing a policy which would secure justice for the labourer who may be going to Ceylon from here. Section 13 of the Emigration Act fully empowers the Governor General in Council to stop emigration at any time he considers proper laying reasons therefor and the Resolution he has come to on the table of this House. If this House is dissatisfied with the conditions it is always open to them to recommend to the Government to take such steps, if the Government does not of its own accord take such steps, in that direction as may be necessary. We have got ample power in the Statute Book to enforce our will and we shall do so. Let us show that we trust the Ceylon Government, the Ceylon planters, and if they betray that trust, if they are not fully alive to their responsibilities, then it will be time for this House to ask the Government to lay down rigid conditions so that they may not make a mistake once again. So far Ceylon has fully complied with the conditions which we have asked them to comply with and we have no reason except in this one instance for any grounds for dissatisfaction, and I therefore ask the House to accept the Resolution as it stands.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, the Honourable Mr. Sarma has without bringing the real issue before the House given us a sidelight on the subject in question. I know, Sir, he has supported what the Honourable Mr. Hullah described so fully and moved so eloquently. The Honourable Mr. Sarma is a lawyer, as we know, and when he has got a very bad case it is the lawyer's business to argue that case. That is the real point of the whole matter.

Sir, before I move my amendment in this House I should like to point out that the subject of to-day concerns people who are going mostly from Southern India to Ceylon. They are generally recruited by a class of people called Kanganis, and they go to a land which is not very far across the sea. Probably a man could easily cross the 22 miles that lie between at a jump, as was suggested by the other side. Then, Sir, we have heard also that if labour does not like to stay there in that happy land, it can be repatriated by that beneficent arrangement which has been made by the Colonial Government in that country. Sir, it is very kind of them to have done so; but for those unhappy creatures who desire to be repatriated by any means to their motherland, the difficulties of the situation under which they are placed after they have been recruited by these Kanganis for that country are very great. Some information was supplied to us about two days ago by the Honourable Mr. Hullah. Let us see, Sir, from the perusal of it what the difficulties are of those poor unhappy people going to that country. I don't know whether Honourable Members have it with them, but at page 3—paragraph 11—of "Emigration to Ceylon" they will find the following remarks:

"There is no minimum wage fixed by law. Reliable statistics for all estates are not available. Calculations based on information supplied by particular estates show that actual wages varied in 1917 from Rs. 10 to Rs. 8 for men; from Rs. 6 to Rs. 4 for women, and from Rs. 3 to Rs. 5 for a child."

That is to begin with, and that is the average pay. Now this paper called "Emigration to Ceylon" has been kindly supplied to us by the Honourable Mr. Hullah, on page 7 of which you will find under the heading Appendix "Statistics of comparison between a Ceylon Estate cooly's cost of living and his earnings in cash." There are two headings. Rubber Estates and Tea Estates, and in the sixth column there is a heading "Total average of monthly earnings." The average is probably that which is given on page 3 of this paper per man, woman and child. This is the average for rubber estates. The average monthly salary is from Rs. 6 to Rs. 11; a man gets Rs. 11 in 30 days, a woman gets Rs. 8 and a child gets Rs. 6, and that is the accurate figure, and then the total is Rs. 15 per man, Rs. 10 per woman and Rs. 7 per child. That is the average monthly earning in 30 days.

Then we come to Tea Estates. The average monthly income is Rs. 9 per man, Rs. 6 per woman and Rs. 4 per child, and in the sixth column you will find the total average monthly earning is Rs. 12 per man, Rs. 8 per woman and Rs. 6 per child and for single adult Rs. 8.

Then from page 37 you will find that these people spend much more than they earn. There is a deficit in the family and the cost of living is much more than the amount of earning, and yet attempts are made to encourage emigration to Ceylon. It was pointed out by the Honourable Mr. Sarma that a friendly feeling is established between the Government of India and the Government of Ceylon. The Government of Ceylon, as we all know, is not for the benefit of the Indian. Their feeling towards Indians is like this. There are two brothers living side by side, or there is a partition of their whole ancestral estate; therefore it is probably much nearer than 22 miles distance from Southern India to go to that happy land of Ceylon, and there is a conflict of interest going on between the two brothers under the same paternal house. You know the feeling that generally exists between two brothers under these circumstances, one brother wants to eject the other and take complete possession of the property. That is the position between the Ceylon Government and the

[Mr. K. Ahmed.]

people of this country with regard to their treatment there. Sir, I keep aloof other subjects for the present. How are they taking an interest in the uplifting and safeguarding of our Indian interests generally? Sir, I do not think that the Honourable Mr. Sarma is justified at all in saying that a close relationship between India and Ceylon exists. It is not in the interests of the Government of India that we should allow recruitment to that country and a Kanganis is to take the major portion of the small salary which these people get, and what balance is left them to spend for their living. These debts are incurred through those blood-thirsty Kanganis. People lend money, Sir, at the highest rate of interest and the condition is that if you don't pay you know what the penalties are. I have got, Sir, certain telegrams in the name of my Honourable friend, Mr. Venkatapatiraju, who was probably a member of that Committee that went the other day to inquire into the condition and status and the method in which things are going on in that extraordinary land of Ceylon. I am told, Sir, that my friend submitted a report, which has been kindly forwarded to me by my Honourable friend, Mr. Hullah. In the Standing Emigration Committee, my Honourable friend, Mr. Sarma, said this :

"I think the less said about emigration the better and there is not much to be said either on this specific question. The Deputations to British Guiana and Fiji have not yet reported about the state of things there nor have they made any recommendations."

Well, Sir, I understand the Report has been submitted since.

Mr. W. S. J. Willson (Bengal: European): On a point of order, Sir. Are we discussing emigration to Fiji or to Ceylon?

Mr. K. Ahmed: My Honourable friend again jumps up, seeing things are going very badly against their interests I presume. Probably he has got a good heart and sympathy with the people of Ceylon, so many miles away from the Southern part of India. I congratulate him, but, Sir, when you are talking about the subject of emigration, when you talk about the labourers who are to be recruited in the other country, the labourer in India who is to go to Kenya, Fiji, or any other part of the world, they are all emigrants from India. Their condition is not in any way better than the condition of these poor people who are recruited to that happy land of Ceylon and therefore, Sir, I referred to them. My Honourable friend will have an opportunity to oppose my amendment, if he so wishes, and we shall be very happy to hear him if he has anything to say about Fiji not touching Ceylon.

That being so, I pass on to the telegram from Ceylon which my Honourable friend, Mr. Venkatapatiraju has received. This is a telegram to my Honourable friend, Mr. Venkatapatiraju. I have got it in my possession. My friend after giving me permission to read it does not probably want it to be read now. This is the telegram :

"Mr. Hullah's statement misleading. Excepting removal penal clauses Ceylon Government's concessions useless. Old debts remain. Several cases instituted against labourers in different Courts of Requests. Numbers can be quoted. Several cases transferred to India to attach Indian properties of labourers. Removal Tundu farce. Tundu replaced by discharge ticket. Labourer given notice is asked to pay debts now. Have investigated 500 estate labourers have run into debts for 1922. On average 10 to 15 Rupees. Can be . . ."

Mr. J. P. Cotelingam (Nominated: Indian Christians): "proved".

Mr. K. Ahmed: "... proved from accounts. Education unsatisfactory. Not even 300 estates have schools. Wages very low. Kept so by means of discharge ticket. Indian opinion favour restriction for improvement wages. Will interest Assembly to know why Mysore insisted declaration before Magistrates for recruits. Ceylon Government intend appointing civilian represent labour. Fight for maximum"

Mr. J. P. Cotelingam: "minimum".

Mr. K. Ahmed: "wages eradication debts compulsory Education Committee's recommendations give no protection. Question of repatriation farce. Labourer who as planters said will be afraid of Magistrates in India will they apply to Ceylon official for repatriation. Natesi"

Mr. J. P. Cotelingam: Natesa Aiyar, sender of the telegram.

Mr. K. Ahmed: Natesa, Andival Street, or whatever it is.

This is what the telegram says. Now, Sir, a meeting was held only the other day in Madras. It appears from the *Madras Mail*, dated the 8th February, that the meeting was held only two days ago, and . . .

Mr. President: I must ask the Honourable Member to draw his remarks to a close.

Mr. K. Ahmed: I will just give the House the opinion of that part of India from which my Honourable friend, Mr. Sarma, comes, and I am sure he is familiar with them. The report in the *Madras Mail* says:

"A public meeting was held on last Wednesday evening at the Victoria Hall to concert measures for improving the conditions of Indians who had emigrated to Ceylon. The conditions of Indians in Ceylon were becoming serious and the Government of India were endeavouring—how, it is very difficult to say—to improve them. The Government of India and the Secretary of State, it was hoped, would come to the help of Indians abroad. Why should Indians go abroad as labourers and not stay in their own country? Zemindars, merchants and other rich people should persuade their countrymen not to leave India if they were sufficiently educated to carry on modern industries."

Now, Sir, at that meeting it was also resolved that they wanted an Indian Consulate if it was necessary. Mr. C. R. Reddy, a very able and moderate politician, in seconding the Resolution, said that the Government of India and their own leaders were responsible for the legal status of Indians in the Colonies. The Government had not taken sufficient care of the people and did not discharge their

Mr. President: The Honourable Member will resume his seat after moving his amendment.

Mr. K. Ahmed: I move:

"That after the word 'Ceylon' the words 'for one year only' be inserted and at the end of the Resolution the following words be added:

'and further recommends that a Committee of Inquiry consisting of three persons be sent to Ceylon to investigate the condition of the labour with a view to find out on what terms emigration should be permitted after the 5th of March, 1924'."

In 1924, on the 5th March, if this notification for emigration is continued

Mr. President: Amendment moved:

"That after the word 'Ceylon' the words 'for one year only' be inserted and at the end of the Resolution the following words be added:

'and further recommends that a Committee of Inquiry consisting of three persons be sent to Ceylon to investigate the condition of the labour with a view to find out on what terms emigration should be permitted after the 5th of March, 1924'."

Rao Bahadur T. Rangachariar: As one of those who has sat on the Emigration Committee I wish to give my views on the outstanding questions which remain with the Ceylon Government so that we may know how the further discussion on the amendments should proceed and also those who move these amendments may consider what amendment should be pressed to a division.

There are still only three outstanding questions which remain to be settled with the Ceylon Government so far as I am able to gather the difficulties of the situation. As Honourable Members are no doubt aware, the old tundu system arising on account of this indebtedness of the labourer to the kangany and the kangany to the estate has been abolished but the debts have not been abolished. The moral force of those debts and the slavish sentiment which hitherto had prevailed in the minds of these people still remain and that is a matter which will take some time for the Ceylon Government to adjust because it is a matter of lakhs and lakhs of rupees which have to be written off by the estates as against the kanganies, but as between the kanganies and the labourers there should be no difficulty and the Emigration Committee have pressed it home both on the Deputation and on the Ceylon Government that this indebtedness of the labourer to the kangany should disappear, for the kangany uses it as a moral force to retain the labourer on the estate to which the kangany is attached. The kangany profits by retaining the labour on the parti-

1 P.M. cular estate to which he is attached, for he gets so much per head of cooly which he retains on the estate from the planter and he uses this debt as a force, not as a legal force but as a moral force and these poor ignorant men, although the law gives them freedom of movement from estate to estate, are not able to get out of the clutches of these kanganies. So this debt will have to be abolished but however as I said already it is a matter in which the Committee felt considerable difficulty whether it should be made a condition in the Notification because the Ceylon Government themselves proposed such an Ordinance, only in the year 1921, after considerable agitation there. They themselves proposed some steps should be taken with reference to the abolition of this debt system and it is hoped that they will take those steps very soon and we were assured that such steps would be taken and that only it is a matter of time. The second outstanding question and the most important of all is this question of the wages. I want Honourable Members to understand the real situation as regards the wages. The figures supplied to Honourable Members both by Mr. Hullah in his opening remarks and in the papers circulated are somewhat likely to be misleading. We have to be guided by the wages which each man earns, not by the averages. We should be guided by the lowest figure which each man, woman or child earns. If you go by averages it is no good at all. If you make an average of the income of all the Members of this Assembly, we are not going to distribute it to all the Members. It depends on the lowest income and we have to find out whether it is a living wage. There is no use therefore taking the *kanakupillai* on the estate, the *maistry* on the estate and the kanganies who are also labourers and get their wages in addition to what they get so much per head of cooly who works under him. So you lump these things and strike an average. That is no good at all. And with reference to this matter I wish Honourable Members to realise what are the actual wages which are earned by these labourers when they go there. I mean the minimum, the lowest which they get. If Honourable Members will turn to page 7 of the Appendix, in the first place there is a

misprint there, which I am surprised to see repeated from the final reprint of the Deputation print. We corrected it with the Deputation in the case of tea estates. As regards the daily minimum wage, Honourable Members will see 51 cents marked there. It is a misprint for 41 cents. It is not 51 cents at all. 41 cents is the average for tea estates and 47 cents is the average for men so far as the rubber estates are concerned. Now, Sir, the wages range from 36 to 50 cents in the case of tea estates. That is the lowest wage paid is 36 cents and the highest wage paid is 50 cents. The highest wage is paid in the case of the factory labourer, in the case of *kanakupillais* or these *sillarai* kanganies who actually labour. You may take it that 36 cents means 5 annas 9 pies per day. 5 annas 9 pies per day,—that is the wage which these people earn; and as regards the women, it ranges between 26 and 33 cents; that is, it is merely 4 annas 1 pie, and in the case of a child, he gets 2 annas 11 pies. Now it must be admitted at once that this wage is hardly a living wage. On their own admission, Honourable Members will see taking their own figures, the cost of living is given at page 3—for a man, woman and child, that is, a non-working child, the cost of living would work to, including clothing, Rs. 20 and annas 4. That does not provide for expenses, for festivals, such as Diwali or Pongal or such other festivals, or even for religious worship, or for offering worship, the usual worship: so that the actual, bare cost of living without providing for these things would come to Rs. 20 and annas 4. We have another estimate of that by a man who is well acquainted with the conditions of labour, one Mr. Natesa Aiyar who gave evidence before the Committee. He calculates the cost of living at Rs. 23 annas 8 for a family. We will take the lower figure of the Deputation, namely, Rs. 20 annas 4, and if we allow a few extras for these festivals, festive occasions, it cannot be less than Rs. 21 or Rs. 22 per mensem. What does this man earn? Even on the most favourable calculation you will find, taking 40 cents as the average, or 41 cents as they put it, on an average, or if you take any of these things, it comes to this,—unless the woman also works, the family cannot live; even with the woman working, it is less than the actual cost of living. The Committee were greatly impressed with the fact that the prevailing wages were inadequate even with a man and woman working together, that they were not able to earn the actual cost of living, the estimated cost of living. The Committee were impressed with that fact and they pressed upon the Government of India that they should immediately press upon the Government of Ceylon—as Honourable Members will see from the proceedings—for an immediate rise in the wages, in the existing wages. That was considered most essential. It is quite true the Honourable Mr. Sarma told us that before we had full information the Committee were doubtful about fixing a minimum wage. But after the next meeting in fact when Major Nicholson gave us interesting figures which Honourable Members will find at page 29, we realized the necessity. He is the gentleman who is in charge of the recruitment of this labour. Honourable Members will find the figures given by Major Nicholson as regards wages, which these people get when they go there, are,—a man, 6 annas 1 pie for rubber, and for tea, 5 annas 9 pies; a woman, 4 annas 2 pies, and for tea, 4 annas; children, 3 annas and 2 annas 11 pies. When we got those figures—in fact we got them by telegram during the sittings of the Committee—when we got those figures we thought that the matter required further examination, and therefore we insisted upon it. The Ceylon Government gave us figures which afterwards turned out to be exaggerated. The Ceylon Government gave us figures which Honourable Members will find in their letter of July.—Honourable Members will find

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them printed also here—in these papers they exaggerated the income of these labourers—in their July letter, that is printed at page 18—they wanted to make out that a man gets Rs. 16 to Rs. 20 in rubber and Rs. 12 to Rs. 16 in tea. It is hardly correct; for women, Rs. 10 to Rs. 12; for working children, Rs. 6 to Rs. 8. It is not borne out by the figures actually given to us by the Deputation themselves.

The Honourable Mr. B. N. Sarma: That is, before they become efficient; there is a qualifying phrase there—on first joining before they become efficient.

Rao Bahadur T. Rangachariar: Yes, that is so; they do not become efficient till one year. We are not concerned about their efficiency. When they go out of the country what is it they get? That is the point we have to consider. We are now asked to encourage emigration to Ceylon. I quite admit the necessity for it. Therefore I do not want to go into questions of policy; I want to look at it from the practical point of view so that we may come to a practical conclusion to-day. I am not opposed to emigration to Ceylon; I do not want to discourage it. In fact it will be difficult to prevent it having regard to the proximity of the place and the past habit of the people of those districts, especially the Tamil districts. I should like, however, to say just a word in regard to the alleged facility of the journey from these districts to Ceylon. Mr. Hullah has presented a rather exaggerated picture of the easiness of the passage from India to Ceylon. Take the district of Chittoor. It is 300 miles from Chittoor to Mandapam and although it may seem a very easy matter for these poor labourers to cross the intervening 22 miles of sea, I must inform the House that it actually takes them seven days to get across, for there in Mandapam they are kept in quarantine. That is a hardship which is greatly felt, as negotiations are going on between the Ceylon and Madras Governments with a view to removing this hardship, we have not therefore laid much stress upon it. But apart from that there are practical difficulties which have yet to be faced by the Madras Government and by the Indian Government before this emigration question can be satisfactorily settled.

As I was saying, with regard to the figures furnished to us by the Ceylon Government, in June Major Nicholson gave us some figures; in July the Ceylon Government furnished us with another set of figures; when the Deputation came in September they gave us a third set of figures; and we find them irreconcilable, and therefore it is a matter which has to be carefully inquired into. But taking them at their best, the wages are unduly low. It may be true that the wages earned by these people in their own districts are not much better, but I doubt if in any place the wages are so low. From my own experience of several Tamil districts I do not think the agricultural wages are so low as they are in Ceylon. It may be asked, why is it then that these people go at all? The real answer is that you have an army of kanganies. For the recruitment of about 39,000 people 14,000 kanganies are employed; each man recruits three or four labourers, and he gets five rupees for each labourer to begin with and five rupees afterwards; each labourer also gets an advance of five or ten rupees. And probably it is the pleasure of the escapade, the trip which he takes, and the freedom of social life away from his home—that is perhaps the secret of these people going away from their

homes. I have investigated this matter, and I do not think there is much fraud going on. I visited the Trichinopoly camp where about 400 or 500 coolies were waiting; they understood what they were about, and I cannot say that there is much deception practised. I have therefore come to the conclusion that these people go out for such low wages because of their desire for social freedom, to go to a place where no question of Brahman and non-Brahman exists and where various other social restrictions do not exist. It is perhaps a matter which has to be investigated. But I do think, Sir, that in discussing this question we should not take into consideration whether these people are happy or not in their homes. We are bound to make them happy here and we are neglecting our duties if we do not make them happy here. But merely because they may not be happy here is no reason why we should allow them to be unhappy somewhere else. At least let us see that they are happy in other places. I quite agree with the sentiments expressed by the Honourable Mr. Sarma. You must encourage freedom of the individual. I am quite willing to concede that. It is not the question of freedom of the individual here. We are now concerned with assisted emigration of labour. So long as it is unassisted, you are not controlling it. But you give your measure of assistance to Kanganis to go about, to recruit, to advance money and take them over and it is that which we want to prevent. If individuals go there on their own account at their own expense seeking their livelihood on the face of the earth, nobody can have any objection. We have to control, therefore, assisted emigration. Therefore, Sir, I want to impress upon this House that the existing wages are unduly low; admittedly they cannot meet the living cost even on their own modest calculation. The cost is Rs. 21, and man and woman cannot earn Rs. 18. That is why the labourers owe to the Kanganis nearly Rs. 150 lakhs, or Rs. 1½ crores. There is indebtedness of Rs. 1½ crores for these poor people. It is quite true that these people have not got much on which you can realise these debts. But all the same you know that they are under obligation in debt. It is moral obligation and moral fear; moreover, decrees can be obtained here and the little property they may have in the villages can be attached. Another fact which strikes me is this. How is it that people are going there all these years, there has been free emigration to Ceylon all these years and yet not one of them has acquired property in Ceylon? Whereas I was quite satisfied to see the conditions in Mauritius, where, for instance, nearly more than 40 per cent. of the land is owned by these Indian labourers who emigrated there; in Ceylon not an inch of land is owned by these labourers. If Honourable Members will compare the inflow and outflow of figures, they will see that 39,000 people go there and 29,000 people return in the year. So, it is merely a short trip, as it were, which they make and they do not profit by it. This country does not profit by it. The only country which is profited by this labour is Ceylon. The planters on account of this large inflow of labour there are able to keep down the labour market. That is the reason for these low wages. There is too much competition and on account of too much competition the wages are low. If we restricted the number or rather if we compelled the planters to give a minimum wage, then perhaps these conditions would not exist; the conditions will much improve. I think it is our duty to do that. I strongly impress on the Government and on this House that we should take some steps. I do not think left to themselves the Ceylon Government will do it. How many months have they had now? This Emigration Act was a Bill before this House for nearly six months, and before the Select Committee, in fact, I pressed only for six months' time

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to be given under the Act. But, Sir, the House allowed one year. What has the Ceylon Government done? In September we gave them time. What have they done? Have they appointed the Committee which the Emigration Committee suggested to them in order to go into this basic wage? It is still under correspondence. What do they say in their reply of October which the Honourable Member referred to? That conditions in South India have to be investigated! Why should conditions in South India be investigated in order to fix what is the living cost there and what wage should be a good wage? All this is a mere attempt, a ruse, on their part to delay, to gain time; and, Honourable Members will also see that since July last the number of people taken to Ceylon, because the Act does not apply, has considerably increased. They have taken advantage of the fact that the Act does not apply. If Honourable Members will look at page 48, the large increase of numbers begins there. Whereas from January to April the number is only, 1,000, 2,000, 3,000, etc., after May, it is, 7,000, 10,000, 10,000. I rather suspect that taking advantage of the delay in coming into force of this Act, there is more effort put forth by the Commission in order to take more labour, so that they may have a large number of labourers on hand, so that when the Act comes into force the labour market there may be overflowed and they may be able to keep down the wage.

I drew the attention of the deputation to that and they say it is due to normal conditions. I do not believe it. For my part I do not believe this statement. I pressed upon Government to get the publication that the Ceylon Planters' issue every month or two months. I do not know whether they have done so yet. That would give them the clue as to why this large inflow of labour is going on. I have not heard whether the Government are going to get this monthly publication which shows the activities of the Ceylon planters. I am satisfied that the Ceylon Government and the Ceylon Labour Commission are one. The deputation was not a Government deputation. Unlike the other deputations which waited upon us from Mauritius and from the Malay States, the Ceylon deputation was really a planters' deputation. There was no Government servant on that deputation. Therefore, Sir, I do not think we should leave it to the Ceylon Government to do the needful. We have left it too long. I insist that this question of wage should immediately be attended to. Otherwise we should put a minimum on the number that should go. I attach the greatest importance to this. I am very sorry I have to do it, but I do not expect much from the Ceylon Government unless we put pressure upon it. Sir, these are some of the remarks I wish to make on this subject.

Dr. Nand Lal (West Punjab: Non-Muhammadian): Sir, we really feel much indebted to the Honourable Mr. Sarma and to Mr. Hullah for supplying us with the printed record in connection with the proceedings and relating to the rules and regulations which are obtaining in Ceylon. I quite recognise the honest efforts, which have been set forth by the Government of India, to ameliorate the condition of Indian emigrants in Ceylon; but one thing is not clear to me, Sir,—it is a puzzle to me; and that is this—whether this Resolution, on behalf of the Government, is being moved for the benefit of Indian labourers or for that of the planters in Ceylon. I should like to be enlightened with a very precise and concise answer to this question. The Honourable Mr. Sarma tells us, and we

thank him for that expression, that the Government, to a certain extent, is reluctant to allow free emigration, but there are certain conditions, subsisting in Madras, which induce Government to allow emigration. What are those conditions? He says that in some quarters and in some months of the year there is congestion—that is, the number of labourers there becomes much more than the work that could be secured to them in that Province. That is the explanation which has been put forward by the Honourable Mr. Sarma. Very good, Sir. If it is out of sympathy with the labourers that they may be given work and that they may not idle away their time, then what about the educated unemployed men of India? Will they be able to secure employment in Ceylon? Will the Government of Ceylon recognise them? Will they be able to hold posts there? Well, if the answer to that is a negation, then I am forced to this conclusion, that our countrymen are sent away simply as coolies, because, coolies cannot be supplied from other quarters. Allow me to say that I, as an Indian, feel ashamed of that and feel very deeply that such may be the condition, that such may be the predicament into which we are, at present, forced. If some of us were to be sent there, as scholars, in the pursuit of knowledge . .

Mr. President: Order, order. The Honourable Member knows perfectly well we are talking about the conditions under which persons going to Ceylon as assisted emigrants may work there. He must confine himself to that subject.

Dr. Nand Lal: Very well, Sir, I shall do so. Therefore, Sir, as I have already submitted, these arguments, which have emanated from the Honourable the Revenue Member, have not appealed to my mind, at any rate. Now, Sir, we are told that the Ceylon Government will see their way to raise the wages after due inquiry and when the proper occasion arises for it. All right, Sir, let us then wait till the Ceylon Government tries to raise the wages of these people. What is the hurry about it? Hurry is not in favour of the labourers or coolies of India. This is being hurried on, if I mistake not, in the interests of the planters of Ceylon, and why so? It cannot be denied that the present wages are too low. It is extremely difficult to see how these unfortunate people live there, and I think, on their return to their own province, they must be coming back without even a farthing with them. That cannot be ~~definite~~ and, therefore, the Government of India, I think, will feel it their duty to impress upon the Ceylon Government, the necessity of raising the wages of the labourers before they help them, otherwise, they should not help the Ceylon Government. As my Honourable friend, Rao Bahadur Rangachariar, has argued before the House, it is startling to us to see that in some past months there has been a great demand for labour. For instance, he told us that from May onwards there was a very large influx of emigrants in Ceylon. How is that? Where is the need for special demand?

The Honourable Mr. B. N. Sarma: In some months there will be greater emigration.

Dr. Nand Lal: I think the planters anticipate, and they foresee, that the labourers in Ceylon, that is the local men will not be satisfied with this low wage. Therefore, the real desire of the planters, if I can say so, is that the market should be dumped by importing a very large number of Indian coolies, so that the local labour may not be able to raise its head. I take it in that light. If I am wrong I may be excused, but that is the result of my study of the whole situation. Therefore, it seems to be highly undesirable that the Government of India should allow this state of things

[Dr. Nand Lal.]

to continue. If the Government of India are not aware of the labourers' condition in Ceylon, then, I may respectfully submit, it is simply regrettable, and if the Government of India, who have very faithful sources of information, still continue to give assistance to the planters of Ceylon, though indirectly, in spite of their knowledge about the labourers' condition in Ceylon, then, I may say, it is still more regrettable. Now, the Honourable Mr. Sarma has very kindly told us about the proceedings which went on before the Deputation and about the understanding, which was come to between the Government of India and the Deputation. The crux of the whole thing is whether the Deputation has given any effective shape to the question which indirectly concerns the fixing of the minimum wage. They say: "*tundu* has been abolished." It is true that it has been abolished. We are told that the recruiters will not in future be given the liberty of inducing or persuading the Indian coolies to go. We must thank the Government of India for that. But what about the indebtedness which is hanging over their (the coolies') heads? As Mr. Rangachariar very ably put before the House: What about that? Can the Indian coolies' minds be relieved of it? Will they feel themselves free from that civil liability, or encumbrance, so to speak? These are the two points which ought to have been given prominence by our Government, and I am very sorry that the adequate consideration has not been paid to it. I take it, more or less though not exactly, as a kind of slavery, if I may be allowed to say so. May I hope that the English gentlemen here, members of that sympathetic nation that abolished slavery, will help Indian coolies and will join us in giving a defeat to the Government Benches, so far as this Resolution goes? However, Sir, the view of this side of the House is, that, if certain conditions, as described in our amendments, are considered and those conditions, when considered and placed before the Ceylon Government, are accepted, then emigration may be allowed. That is, there should be some increase in the wages, and there must be some practical and suitable arrangement in that behalf, in any case. In addition to that there must be an authoritative stipulation between the Government of India and the Government of Ceylon that the previous indebtedness of the coolies should be removed and the minimum wage fixed for the future. If these stipulations, these covenants, are accepted and they are acted upon, then, of course, we shall not have any hesitation to countenance the emigration from India to Ceylon. Unless and until these conditions are fulfilled, unless and until these sympathetic efforts are made, this House is not in favour of supporting this Resolution at all.

Mr. President: I propose to put Mr. Kabeer-ud-Din's amendment in view of the fact that nobody seems inclined to discuss it.

The original Resolution was:

"That this Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Ceylon, and recommends to the Governor General in Council that the notification be published in the Gazette of India."

Since which an amendment has been moved:

"That after the word 'Ceylon' the words 'for one year only' be inserted and at the end of the Resolution the following words be added:

'and further recommends that a Committee of Inquiry consisting of 3 persons be sent to Ceylon to investigate the condition of the labour with a view to find out on what terms emigration should be permitted after the 5th of March, 1924'."

The question I have to put is that that amendment be made.

The motion was negatived.

Mr. President: I propose now to adjourn and to take Mr. Bagde's amendment after Lunch. I may point out for the information of the Assembly that on the original amendment paper amendments Nos. 2, 4 and 5 are of the same character inasmuch as they make the continuance of emigration for the purposes of unskilled labour in Ceylon conditional on certain action being taken by the Government of Ceylon. And, therefore, it may be convenient to take one or other of these amendments as an amendment in its turn to Mr. Bagde's.

Sir Montagu Webb, in the new amendment put on the paper to-day, raises the same question in a slightly different form. He invites the House to give the Government of Ceylon a time notice of 18 months instead of one year.

The Assembly then adjourned for Lunch till Twenty Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty Five Minutes to Three of the Clock. Mr. President was in the Chair.

Mr. K. G. Bagde (Bombay Central Division: Non-Muhammadan Rural): Before moving my amendment I beg the Chair's indulgence to effect some verbal changes in it. They are, before the word "emigrants" I intend to put the word "assisted," and I wish to omit the words "who have been assisted otherwise than by a relative." After introducing these changes the amendment would read thus:

"That after the word 'approves' the words 'with the modification set out below' be inserted; after the words 'the notification' the words 'as approved' be inserted; and at the end of the Resolution the following be added:

'After clause (3) of the draft notification the following clause shall be inserted:

'(4) Before the 1st of April, 1924, the Legislature of Ceylon shall have enacted a law fixing the minimum basic wage for assisted emigrants to the satisfaction of the Governor General in Council and of both Chambers of the Indian Legislature.'

'And the subsequent clauses shall be re-numbered accordingly.'

Sir, by this amendment I propose that no emigration should be allowed to Ceylon after the 1st of April 1924, if the Legislature of that country does not pass a law fixing the minimum basic wage for assisted emigrants. This demand for the fixing of a basic minimum wage has been made for a long time. Honourable Members are aware that Mr. Marjoribanks and the Honourable Mr. Ahmed Thambi Maricar were specially deputed for the purpose of an exhaustive inquiry into the condition of Indian labour in Ceylon and these two gentlemen made certain recommendations. These recommendations are given on pages 4 and 5 of the Memorandum with regard to Emigration to Ceylon that has been distributed to us. There is the seventh recommendation which reads thus:

"The fixing of a minimum wage for labourers."

It is also important to note that the Ceylon Government is trying its best to evade the fixing of this minimum wage. On page 18 of the same Memorandum we find the opinion of the Government of Ceylon with regard to this question of minimum wage. They say:

"As regards the minimum wage this Government is not in favour of introducing such a principle as there is no doubt that it would tend to deprive the coolie of the benefit of higher wages which he earns at times of good crops or scarcity of labour. The cost of living of a family consisting of a man, his wife and two children is approximately Rs. 17 a month for basic stuffs and rice. This, of course, excludes the cost of cloth, expenditure in festivals, etc."

[Mr. K. G. Bagde.]

This will give a clear idea that the Ceylon Government is trying its best to ignore this question of fixing the minimum wage. Now, I submit that the non-existence of a minimum wage involves a hardship upon the labourers in general. Labourers are allured from this country outside on the prospect of high wages. When they are taken there they find that the promises given to them were all false. They have no other alternative but to stick to the jobs there and work on wages that are offered to them. If a minimum wage is fixed the labourers in this country would know exactly what wages will be paid to them and therefore there would not be much ground for deception. If we look to the present standard of wages in Ceylon we find that it is extremely low in comparison with that which obtains in this country. Even in urban areas we find that labourers are required to be paid more highly than they are paid in Ceylon. There are other amendments than mine which involve the same principle. The Honourable Sir Montagu Webb has got his amendment and there is not much difference between his amendment and mine. In that amendment he fixes the period from the 1st of October 1924, while in mine I mention the period from the 1st of April 1924. I have taken the 1st of April 1924, because it is the beginning of the new official year. Then there is another difference and that is he wants the minimum wage only to satisfy the Governor General in Council, while in my amendment I have added that this minimum wage should satisfy the Governor General in Council, and both Chambers of the Indian Legislature. I specially introduce the Indian Legislature in this amendment because this question of emigration is very important. Day by day it is growing more important and the fates of thousands of Indians are involved in this problem. If this amendment as proposed is included in the notification, then a period may arise which will make it necessary for the Government of India to prohibit or restrict emigration to Ceylon. Now, if we look to clause 13 of the Indian Emigration Act, I mean Act VII of 1922, that clause reads thus: "The Governor General may, by notification in the Gazette of India, prohibit from a date and for reasons to be specified in the notification of persons or any specified class of persons from emigrating to any specified country from the territories of any Local Government or any specified part thereof for the purpose of unskilled work. Every notification issued under this section shall be laid before both Chambers of the Indian Legislature as soon as it is made." So that right is vested in this Legislature by this Act, and therefore I think it is not advisable for the Legislature to part with that right. With these words, Sir, I commend my amendment to the acceptance of this House.

Mr. President: Amendment moved:

"That after the word 'approves' the words 'with the modification set out below' be inserted; after the words 'the notification' the words 'as approved' be inserted; and at the end of the Resolution the following be added:

'After clause (3) of the draft notification the following clause shall be inserted:

'(4) Before the 1st of April, 1924, the Legislature of Ceylon shall have enacted a law fixing the minimum basic wage for assisted emigrants, to the satisfaction of the Governor General in Council and of both Chambers of the Indian Legislature.'

And the subsequent clauses shall be re-numbered accordingly."

Mr. B. Venkatapatiraju (Ganjam cum Vizagapatnam: Non-Muhammadan Rural): Sir, I have given notice of a similar amendment, and therefore I take the earliest opportunity of supporting Mr. Bagde's amendment.

The reason why a minimum basic wage was insisted upon by the Select Committee and why it was proposed for the acceptance of this House is this. Unfortunately, Sir, even if emigration to the Colonies were prohibited, they have fixed a certain wage, not less than one shilling, and subsequently increased it, to suit the conditions in other places. But though we have the advantage of not having long-term contracts in Ceylon which is called indenture, it is worse in some respects. Sir, for a period of no less than 40 years there has been no large substantial change in the wages Bill. Even if we refer to India—and I refer the House to the rise in wages given by the Government of India—you will find that all industries during the last 20 years increased their wages by about 75 to 100 per cent. This is the only place where there has been no substantial increase in wages. In the latest statistics published for Ceylon by an officer of the Government, they state that roughly they may put the increase of wages at 33 to 70 cents per day. I may take it that the high figure is with reference not to the Estate labour but with reference to other labour, because the Ceylon Government admitted that they are paying about 20,000 people employed in the harbour and Public Works and in Railways a wage of Re. 1 to Rs. 1-8, on the average Rs. 1-4. But when we come to State labour, it actually starts with one-third, 5 annas 4 pies. The increase, as pointed out by the Honourable Mr. Rangachariar, is 5 annas 9 pies, it may be 6 annas in some places, according to the ability of the worker. When we have seen that the whole world is moving, why should this country, Ceylon, remain at a standstill? The only suggestion that could be put forth by the planters is that the industry cannot bear a higher wage. But so far as the tea industry is concerned they cannot put forth any such plea, because I have figures before me to show that the productive cost of tea is about 35 cents, whereas the ruling price during the last 12 years, 45, has gone up to 60, even to 70 and I may go further and state that even when it is selling at 43 cents, there are several Companies which made profits of between 50 to 100 per cent. And if detailed dividends given by various Companies are wanted, I would only refer Members who are curious to know to what is called the Rupee Company Book, corresponding to the "Investors' Review". There they will find what dividends were made even when it was selling at a rate of Rs. 48. Therefore there is a sufficient margin; but in spite of a sufficient margin no increase is made. Now, the Honourable Mr. Sarma suggested that Government generally do not interfere. It is true, but they interfere in cases where a powerful organization on the one side and ignorant masses on the other side are concerned. That is the reason why this emigration law has been introduced. The Honourable Sir Barnes made it plain when he introduced this Bill that its object is to protect the ignorant masses of India, to prevent them being duped and advantage being taken of them by powerful and influential persons on the other side. That is the object of this emigration law; otherwise there is no object in bringing it in at all. According to the statements made by the Ceylon deputation, according to the statements made by the Ceylon Government, the actual cost of food alone for a man, woman and two minor children who do not earn, is Rs. 17, and Rs. 17-8 according to the Deputation. The cost of clothing is besides variously valued at Rs. 3-8 and Rs. 5. Whatever it be, Rs. 21 or Rs. 22 is absolutely essential for a man and his family. Moreover, wherever a man gets a decent pay he does not send his wife out to work to supplement the domestic budget. Here even the woman has to work. According to the Government of India's information, the wage for a man is Rs. 10 and for a woman Rs. 8. They can thus between them earn only Rs. 18, while the cost of living is Rs. 22. Is it

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fair that we should allow such a thing to go on? I may say, Sir, that the Government of India since the time of Lord Hardinge, during the Viceroyalty of Lord Chelmsford and in the present Viceroy's time, have made every effort to secure proper conditions for Indians overseas, but Ceylon has escaped notice all along. It is admitted that there are about five lakhs of Indians employed on the estates in Ceylon, and of these about 90 per cent. have nothing to count upon; they have not a pie saved and they have no property whatsoever while they are all indebted to the extent of from Rs. 70 to Rs. 200. Would any Government who cares for the interests of its subjects allow them to go to a foreign country, stop there for many years and in the end have nothing more than indebtedness to fall back on? It is not even suggested that they are wasting their money in drink or other evils. It is economically impossible for these people to save anything. When their expenditure is more than their income how is it possible for them to save? They have indeed to run into debt. With regard to this, one witness who gave evidence before the Committee stated that he has 2,000 coolies on his estate of whom only 150 are out of debt, and he stated that the misery and trouble of these people is due entirely to the low wages which they receive from the planters. These planters are not Europeans, but look like Anglo-Indians or Eurasians. They stated that unless you raise the wages to at least 75 cents (that is 12 3 P.M. annas), they cannot live; otherwise they must live in misery.

Now, Sir, it is stated,—and it must be said to the credit of the Government of India—that they insisted upon securing the abolition of the penal clauses and they have succeeded in that. Much credit is due to them for this and they have also abolished the *Thundu*, that is indebtedness for failure or breach of contract. For this they cannot be proceeded with criminally and in Ceylon they cannot be arrested civilly, though civil liability still exists. Those things the Ceylon Government have cheerfully accepted and we are also grateful to them for what they have done. But whenever we touch this question of decent wages, we do not expect acquiescence from them, for persons who are accustomed to take large dividends are not the persons likely to agree to forego any profit voluntarily; some pressure must be brought to bear upon them; and that is the reason why the Select Committee insisted that that should be done. The only suggestion that has been made by the Honourable Mr. Webb is that instead of having 12 months, it should be 18 months. Giving 12 months or 18 months must depend on whether there is any prospect of any immediate increase of wages. If there is no increase it will be ruinous to the lakhs of people who are suffering in Ceylon. The reasons why these people go there are numerous. As Mr. Rangachariar said, if so many people have gone there to secure Rs. 10 per head, there are other means of inducing these people to go. It may be that people are not better off in India. That does not redound to the credit of the British administration. If we say "our people cannot get a proper living, therefore let them go on starvation wages elsewhere." I do not think that would be an argument. But it may be an argument for the Government to take necessary steps for improvement of conditions in India. Therefore, Sir, before we agree to a period longer than one year, which is reasonably suggested by Mr. Bagde, I appeal to the House. The Select Committee have recommended that there should be a basic wage and the Ceylon Government have been advised that they should adopt it, and that Government have stated that they have no objection to institute inquiries. We know what is the meaning of instituting inquiries. We do

not want to leave it in a haphazard manner when the interests of 5 lakhs of people are concerned. This is the only occasion when we can exercise our right. We must insist that there should be a basic wage to the satisfaction of that Government, of our Government and of ourselves. Otherwise, there is no use in bringing forward any Emigration laws when we cannot safeguard the interests of our subjects. It is the fundamental duty of every State to protect its own subjects, and if it does not do so, then it is failing in one of its legitimate duties.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadian Urban): Sir, I rise to take part in the debate because I think we are straying away from the real point which is before the House. On a reference to the literature on the subject with which we have been furnished, I find, Sir, that there is absolutely no difference of opinion as to whether the Ceylon Government should fix a minimum wage. No doubt, the Ceylon Government at one stage raised the question that such fixation of minimum wage might interfere with certain industries in that country. And they were inclined not to favour such a proposition. I refer to page 18 of the paper-book:

"As regards a minimum wage this Government is not in favour of introducing such a principle as there is no doubt that it would tend to deprive the cooly of the benefit of the higher wages which he earns at times of good crops or scarcity of labour."

But towards the end of the deliberations of the Standing Committee, I find, from the paper-book that the question was put in a very definite form to the representatives who came over from Ceylon, and it was suggested that this question of a minimum basic wage should be settled once for all. At page 44 of the paper-book, the House will find that the Standing Committee:

"Resolved that the Ceylon Government should be asked to make an inquiry into the question of fixing a basic wage subject to a minimum, and of the cost of living in relation to the rate of wages now paid. In the meantime the Government of India should do its best to secure an improvement in wages. On the receipt of the report suggested above, the Emigration Committee would have to consider the findings and to decide whether to ask for a Joint Committee to settle what should be the rate of wages and other details."

Now, Sir, the question to my mind, is this. But before proceeding further I should say that at page 42 it has been reported that—the Honourable Mr. Sarma stated to the Deputation from Ceylon, that "negotiations on the subject of a basic wage should take place at an early date with a view to an arrangement being arrived at, if possible, before the draft notification under section 10 should be laid before the two Houses so as to enable the Government of India to reach conclusions satisfactory to all and to carry the Councils with them." That being so, Sir, there is no doubt that the Committee came to the conclusion that the question of the basic wage should be settled before the notification was issued. The House has adopted by its attitude towards the notification, already certain suggestions which were recommended by the Standing Committee, and these have been embodied in the proposed notification. They are of very great practical utility and are entirely in accord with the decision which the Committee arrived at. It is incumbent upon us to see that the notification secures those conditions and safeguards for the benefit of the emigrants. Therefore there is only one question now standing out, for consideration by the House, namely, the fixation of the basic wage. That question, Sir, I may ask the House to consider, will take some time to.

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settle, and the result of the amendments proposed will be that if for securing that end in view, we have to wait, and the notification in question be held back, for the present, emigration in the meantime will continue without those safeguards which have been provided in the notification itself and on the old lines, without securing those benefits which the notification intends to secure to the emigrants. The question of a basic wage, if it could have been settled in accordance with the wishes of the Committee, would have been settled before this notification was placed on the table of this House. That having failed of immediate achievement, the only question that now remains is whether we should allow the old state of things to continue, with regard to emigration, or have a notification at once securing most of the ends we have in view and which are exactly in accordance with the conclusions of the Standing Committee. If the wording of the amendments be considered, it will appear that it is more or less inconsistent with the notification itself, and that the amendments in question do not fit into the Resolution. The notification says that emigration shall be valid only if the conditions laid down therein are fulfilled, whereas the amendments that are proposed are to the effect (to take up the first amendment), that:

"After clause (3) of the draft notification the following clause shall be inserted:

'(4) Before the 1st of April 1924, the Legislature of Ceylon shall have enacted a law fixing the minimum basic wage for emigrants, who have been assisted otherwise than by a relative to the satisfaction of the Governor General in Council and of both Chambers of the Indian Legislature'."

It does not suggest any immediate action. Does it mean that if on the 1st of April 1924 the Legislature of Ceylon fails to enact a law fixing the minimum basic wage, all emigration will then become illegal? As it is, it simply declares a pious wish, because it merely says that the "Ceylon Government should enact by the 1st of April 1924, a law as proposed to the satisfaction of the Governor General in Council and of both Chambers of the Indian Legislature". It is really a direction to the Ceylon Government, and there are no means of compelling the Ceylon Government to accept the suggestion, and carry it out, within the proposed time-limit. On going through the papers supplied to us, I find that it was not decided by the Standing Emigration Committee that emigration should be stopped. Pending the settlement of the minimum wage questions I could have understood the position if emigration could have been stopped in the meantime and if the Standing Committee came to the conclusion that emigration should be suspended until conditions as to fixation of a minimum basic wage were fulfilled. But that is certainly not to the advantage of the emigrants themselves, or to the people of India. Further whatever we may say, emigration after all is the natural outcome of economic conditions, and therefore it must have operation where economic conditions require it. Therefore, Sir, if we try to stop it in British India, it will seek its natural outlet. If emigration is really wanted it will find some natural mode of operation. On the whole, I think it will not be good for the emigrants themselves if this House desists from all action, and allows things to go on as at present without our doing anything until the question of a basic wage is settled. I submit, Sir, that is not a desirable state of things to have. We have been told,—and it is a fact,—that the Government has retained the power of imposing upon the Ceylon Government certain conditions on the question of a basic wage. Judging from the papers before us, it will certainly take some time to settle this

question satisfactorily. It requires some inquiry, and it cannot be done in a hurry. So that, if we take such a view of the whole question, it will not be difficult to see that it is altogether to our advantage that the restrictions and safeguards, whatever they are, as provided in the notification should meet with the acceptance of the House. We are assured that Government is prepared to act in accordance with the conclusions of the Standing Committee on that point. I for one therefore do not see any reason why in order to gain that one point, we should keep in abeyance the operation of the other clauses as laid down in the notification. I hope the House will consider the whole question from that point of view, and try and cut short the debate on a point which, if gained, will perhaps not carry any advantage to anybody.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadian Rural): Sir, before I enter into the merits of this question, I would refer to section 10 of the Emigration Act. According to that section, from the 5th of March of this year, all emigration to Ceylon will become illegal unless permission is given by notification by the Governor General in Council, and therefore this Resolution is put before the Assembly with certain conditions imposed in regard to emigration.

The new conditions we now propose will no doubt require a certain amount of time to negotiate. And therefore in our amendments we have given a further period to bring these conditions into operation. That does not mean that these amendments would prevent the continuance of emigration under the conditions laid down in the Resolution moved by Government.

Now, Sir, in regard to this question, my Honourable friends who have spoken have entered into the fullest details as regards the conditions of labour, wages and other matters. The point immediately covered by the amendment is the question of a minimum wage. Now, this question is important, apart from other considerations, in that, if the Government of Ceylon fixes a minimum wage, it will be an authoritative notification as it were to all emigrants of what they are sure to get in Ceylon and it will prevent, as has been said by one of the previous speakers, any exaggerated ideas of the wages that await the emigrant to Ceylon. That will be one good result of fixing a minimum wage. As regards this point, the Ceylon Government no doubt said they were agreeable to fix a minimum wage. But they said they would have to make inquiries as regards the prevailing rates in the various estates and also they want to make inquiries in Southern India, that is the area from which these emigrants come. I do not think that these two grounds are really very material. That is, a basic wage, to be fixed by the Government of Ceylon, must I suppose reasonably vary from one area to another. They cannot say that this is the minimum wage for every part of Ceylon. There must be some variation and that they must go about doing as quickly as they can. As to discovering the conditions of labour and all the amenities which the labourer enjoys in his own home, I think that is unnecessary, for this simple reason. You fix your wage just as you like. If the labourer desires it and if he thinks the wage is better than he would get at home, he will come; if not, he will not. For an inquiry like that into the wages earned in this area from which the emigrant generally goes, will not be a satisfactory one unless this Government also takes part in it, and it will be an inquiry which will have to take up various aspects of the question. There is rural agricultural labour, in which it is impossible to fix, impracticable to settle, the actual

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amount earned by a labourer, for this simple reason that there are so many things which the agricultural rural labourer in Southern India gets which, if converted into money, would be very much more than the money which the labourer gets in the city. He gets free housing, free vegetables, free fish, free firewood, and always a certain area of land for which nothing is charged in which he can grow his own garden or he can raise some short crops. And, besides, there are certain customary gifts at festivals given to the labourer—both festivals in his own house and festivals in the employer's house. I mean to say an inquiry like that in regard to rural agricultural labour will never be satisfactory. And that, I point out to the House, is at the root of the very low figure which sometimes is given as wages to agricultural rural labourers and all people who are philanthropically minded start saying: They get such a low wage. The test would be to find out what is the wages in towns—smaller towns, bigger towns and even in cities. That should be the test. That could be found out without much difficulty and no Ceylon Commission need come over here to inquire about that. We know, every one in this Assembly knows, that the minimum wage of an ordinary unskilled labourer in the towns is twelve annas

Dr. Nand Lal: More than that.

Rao Bahadur C. S. Subrahmanayam: More than that. I gather from my friends everywhere that it is more than that. I want to put my case on the most modest scale. I know it is one rupee or Rs. 1-8-0 or it even goes up to Rs. 2. Strong able-bodied men are able to earn Rs. 2 a day. That is by carrying loads from one place to another. Therefore, unskilled labour is not underpaid in India, at any rate in the smaller towns or larger towns. Well, then the question is—and it is a question when it is not easy to answer in one word—if there is such a high wage here, why do people go to Ceylon? We have got two facts. Even according to the highest estimate the wages in Ceylon varies from Rs. 12 to Rs. 17 per mensem. That gives us not more than 8 annas or 9 annas *per diem*. That is an undisputed fact. And we know also as a fact that the wages in India in towns is never less than 12 annas. Why do people go then? That, I consider, is a question which I can only answer by saying that there is some defect in the mental condition of a large class of people and that they do not understand what is good to them. That is all I can say. The question has been asked of me by several friends and I would only say that the defective judgment of these labourers is responsible for their not knowing that in India itself, not far from their homes in the villages, they could find better wages. Well, apart from that question, with regard to emigration to Ceylon, I will not say that there is much that we can say against our own Government. During the last 8 or 10 years the Government of India has taken a good deal of interest in this matter and has endeavoured to protect the interests of emigrants. Even at present, the Government of India are as keen, I have no doubt, as we are; only they are not in a position to speak out as strongly as we do. The Government cannot do that in respect to another Government. But the fact remains that these rural labourers who are admittedly in every country unable to protect themselves and unable to judge for themselves, are persuaded by some kind of promise, by some kind of rosy account, to go to Ceylon, after receiving some money and executing a bond for the amount. If it is not indenture in the strict sense of the term, the bond which they execute for moneys they receive and for moneys which they have not received—that is a point which is admitted in the Government papers and I do not

think there can be any dispute about that—subsists all their lives in Ceylon. The wages they get in Ceylon does not enable them to discharge the debt which they have contracted and the bond which they have signed in India for advances to meet the expenses of the voyage and maintenance during transit. That debt subsists and so long as they are not able to discharge that debt, they cannot come back. Coming back means an expenditure of Rs. 10 or 15 and these people who are admittedly in debt to the tune of Rs. 70 to Rs. 200—that is one of the official figures—are unable to find the money to come back to their homes and therefore they remain there. I think that is an answer why people go there and do not come back. Therefore, the fixing of a minimum wage is an absolute necessity now-a-days.

Then, there is another consideration in regard to this. There are hardly any returned emigrants from Ceylon who could be pointed to as having improved their condition by this emigration. Such instances we have found from emigrants to the other colonies. Though hundreds may have gone under there have always been some who have come back better off than they were when they left the country and those were shown as examples of the advantages of emigration. But in the case of Ceylon we can hardly find a person who has improved his condition either when he came back or who is in an improved condition in Ceylon, having acquired a house, having acquired land or being in a better position.

These considerations ought to lead the Assembly to decide upon the fixing of a minimum wage. It is now too late. If we throw away the Resolution or if this Resolution which the Government has proposed is not passed, the whole thing will be upset and therefore we propose to give a time limit to the Government of Ceylon to fix a basic minimum wage for the labour that goes to Ceylon.

In that matter there is a slight difference in these amendments, but I shall refer to it for this reason. The amendment proposed by Mr. Bagde says that the minimum wage ought to be accepted by both the Chambers of the Legislature. It is a point on which there might be a difference of opinion. Is it necessary to have it before both the Houses of Legislature? Can we not trust the Governor General in Council to accept—I am simply putting the alternative case because I do feel personally that there is very little ground to complain against the action of the Government of India in this matter. I think they may well be trusted to look after the interests of labourers, while I cannot say the same of the Government of Ceylon which unfortunately is peculiarly situated, because it has long identified itself with the planters and all this recruiting goes on at the expense of the Government of Ceylon, and naturally owing to certain conditions in Ceylon the Government has to identify itself with the planters. Therefore, in regard to that point it is a matter on which there might be a difference but I should prefer not to divide the House on that matter and it is better for us to be unanimous about it. Then as to the time limit there is again this difficulty. A year's limit is proposed in the amendment which my Honourable friend, Mr. Bagde, has moved. Sir Montagu Webb suggests 18 months. I do not know whether we should divide on that point again, whether Mr. Bagde or Sir Montagu Webb cannot either of them give up his position and agree, because we all seem to agree upon the main question that a minimum wage ought to be fixed and I do not see why we should on small matters disagree. Now in regard to the wage, the substantial grievance is the wage figure, 10 and 16. 10 is the figure given in Mr. Merjoribanks' report. That was a report which was published in 1917. I consider that

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as a report which the Assembly could readily accept, probably more readily accept than other statements which were made before the Emigration Committee and on other occasions. Now, Mr. Marjoribanks and Mr. Maricaire put Rs. 10 as the maximum wages earned by a man and about Rs. 6 as the wages earned by a woman. That is Rs. 16 for both man and woman. Now, it is apparent that when the cost of living is Rs. 20 and annas 4 only for feeding and clothing, without any extras, the husband and wife are both compelled to earn in order to make up only Rs. 16. It means a wage less than that on which they could live in comfort. Now we have another figure. That is the cost of maintaining a person in jail in Ceylon. It is Rs. 6 and some annas. Honourable Members will at once see the disparity between the wages earned and the cost of living.

The Honourable Mr. B. N. Sarma: May I ask the Honourable Member whether he is moving his own amendment or speaking on Mr. Bagde's amendment.

Rao Bahadur C. S. Subrahmanayam: I am only speaking on Mr. Bagde's amendment.

Mr. N. M. Joshi: Are you moving yours?

Rao Bahadur C. S. Subrahmanayam: Please wait. The question of minimum wage is very important and there is great disparity between the wages earned and the cost of living. I have pointed out that it is so great that it has become necessary that we ought to fix a minimum wage. Now, I do not know how you are going to deal with these amendments. I shall however move my amendment now. I do not want to get into conflict with any of those who are at one with me on the main question. That is my difficulty at present. This is not a matter on which I should like to fritter away the support of the Assembly on any small matter on which we may disagree and therefore my amendment is to the effect that we may trust the Governor General in Council to see that the minimum wage which the Ceylon Government may fix is sufficient to keep only body and soul together for these people but also keep them in comfort and keep them in some kind of self-respect and the time limit which I propose is that it may be extended to one year. I have no objection to that. That is the first of my amendments. I have three amendments on the paper. My first amendment reads thus:

"To the Notification the following shall be added, namely:

'Within six months from the issue of this Notification or within such further period as the Governor General in Council may by notification appoint before the 5th March 1924 the Government of Ceylon shall take and complete the necessary steps to legally fix a minimum wage to be paid to emigrants by the Ceylon planters—such wage being one previously approved by the Governor General in Council'."

Then my next amendment runs as follows:

"The number of new emigrants after the date of this Notification to Ceylon shall not exceed 10,000 for the period ending 5th March 1924."

It is an important one for this reason. A large overcrowding of these emigrants to Ceylon would necessarily reduce the wages. The competition would be so great that practically either they would be without employment or accept such low wages as the planters, the employers, choose to give them and as during the last one or two years after this question was raised and after the passing of the Act and after the introduction of

the Bill, the emigration activities, the recruiting activities have been very keen, large numbers of people have been taken to Ceylon, and there is a sufficiently large number of labouring population there, it is better to cry halt at this stage so that the numbers that now flock to Ceylon may not reduce the wages and make the rule under which we are going to have a minimum basic wage practically inoperative. It is on that view, I say, that the number of emigrants ought to be restricted. Ordinarily about 25,000 people

Mr. President: I must draw the Honourable Member's attention to the fact that his time is exhausted.

Rao Bahadur O. S. Subrahmanayam: Ordinarily 25,000 people used to emigrate, and as large numbers emigrated later on, so I reduce it to 10,000. Another amendment is that during this period, the transition period, that is, the period before the fixing of the minimum basic wage, undoubtedly we must call upon the planters to raise the wage they are now giving on each estate by 30 per cent., by at least 30 per cent., and that is the third point. I therefore move, Sir, my amendment.

Mr. W. S. J. Willson: Sir, I should like to thank Mr. Seshagiri Ayyar for asking for this complete set of papers which Government have kindly given us, and it has been a most interesting study. Since we have had it, as the latest recruit to the Emigration Committee, I feel that I can make some remarks upon the labours of my predecessors, for which I was not responsible, and I think we may very well congratulate them on the results of their efforts with the Ceylon Government, which tend so much to improve and ameliorate the conditions under which labour is employed in Ceylon. For myself, I am impressed with the Government letter from Colombo dated the 28th October and with the readiness with which the Ceylon Government have yielded to the persuasive powers of our letter of the 11th October and their promise to at once institute an inquiry with a view to ascertaining the cost of living and the rates of wages paid, etc., etc. That wish was the one arrived at by the Emigration Committee, and my own view is that we shall be very well advised to await the results of that inquiry before we attempt to legislate for what ought to happen after the 1st April 1924 or any other date which may be mentioned in these other Resolutions. Sir, this House does not know what it is likely to do itself by the 1st April 1924, or what is likely to be the position anywhere; so that it seems to me rather unreasonable to ask the Government of Ceylon to enact what planters shall do in 1924 in what is now an unknown state of the trade in that year. Various figures were given, particularly by Mr. Raju, and I noticed that he confined his remarks entirely to the wages paid in the tea trade and he referred to the temporary, or at any rate recently accrued, prosperity of the tea gardens. But rubber is very far from being a prosperous concern. Now, Sir, I find it very difficult indeed to lend any support to any amendment in favour of fixing a basic minimum wage. We know very well that to move from his home in India the common lot of the labourer. I have travelled down through Southern India and I have seen labourers living there in the most miserable mud huts where a man of my size could very easily touch the roof; where they have no facilities of any sort of description and where they earn what seems to me to be absolutely a beggarly wage. It is, as I have said, customary for labour to emigrate everywhere. Even my own syce in Calcutta has found it to his advantage to emigrate from Delhi;

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with me in Calcutta he gets Rs. 17 a month and no other allowances. Now these gentlemen who emigrate from South India to Ceylon have only to travel a little distance of 22 miles by sea. I have visited plantations, Sir, in Ceylon (though I may say that I am not financially interested in any of them) and I did not go to examine the position personally with a view to addressing this House on the subject but merely as a passer-through. I found there very comfortable outfits generally for the workers on the estates that I happened to come across. They are provided with very good houses and they have all sorts of allowances which I need not go into because they are all reported on in this list. But it strikes me that they had arrived at a state of comfort, convenience and happiness which they—a great many of them—did not have originally in their own homes. Now I say that the proof of the pudding is in the eating. If these men were as well off in their own homes, they would not want to go to Ceylon though it is only just a very little distance away. They are, it is true, of an ignorant class, but they are by no means fools and a man knows when he is well-fed and reasonably housed and what is to his own personal advantage so far as purely creature comforts are concerned. Efforts have been made all the world over to fix basic rates of wages, and so far as I know they have practically all failed. Labour is a commodity and we all live by disposing of our commodities, whatever they may be; they may be our brains, our houses, our goods or the labours of our hands. Labour is employed in producing something. What that something fetches in its turn is governed by the law of supply and demand, and that law must inevitably react on the labour that is used to produce it. One Honourable Member compared the wages paid in places like the docks and harbours in Ceylon, which is Rs. 1 8 a day, with the wages shown in this paper earnable on a tea estate; but the conditions are totally different. In the first place, labour on an estate is rather a pleasant occupation, if any occupation which we have to indulge in to earn a living is pleasant, whereas labour in docks is extremely hard work, and people prefer the lighter duties on an estate and the open air life in the country to those conditions in town labour, where they have to find expensive lodgings, and those comparisons made are, to my mind, outside the point. I should be very pleased indeed if by a mere stroke of the pen we could raise the wages of everybody, of very cooly to Rs. 100 a month, of every clerk to Rs. 1,000 a month, double the wages of every medical practitioner, halve the wages of every lawyer, and so on, but it cannot be done, Sir. Labour has its value which comes out in the article which it produces. Mr. Rangachariar made rather a point about the indebtedness to the kanganis. But I find, from this very excellent brief, that of the 90 lakhs which were at one time outstanding, two-thirds of it have been paid off, and that being so, I think we can leave it to time to adjust the balance. As I have said, Sir, I cannot support any amendment which aims at fixing a basic wage, because I am convinced that it is impracticable, and I have no fear, as seems to be entertained in some quarters in this House, that labour is likely to rush off to Ceylon in such overwhelming quantities that it will bring down the market. Mr. Rangachariar also mentioned the figures on page 48 showing that 49,000 men went between January and August 1922, at the rate of some 10,000 a month during June, July and August. Sir, there is nothing striking in those figures at all, because if he will turn to page 30 of the brief, he will find that in the 9 years from 1913 to 1921, 585,401 coolies went, which divided by 9 gives an average of 65,000 per year, which is a

little less than 5,500 per month, against 6,000 per month that he has pointed out in the figures which he quoted; and, I must remind him that those figures for June, July and August relate to a time of the year when crops are coming on and it is the natural time when labourers should go. I do not think, Sir, that I need labour the point any further about the fixing of a basic wage. I am very much afraid of it. I do not think it will work. I do not think it is right that we should attempt to impose on the Ceylon Government what they ought to do twelve months hence, whereas, I say, we do not in the least know what we are likely to do then ourselves or what the position is likely to be.

Rai Bahadur S. N. Singh (Bihar and Orissa : Nominated Official): I move that the question be now put.

Sir Montagu Webb (Bombay : European): Sir, I have spent most of my life in India. One of the results of that experience is that I yield to no Member of this House in my desire, I may say ~~in~~ my anxiety, to see that all Indians who go overseas to labour, shall be treated fairly and properly, and with that respect which is due to Members of the British Empire. Now, Sir, we have heard a great deal about the alleged misfortunes and the poverty of these unfortunate men who have gone to Ceylon. It has been my good fortune, Sir, to see with my own eyes the state of the Indian labour in Ceylon. I have also seen it in Natal. I have seen it in Central Africa; and in other parts of Africa and of the world. I must say that the impression left upon my mind is that on the whole those Indians who go overseas, generally do very well for themselves and are living very comfortably and satisfactorily, perhaps even more so than they did in this country. I know in some cases that Indians who go overseas not only live comfortably, but they acquire property and they amass considerable wealth. I can recall several parts of the British Empire where Indians own shops, houses and properties far superior to those which some of the Europeans on the spot hold.

(*An Honourable Member* : "Not in Ceylon.")

Sir Montagu Webb: I remember, Sir, if I may recall the incident, I remember a few years ago when I was travelling in Central Africa,—in Northern Nyasaland to be quite definite,—some hundreds of miles away from the coast, to my astonishment, away in the jungle I came upon an Indian with a little field and a little shop. I was so astonished that I stopped to inquire where this man came from, and he told me "Oh I belong to Porbandar,"—half way between Karachi and Bombay. I felt that I was meeting one of my own countrymen, and I stopped and had a very long conversation with this man. We were very pleased to meet each other. I cross-questioned him closely. He was doing very well. He was satisfied with his surroundings, and he was remitting—this is the point—he was remitting through the Post Office a considerable sum of money to India. A few weeks later when I happened to be talking to some of my European friends in that part of the world about this man, they said "Oh yes, these Indians are not much good to this country because they do not spend very much here; they remit all their money back to India." Sir, I seem to have heard that argument before, about people who do not do much good where they work, because they remit all their money back to their mother country. Sir, I am no believer in those theories.

Dr. Mand Lal: I thought we had to discuss the question of Ceylon only.

Sir Montagu Webb: I mention these facts merely to lend emphasis to my argument that Indians working overseas remit their savings to India, and further that the labour in Ceylon is not nearly so badly off as some of the speeches which we have heard in this House this morning might lead us to believe. Mr. Willson has just given one or two explanations and anticipated my remarks with regard to certain figures of emigration which I had proposed to quote. Now, Mr. Rangachariar could not make out why it was that so many people went from the south of India to Ceylon. May I suggest that the explanation is obvious? They are going there to better their conditions of life. They are going there, Sir, because they are finding better circumstances, and they are better off in Ceylon than they are in the South of India. There is in my mind not the slightest doubt about it. I have been there and seen it with my own eyes. My friend, Dr. Nand Lal, went so far as to hint there was a sort of slavery in Ceylon. Why, Sir, I can only say in reply that there must be still more slavery in Southern India. I suppose it is to escape that kind of slavery that some of this labour goes over to Ceylon. Now, Sir, I have an amendment on the paper which indicates that my sympathies in this matter and those of the movers of other amendments are very much the same. We should all like to see something done to benefit the labour that goes over to Ceylon. But I think Sir,—I do not know if the Honourable Members who moved their Resolutions can see eye to eye with me, but I venture to submit that my Resolution puts the matter perhaps a little bit more acceptably. It proposes for example not to alter the Notification. I have suggested merely that we should add a few words to Government's Resolution. I have suggested in my amendment that we should give another six months—eighteen months in all—to the Ceylon Government in order to do what they can, and I think this House has every reason to feel confidence in the Ceylon Government. They have to consult the different parts of the country; they have to satisfy their own Legislature. All this will take time. There will be consultations with the Government of India and naturally this will take more time. I do not think, Sir, that we should press for too short a period, and I have therefore suggested that we should give the Ceylon Government time up to the 1st of October, 1924, and thereafter, if they have not brought about an improvement in the conditions of labour which this Government thinks satisfactory, we can move again. I quite share the doubts expressed by Mr. Willson as to the possibility of fixing a minimum wage. I do not think such a thing has ever been done in the East yet, and although it was attempted in the United Kingdom, there is no doubt whatever that the attempt has broken down. It is not so easy to fix a minimum wage as some Honourable Members think. At the same time, I am prepared to give the Ceylon Government an opportunity of improving the conditions of this labour. I think it is our duty to do so, and I would therefore ask Mr. Subrahmanayam if he can see his way to accept the proposal I have put forward. I do not know, Sir, whether I can move still another amendment to the amendment that he proposes. Perhaps my friend Mr. Bagde will accept the proposals I have put forward

Rao Bahadur T. Rangachariar: You don't make it a condition. You simply make a recommendation, while the others make it a condition.

Mr. President: I took Mr. Ahmed's amendment first against the Resolution because it stood first on the paper. Then Mr. Bagde proposed to make the continuance of emigration conditional on certain action by the Ceylon Government. The Honourable Member does not propose to do that.

The scope of his amendment is even narrower. I must put Mr. Subrahmanayam's amendment as an amendment to Mr. Bagde's amendment as an improvement or the reverse of it according to the judgment of the House. It depends upon the decision of the House whether that excludes the Honourable Member from moving another amendment.

Sir Montagu Webb: In that case, Sir, I will wait for the opinion of the House, before moving my amendment.

Mr. N. M. Joshi: Sir, although I sympathise with some of the proposals in the amendments proposed before this Assembly, I must say that I cannot accept several others put forward by my Honourable friends. In the first place, it must be made quite clear that I do not want that any restrictions should be imposed upon the labourers against their leaving the country if they feel that by going out of the country they can improve their condition. We have no right to keep them here when they feel so. Sir, although that is my view, it is also necessary for us to see, when we allow large emigration to those Colonies where there are a large number of Indians already settled, that their wages are not lowered by fresh emigration to a point which is undesirable. The solution of this question is not

very easy. We have to reconcile the interests of those people
 4 P.M. who want to go out to better their prospects with the interests of those people who have already settled in the Colony. If these people who are settled in the Colony are not Indians perhaps this Assembly may not give much attention to that point, but still it is necessary for us to look to the interests of those who are already settled there. I, therefore, feel that, under these difficult conditions, it would have been much better if the whole question of negotiation had been left to Government. I do not believe an Assembly like this is capable of negotiating a treaty with a foreign Government. That is the business of the Government. Unfortunately, even Government, in order to please the Assembly, put a clause in the Bill that such conditions should be approved by this Assembly. The whole difficulty is created on account of that. And, therefore, we see here proposals made which unfortunately we cannot throw out nor can we accept. Take the proposal of my friend, Mr. Subrahmanayam. I sympathise with him that the number of people to be sent should be limited. But how are we to decide whether that number should be 10 thousand or 15 thousand? That is a matter which he should have left to the Government of India and certainly I should have then supported him. As regards the minimum wage, Sir, my sympathies are fixing a minimum wage. I have no fears, which my Honourable friend, Mr. Willson, and my Honourable friend, Sir Montagu Webb, have, about fixing the minimum wage. The minimum wage has been fixed in several countries and these minimum wage laws have not yet been repealed, so we can have some assurance in our minds with regard to these laws. If we fix the wage, to some extent, we protect the interests of those who are already settled. Sir, but it is also out of place to fix the minimum wage in our Assembly. It is a matter which we must leave to the Government of India,—whether that minimum wage should be Rs. 15, or Rs. 16, or Rs. 17. I therefore do not approve of the idea that the fixing of the minimum wage should be in the hands of this Assembly. Sir, when we have to fix the minimum wage, we must see that we do not fix the minimum wage at such a high point that the emigration will be stopped. My Honourable friend, Mr. Rangachariar, said: Why should the Ceylon Government inquire into the conditions of Southern India? It is necessary to find out whether it will be advantageous to the labourer in Southern

[Mr. N. M. Joshi.]

India to go to Ceylon on a particular wage. Therefore, an inquiry into the conditions in Southern India is certainly necessary. But there are some people who are afraid of that inquiry. They know that the inquiry will bring out information which they do not wish should see the light. Only the other day, my Honourable friend, Mr. Rangachariar, was praising the planters of India and he painted a glowing picture of the conditions of the plantations in India. What are those conditions? In the plantations in India people are paid Rs. 6 or 7 or 8. Why should we prevent these people from going to Ceylon to get Rs. 12, even if they do not get Rs. 17? Sir, the other day I also wanted several conditions to be pressed upon the planters in India in order that the conditions should be improved for the labourers, but, Sir, the proposal was not accepted. Unfortunately, the Standing Emigration Committee now comes forward to lay down restrictions upon the planters in the sense that the people should be repatriated under certain conditions, sick leave should be given, etc. If we want that our labourers should not go to Ceylon, the best thing is to improve the conditions in India and therefore I think my Honourable friend, Mr. Rangachariar, instead of painting glowing pictures of the labour conditions in India, should henceforth try to improve them. Sir, Mr. Rangachariar also referred to the debts which these labourers have with kanganis and from that he inferred that the people who are there do not really prosper. It is a wrong conclusion altogether. If he had inquired into the debts which existed on the Indian plantations he would not have been surprised by this at all. It is the business of the planters to keep these people in debt, whether they prosper or not. My friend, Mr. Nag, who has got experience of Assam, will tell you that if a man goes and pays his debt, the planter will not accept the money. That is a fact in India in Assam.

Mr. B. C. Allen (Assam: Nominated Official): I protest against that statement. Mr. Joshi has no foundation whatever for making that statement against the Assam planters.

Mr. N. M. Joshi: I would only refer my Honourable friend to the report which was recently published by the Assam Labour Committee.

(An Honourable Member: "I have got the authority.")

Mr. B. C. Allen: Can Mr. Joshi quote it here? Can he let me have the paragraph?

Mr. N. M. Joshi: I cannot quote it here to-day.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): He has given the authority. The Honourable Member had better consult it.

Mr. N. M. Joshi: I am quite sure of my facts. There is here my friend, Mr. Nag, who has got a lot of experience of plantations in India and I am quite sure he would corroborate that fact. Therefore, the fact that these labourers are indebted to some extent is not a negation of the fact of their own prosperity at all. I therefore think that although we should fix the wage, and it is necessary to fix the wage in the interests of the people who are already settled there, we must not fix it at such a point which will prevent emigration altogether and which will be against the interests of the people who have to emigrate from this country. Therefore, when we try to settle the conditions on which we should permit emigration, we should take into consideration the fact that without sacrificing the interests of

those people who are settled there, and without also sacrificing the interests of those who want to go, we should be in a position to improve their condition. The only way in my humble judgment to secure improvement is that the Government of India should be watchful about the interests of our people. Sir, nobody has mentioned that it is necessary for the Government of India to appoint an agent in these Colonies. I do not know whether the Government of India has decided

The Honourable Mr. B. N. Sarma: It is one of the conditions.

Mr. N. M. Joasi: It is one of the conditions, but I want to know from the Government of India whether they are going to fulfil that condition themselves. This is not a condition to be fulfilled by the Ceylonese Government. It is a condition to be fulfilled by the Government of India. The Government of India have never mentioned yet that, as soon as emigration is permitted, they will appoint an agent. If an agent is appointed, I think that fact in itself will tend to improve the labour conditions in Ceylon. It will enable us to get correct reports upon which we can place reliance and upon which we can take action. Sir, if we have got our agents, then we can get correct information, and if we get correct information, we can propagate that information, so that no person will go out of the country under any misapprehension or on any incorrect information. If they do this much, I think we shall have taken sufficient care of the people who will be going out. But the real solution of the problem lies in our improving conditions here. Unless you improve the conditions here, people will go out, and it is not right that we should prevent their going out. On the whole, Sir, after having seen all these amendments, I am inclined to support the amendment of Sir Montagu Webb, because it does not ask the Government of India to stop emigration altogether but it lays a certain duty upon them to see that a minimum wage will be fixed very soon. With these remarks, Sir, I resume my seat.

The Honourable Mr. B. N. Sarma: Sir, I have been always an optimist in my life and I am sure that after shewing me the indulgence of hearing me once again, the House will agree that the Notification which has been put by the Government of India before them is one that they can readily accept. I do not propose to go into all the details of the criticisms that have been levelled against us for it is a very late hour and it is unnecessary to dwell minutely on the state of the wages in Ceylon. But there are some salient points which have been urged on the attention of the House which I should like to deal with.

A good deal of confusion of thought has been exhibited in the course of the discussion between the causes which have led to the indebtedness of the cooly in Ceylon in the past and existing at present there and the conditions on which we propose to allow labourers to emigrate hereafter to Ceylon. Every one admits that under former conditions the labourer went to Ceylon saddled with debt. The cost of emigration, the advances given to him when he was in India, the penal provisions which were provided to enforce labour, the facilities for his obtaining loans, enabled him, or rather compelled him, induced him to get into debt, and that, as has been shown, is going to be wiped out. He is to be no longer subject to that debt and cannot be imprisoned for it. And under our Notification the labourer from India would go to Ceylon without any debt whatsoever. All the expenses must be met from the common fund. No agreement for more than a month would be valid. The monies that are advanced to him in India, or that may be advanced in Ceylon cannot be recovered.

Dr. Nand Lal: What about civil liability?

Mr. President: Order, order.

The Honourable Mr. B. N. Sarma: I am talking of the labourer that is going hereafter from India and that is the only labourer we have to deal with under this Notification, because the other labourers are there already. This labourer goes saddled with no debt whatsoever. He cannot contract any debt enforceable by arrest. There is no penal provision binding him. At the end of a month he can quit. We have, furthermore, provided that the Government undertake to repatriate him at their expense provided he satisfies our Emigration Agent or other officer who may be appointed in his stead that the conditions do not suit him. Therefore, every precaution that can be taken has been taken under the Notification laid before you. Nor would it be possible for Honourable Members. I think, to justify such a gloomy picture as has been drawn as to the state of wages obtaining in Ceylon. As has been effectively put by one of the members of the Revenue Department, in former days, if you are going to calculate the cost of labour on the footing that every man has to be paid a certain rate, if the cost of cultivation be counted up in money, there would hardly be any profit left to any agriculturist and the wonder would be how any agriculturer could manage to subsist on the soil or pay any revenue whatever. Similarly, elaborate calculations have been made as to what the labourer and his family have been deriving in the past in the shape of wages and their sufficiency. As has been aptly put, the proof of the pudding is in the eating of it. The men find it to their advantage to go there. I go further. We have positive proof. Two members of the Deputation which went to Ceylon in 1917 reported to us that the wages were not altogether unsatisfactory:

"The rate of wages paid on estates (they give calculations) does appear to be sufficient to keep a labourer in health and strength and to leave a margin over."

I had the curiosity to send for the post office statistics and I find that there were three hundred thousand and odd money orders remitted to India during 1921-22 to the extent of 87 lakhs of rupees. I am not going to contend for a moment that all this represents the savings of labour but surely three hundred thousand traders are not there and the number itself clearly shows that a large number of labourers have been remitting small or large sums to India and they would not have been labouring there if they had not been in a position to do so. I do not wish the House to be under the impression that the Government are satisfied that the wages are as adequate as they might be, but to depict the picture the other way and show that the conditions are absolutely unsatisfactory is, I think, overdrawing it. We have positive information that a large number of labourers have been remitting their savings to this country. It is a fact that about 60,000 or 70,000 labourers have been coming and going back and that shows that the conditions cannot be as unsatisfactory as is imagined by many individuals. The figures that have been quoted in the proof that has been circulated show clearly that every year 60,000 or 70,000 or sometimes as many as 100,000 come back and many go back to Ceylon. It is quite easy to understand those figures, the total labouring population being about six hundred thousand, only 10 per cent. come back owing to various causes and there must be other people who replace them. Apart from the question of new labour, 60,000 labourers are coming and going and in addition to that a certain number of new labourers are added

every year to the plantations in order to replace wastage. That accounts for the figures which have been shown at the last page and my Honourable friend, Mr. Rangachariar, complains there has been a very large influx of labour during the last 8 months into Ceylon showing thereby that the planters were taking a very large number in anticipation of any prohibition which we may seek to impose upon them. 31,000 come down and 49,000 go out again and the net surplus is about 8,000 and as has been pointed out that this occurs in the summer months when there is not much labour here and there is more demand for labour in Ceylon. Therefore we need not be perturbed by these facts. Taking them all into considerations, the conditions there are not so unsatisfactory that a remedy has to be found immediately or the normal flow should be stopped at the end of one year. I commend to the House the view taken by Mr. Joshi. Mr. Joshi has got the interests of the labourers at heart as much as anybody and the view taken by him is eminently reasonable barring one exception in that he accepts the amendment which is suggested by Sir Montagu Webb. These matters are matters which really might be left to negotiation as between the Ceylon Government and the Government of India. That was the view taken finally by the Emigration Committee themselves. No doubt they have felt keenly the desire to improve the lot of the labourer that may be going to Ceylon or that has been already settled there and they press very hard for an increase in the wage and finally when the matter was considered as to whether it should be a condition precedent the final Resolution was that the Ceylon Government should be asked to make an inquiry into the question of fixing a basic wage subject to a minimum and about the cost of living in relation to the rate of wages now paid. In the meantime the Government of India should do their best to secure an improvement in wages. The Government of India immediately addressed the Government of Ceylon and the Ceylon Government have promptly promised to do their best to improve the wages and they have told us so.

Rao Bahadur T. Rangachariar: May I ask whether they answered that portion of the letter?

The Honourable Mr. B. N. Sarma: They have answered that the wages have been rising, that they are closely watching the interest of the labourers, that the *Tundu* system has been abolished, that the labourer has been able to find his feet, that there is a great movement between estate and estate and they say that there has been a rise in wages; and the very fact that there is voluntary emigration on an appreciable scale from India, they point out as a clear proof that the wages have risen in the Colony. They say that they are as anxious as our Government to see that all that can be done is done, and they have promised to institute inquiries at once. But we cannot reasonably blame them for not having instituted an inquiry until they know as to whether we are going to issue a notification, and the Government of India are in a position to press upon the Ceylon Government the institution of an inquiry or any further expenditure on that account, until we make up our mind and tell them that we are going to give them a reasonable margin of time in order to set their house in proper order. I therefore think, Sir, that the Ceylon Government's attitude cannot be depicted or pictured as being an unreasonable one so far as the past is concerned. We need not go back to an Antediluvian period to see what had been done years ago. We have now the fact that they have readily complied with every one of the conditions that we stipulated—they have readily agreed—you may say, some of you, because they had no other

[Mr. B. N. Sarma.]

option, but I would not do them that injustice; they have agreed to everyone of the conditions that we laid down, and they are apparently going to institute an inquiry. But as I put it some time ago, there are 1,200 odd tea estates alone, and there is the further difficulty that most of these workers do work on the piece-work system. The figures that have been referred to by Mr. Rangachariar are somewhat illusory for this reason that on the whole, including overtime, including sundries and so on, the wage is between Rs. 16 to 20 in the case of rubber estates and Rs. 12 to 16 in the case of tea estates per adult male labourer. They take into consideration the average wage no doubt, but that does not mean that the minimum is very much below. The figures that have been given were for a particular kind of work which has to be finished, which may be finished within 5 or 6 hours, but after that work is finished, after the task work is finished, there would be ample leisure according to the evidence given in which more money can be earned and the average wage any labourer can earn is between Rs. 16 to Rs. 20 and Rs. 12 to 16. In addition to that, they get some perquisites which I need not refer to at length.

Mr. J. P. Cotelingam: May I point out, Sir, that this includes piece-work and overtime work?

The Honourable Mr. B. N. Sarma: I did not say that. Rs. 12 to Rs. 16, that figure is exclusive of overtime. I am excluding the perquisites from it which are marked below 5, 7 and 8 in the last column.

Rao Bahadur T. Rangachariar: It is not everyone that does overtime, only the able-bodied.

The Honourable Mr. B. N. Sarma: Yes, everyone, I suppose, who goes there is an adult labourer, is not lazy, but does work. And then we must also remember the class of labourer which emigrates from Southern India to Ceylon—a large section of the labourers go from the depressed classes and from the classes, in which both men and women work, and even in Southern India we find that it is impossible to maintain a household until both men and women work on the fields. They do work here, and they work in the same way there, to earn their living: and simply because there is a distinct Government, a different Government there, we should not I think interfere unduly between employer and employee. We must let the natural laws operate and make the necessary adjustments, but if we find that those natural laws oppress the weak, the Government may have to step in and will step in. I therefore suggest, Sir, that the Committee and the Government were fully right in imposing as conditions only those that have been shown in the notification, that the Government might be well left to adjust matters and to press upon the Ceylon Government to immediately bring out an increase if it be possible, to see that the interests of the labourers are safeguarded, and that the inquiry is concluded at as early a date as possible. It will be impossible for the Government to accept this limitation with regard to the number of emigrants. For instance, 60,000 people may return on a holiday to their homes in one year; there must be somebody to take their places or they will not be able to come to their homes to see their people, and 10,000 fixed as the limit will be absolutely inadequate. You will, if you introduce such a limit, be compelling the labourers now there to work on year in and year out without a holiday to India. The inflow and outflow of the coolie population to and from Ceylon is on an entirely different footing from that which

obtains in respect of other distant overseas possessions. I therefore submit that the limitation proposed could not work at all.

With regard to the fixing of a minimum wage 80 per cent. above present rates, I suggest that there is some danger in such a course. We have first to see indeed whether it may not be necessary to fix the minimum at an even higher figure, and these artificial interim increases will not only be illusory but will in the end prejudice the cause we have at heart. If we tell them that we will be satisfied with this *ad interim* increase and that be fixed as the minimum, it may become as well the maximum: whereas on inquiry it may be found that it is necessary for us to press for more; and if in the meanwhile we accept this much, we shall be prejudicing our chances of getting what is really needed. And I submit that since we have allowed this system to go on since 1847 up till this date, we may well have patience and wait for another year or two when this inquiry by the Ceylon Government will be finished. The Emigration Committee have stipulated that the report of that committee of inquiry should be put before them in order that they may have their say before the Government take it into consideration, and in order that they may do so in the light of the criticisms they may make, before further representations are made to the Government in Ceylon. In the ordinary course of things it may be impossible for us to consult this House before it meets again in January; and in any case the *ad interim* negotiations could most probably not be carried out in less than 12 or 18 months. I am not asking the House for a moment to rest content. But the Government has said that they will press the matter firmly on the Ceylon Government, and I think having regard to what has been done in the past by the Ceylon Government and the ready and speedy manner in which the recommendations of the Government of India have been accepted by them, this House may I think leave it to us to do a little more in the way of securing a better wage for the labourer.

I do not think, Sir, that I need refer at any length to one or two observations made by my friend Mr. Rangachariar as to the constitution of the Deputation. He complained that the Government entrusted its work to non-officials. The President of the deputation is an eminent lawyer of Ceylon. My friend said that they had not done the right thing in not having a Government official as a member. Well, it shows the confidence which the Government has in its non-officials. That shows the confidence which the Government has in its non-official public in advocating the cause and not being so bureaucratic as to send one of their own men to be in charge; and, apart from that, I would say that the letters from the Ceylon Government show distinctly how anxious they have been not to mix themselves up with the Labour Commission. One of the reasons as to why they would not agree to our first condition is that they said that they would like to adopt a benevolent neutral attitude or an attitude of aloofness where they can press the Labour Commission to adopt any views which they may have to enforce to keep the balance even between the labourer and the planter. They do not want to identify themselves in any way with the Commission or with recruitment for the planters. That is an index to the frame of mind of the Ceylon Government, nor can we blame them for that. I, therefore, think, Sir, that we cannot cavil at the constitution. The constitution is, I think, one of the best that could be constituted and the advocacy has been entrusted to one of the most eminent lawyers of the island and everybody has had an opportunity of having his say and all

[Mr. B. N. Sarma.]

the figures have been placed before the committee fully. My friend, Dr. Nand Lal, had some doubts as to whether the Government of India have the interests of the labourers at heart or the planters at heart and as to why they do not interfere for the sake of the educated few who may be going there. I need hardly assure him that the Government of India cannot at any moment under any circumstances sacrifice the interest of the labourers for the sake of any planters, whether here or elsewhere. I wonder why such a doubt should have arisen in his mind. Nor are the Government prepared to draw a limitation, an adverse limitation, as between the interests of the planters and the labourers. I do not see why there should be any necessary conflict, and if the labourer gets his due and the planter also benefits, I do not see that it is our business or the business of any Government to grudge any indirect benefit which the planter may derive thereby. Therefore, the answer to him would be that it would be primarily the labourer we have in mind and they would not grudge if the planter in Ceylon also gets the benefit of any labour that may go from here. My friend Mr. Joshi was anxious as to whether the Government of India would appoint an agent to watch the interests of these labourers in Ceylon. I thought I already mentioned in my preliminary remarks that the Government of India hope to and believe they will be able to appoint an agent, but if I have not said more, it is because we have to consider as to what it would cost. But there seems to be absolutely no reason as to why out of the money that we would be able to secure in the shape of fees we should not be able to appoint an agent, without burdening the general taxpayer. We hope to be able, Sir, to appoint an agent shortly after emigration is re-opened. I should like to have accepted Sir Montagu Webb's amendment. I appreciate the reason as to why he has substituted 18 months for 12 months. He sees that twelve months would be too short a period and the Legislative Council and the Emigration Committee cannot be consulted within that time. But I would suggest to the House that there is no need for such an amendment. We distinctly put to the Ceylon Government certain conditions which we were going to notify under section 10. The committee did not insist upon the settlement of wage as a condition precedent. The Government of India have not done so, and it is not fair to the Ceylon Government that we should now fix as a condition precedent to any emigration being allowed to that colony, the settlement within a particular period of this very difficult, complicate and intricate question of a basic minimum wage. I think the House may rest content that the two Governments will put their heads together and secure the welfare of the labourer and see that the basic minimum wage is obtained if it is practicable and possible.

* **Mr. President:** I will put Mr. Subrahmanayam's amendment against Mr. Bagde's.

Rao Bahadur C. S. Subrahmanayam: Only the first clause of my amendment, clause 10 of my amendment, and not the others. They do not tack on to Mr. Bagde's amendment. My amendment may be put separately, one by one.

Mr. President: The Honourable Member does not withdraw.

Rao Bahadur C. S. Subrahmanayam: I cannot withdraw them.

Mr. President: Amendment moved:

"That after the word 'approves' the words 'with the modification set out below' be inserted; after the words 'the notification' the words 'as approved' be inserted; and at the end of the Resolution the following be added:

'After clause (3) of the draft notification the following clause shall be inserted:

'(4) Before the 1st of April, 1924, the Legislature of Ceylon shall have enacted a law fixing the minimum basic wage for assisted emigrants, to the satisfaction of the Governor General in Council and of both Chambers of the Indian Legislature'."

To which an amendment has been moved:

"Omit all words after the figure 4 in order to insert—'within six months from the issue of this notification, or within such further period as the Governor General in Council may by notification appoint before the 5th March 1924 the Government of Ceylon shall take and complete the necessary steps to legally fix a minimum wage to be paid to emigrants by the Ceylon planters, such wage being one previously approved by the Governor General in Council.'"

The Honourable Mr. B. N. Sarma: May I suggest, Sir, that Sir Montagu Webb's amendment is really a limitation and his amendment to the amendment I think is a condition. It is not a mere recommendation. He says the Council's recommendation shall be enforced from October, etc., provided certain things are done. That is really a condition, and it is in the nature of an amendment. Not that I am accepting. I am only putting it that it is really in the nature of an amendment to the amendment.

Mr. President: In form both of them are recommendations to the Governor General in Council. But I think I must proceed to put this amendment against the other, though no doubt the Assembly in voting will bear in mind that Sir Montagu Webb's amendment is still on the paper. The question I have to put is that Mr. Subrahmanayam's amendment to Mr. Badge's amendment be made.

The motion was negatived.

Mr. President: The Honourable Member has originally moved three amendments together—10, 11 and 12. Does he wish to insist on 11 and 12?

Rao Bahadur C. S. Subrahmanayam: Yes, I do.

Mr. President: Further amendment moved:

"That after the words 'both Chambers of the Indian Legislature' in Mr. Badge's amendment, the following be inserted:

'(4A) The number of new emigrants after the date of this Notification to Ceylon shall not exceed 10,000 for the period ending 5th March, 1924'."

The question I have to put is that that amendment be made.

The motion was negatived.

Mr. President: Further amendment moved:

"That after the words 'both Chambers of the Indian Legislature' in Mr. Badge's amendment the following be inserted:

'(4A) The Government of Ceylon shall require the Ceylon Planters Association to increase the existing rate of wages by at least 30 per cent. within three months from the date of this Notification'."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—23.

Abdul Majid, Sheikh.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Dass, Pandit R. K.
Ginwala, Mr. P. P.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.

Mahadeo Prasad, Munshi.
Mau Singh, Bhai.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Rangachariar, Mr. I.
Reddi, Mr. M. K.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

NOES—45.

Abdulla, Mr. S. M.
Ahul Kasem, Maulvi.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridoonji, Mr. R.
Gulab Singh, Sardar.
Haigh, Mr. P. B.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Jamnadas Dwarkadas, Mr.

Joshi, Mr. N. M.
Ley, Mr. A. H.
Misra, Mr. B. N.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.
Wilson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. President: The question is:

"That after the word 'approves' the words 'with the modification set out below' be inserted; after the words 'the notification' the words 'as approved' be inserted; and at the end of the Resolution the following be added:

'After clause (3) of the draft notification the following clause shall be inserted:

'(4) Before the 1st of April, 1924, the Legislature of Ceylon shall have enacted a law fixing the minimum basic wage for assisted emigrants to the satisfaction of the Governor General in Council and of both Chambers of the Indian Legislature,' and the subsequent clauses shall be re-numbered accordingly'."

The motion was negatived.

Sir Montagu Webb: I beg to move, Sir, the Resolution standing in my name. I do not think it is necessary for me to repeat the arguments which have already been used. I therefore simply commend my motion to the House.

Mr. President: Further amendment moved:

"That at the end of the Resolution the following be added:

'This Assembly further recommends to the Governor General in Council that the notification shall be in force up to the 1st October, 1924, and shall continue thereafter provided that in the meanwhile the Government of Ceylon shall have fixed by law a minimum wage for labour on estates, such wage having been previously approved by the Governor General in Council.'"

The Assembly then divided as follows:

AYES—32.

Abdul Majid, Sheikh.
Abul Kasem, Maulvi.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Anjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Cotelingam, Mr. J. P.
Dasa, Pandit R. K.
Ginwala, Mr. P. P.
Gulab Singh, Sardar.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.

Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Misra, Mr. B. N.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Srinivasa Rao, Mr. P. V.
Subrahmanayan, Mr. C. S.
Venkatasatiraju, Mr. B.
Webb, Sir Montagu

NOES—36.

Abdulla, Mr. S. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bradley Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Clow, Mr. A. G.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Faridounji, Mr. R.
Haigh, Mr. P. B.
Hailey, the Honourable Sir Malcolm.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Husanally, Mr. W. M.

Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C.
Ley, Mr. A. H.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Percival, Mr. P. E.
Pyari Lal, Mr.
Rhodes, Sir Campbell.
Sarfaraz Hussain Khan, Mr.
Sassoon, Capt. E. V.
Spence, Mr. R. A.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. President: The question is

"That this Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Ceylon, and recommends to the Governor General in Council that the notification be published in the Gazette of India."

The motion was adopted.

RESOLUTION RE EMIGRATION OF UNSKILLED LABOURERS TO STRAITS SETTLEMENTS AND MALAY STATES.

Mr. J. Hullah (Revenue and Agriculture Secretary): I move

"This Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to the Straits Settlements, the Federated Malay States of Perak, Selangor, Negri, Sembilan and Pahang and to the Unfederated Malay States of Kedah, Perlis, Johore, Kalantan, Trengganu and Brunei, and recommends to the Governor General in Council that the notification be published in the Gazette of India."

Mr. President: Honourable Members will observe that the amendments sent in to this Resolution raise almost precisely the same questions as the amendments to the Resolution which we have just passed, and except in

[Mr. President.]

so far as conditions may vary, and they do vary, between Ceylon and the places named in the second Resolution, it will be a sheer waste of time to continue the debate on the lines on which the previous one has followed. Members will be within the "letter of the law" if we allow the debate to proceed along such lines, but I should think we should be violating the spirit of it.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): I have great pleasure in supporting the motion made by Mr. Hullah. We must make a distinction between Government and Government. I have entirely satisfied myself from the Deputation, from the way in which they behaved, from the very frank and ready way in which they placed facts and figures before us, from the earnestness and anxiety which they displayed for the welfare of labourers, our labourers run any risk in going to the Straits Settlements. The Government there are taking every care so far as I am able to see,—at any rate Mr. Gillman who appeared before us as the representative of that Government gave such a full and frank statement that I was simply delighted with the way in which that Deputation behaved. The wages the labourers earn there are not very high. They earn about 10 or 12 annas a day there, much better than, nearly double of what the people earn in Ceylon, and although we have pressed them to accept an inquiry for fixing the basic minimum wage, they have agreed to it and I think we may trust the Government of the Straits Settlements to see to what is necessary being done. I therefore support the motion.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): In order just to remind the Government of India, I must draw the attention of the Assembly to the fact, why is it that the Chinese cooly works at a higher rate of pay than the Indian cooly there in the Malay States and other places stated in this Resolution. I know, Sir, there are instances before

me where Indian people are treated badly while the Chinese people are much better off and apart from that, Sir, there are other nationalities whose condition is much better than the Indians. Indians are looked down upon by the people because the Malayan State Government and others do not appreciate the position of Indians and if the Government of India will try to bring things together and take proper steps, we shall be very thankful. Sir, we have many other things to say but since we have already seen the result of the first Resolution of this morning it is not worth while to discuss the second one when the sun is setting and darkness will now begin. Sir, an eminent authority like Mr. Polak who has worked for 18 years to ameliorate the condition of the labourers says:

"I am strongly of opinion that save upon conditions India ought not to consent to the emigration of Indians. These two conditions are, first the satisfactory settlement of the Kenya question, and secondly, that any scheme that may be considered genuinely partakes of the nature of colonisation and is not merely a camouflaged system of labour emigration. The case of Kenya must be taken as a test by which the question of status is to be judged. If Kenya does not grant that real equality of citizenship to which His Majesty's Government are pledged then there cannot be any kind of certainty that such equal status can be secured at the present time in any other colony or protectorate."

Mr. Jannadas Dwarkadas (Bombay City: Non-Muhammadian Urban): May I rise to a point of order? The Honourable Member is talking of Kenya which does not form one of the places about which we are discussing.

Mr. K. Ahmed: I think the Honourable Member will shortly appreciate my point.

Mr. President: What is the Honourable Member talking about?

Mr. K. Ahmed: About Malaya: Mr. Polak says:

"I think that as news of conditions in Ceylon or Malaya is gathered, sifted and published, Indian opinion will realise more and more that so long as Indian emigration is practically confined to the ill-paid and worse-organised labouring classes, no real equality of citizenship is possible or even to be expected. Even a clean statute book cannot bring this about. Status is not merely a matter of law; it is still more one of facts."

Then, Sir, in 1857, Lord Salisbury told us:

"Above all things we must confidently expect as an indispensable condition of the proposed arrangement that the Colonial laws and their administration will be such that Indian settlers who have completed the terms of service to which they agree, as the return for the expense of bringing them to the Colony will be free men in all respects, with privileges in no way inferior to those of any other class of His Majesty's subjects resident in the Colony."

I need not point out how this pledge has been fulfilled more in the breach than in the observance, and in so far as the condition of Lord Salisbury is concerned, it has remained up till now a dead letter. Now, Sir, probably what Lord Hardinge has said will be appreciated by my Honourable friend opposite in charge of the Department. Lord Hardinge said this: "That is not the duty of the Government of India to supply coolies to the Colonies"; and the kind of duty that we find that the Government of India, as the great benefactor of these poor, miserable people living in this part of the country, do, is that they have always accepted invitations from the Colonies to supply coolies instead of leaving them in this country. Every State has got that, Sir, and every constitutional Parliament—the House of Commons, I say—the Prime Minister's house, there you find glasses of windows broken—and I hope my Honourable friend who comes from that part of the country realises that he should uplift the condition of these poor people, of these poor, miserable people, and try his utmost to see that their status, their condition is improved. Look at the treatment that they receive at the hands—I do not like to attack any of these colonials—but we did attack and the result, Sir, was not very much satisfactory to our mind, because we got defeated already twice or three times. We are not strong enough but humbly ask Government that they must realise the situation as far as they can, to uplift the condition of these poor people, and see their way to ameliorate their condition.

With these few words—probably, Sir, my position is just the same as my Honourable friend, Mr. Rangachariar—and I do in a way support the motion of Mr. Hullah.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I wanted to make one or two remarks, and I also wanted some explanation from the Government of India on one or two points. In the first place I insist that the Government of India should appoint an agent—I was somewhat apprehensive from the remarks of the Honourable Mr. Sarma that if the Government of India gets sufficient money from the fees, then only would the Government of India appoint an agent. Sir, I deprecate this thing altogether. There was some sympathy shown . . .

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): I did not say that it is only if we get fees that we are going

[Mr. B. N. Sarma.]

to appoint an agent, but that I am looking forward to the fees also as a possible way of our immediately appointing an agent. I did not say that we would not otherwise appoint an agent.

Mr. N. M. Joshi: I do not mean that the Government are looking forward to getting large fees from the planters, but I do not want the Government of India to depend upon those fees. There was so much sympathy shown for the working classes here to-day that I am quite sure that if a proposal were brought forward for sanctioning the salary of the agent, the House would pass it unanimously.

The Honourable Mr. B. N. Sarma: I am glad to hear that.

Mr. N. M. Joshi: And pay a good salary too. I want the Government of India to explain to me whether strikes in Malaya or in these Colonies are legal or not. From my study, I have, Sir, doubts on this point. Sir, the House knows very well that in the case of poor people the strike is the only weapon by which they can get their demands satisfied; they have no political influence at all. Therefore I insist that the Government of India should make an inquiry as to whether strikes in these Colonies are legal or not. If they are illegal, I think the Government of India should at once make a strong recommendation to that Government and say that they must not expect any more labourers unless that law is abrogated. Then, Sir, I find from the papers circulated to us that the Government of Malaya make education compulsory for the Malaysians but in the case of Indians they leave it voluntary. I want the Government of India also to impress upon the Government of Malaya the necessity of giving compulsory education to Indians. It is absolutely wrong for a British Government, whether the Government of India or a Colonial Government, to make any distinction between subjects in their territories. They are after all British subjects; and if education is to be compulsory for the Malaysians, it ought to be compulsory for the Indians. I therefore hope that the Government of India will write to the Government of Malaya on these points and receive satisfaction on all of them.

The Honourable Mr. B. N. Sarma: We will make the necessary inquiries and try to redress the matters complained of.

Mr. President: The question is that that Resolution be adopted.

The motion was adopted.

STATEMENT OF BUSINESS.

The Honourable Sir Malcolm Hailey (Home Member): Sir, it has just been brought to my notice that by a notification issued on the 9th of February the Local Government has gazetted next Tuesday instead of Wednesday as the date of *Shivaratri* and as a public holiday. We arranged our business on the basis of the former notification issued by the Local Government, and took Wednesday to be the public holiday. In the circumstances, I would ask you to decide whether we should take the business which was put down for Tuesday on Wednesday, taking Tuesday as our public holiday.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I do not think, Sir, that the existing arrangement need be disturbed, because the holiday is for *Mahashivaratri* and we do the puja on the night of that day, and if the next day is a holiday it will be all the better for us.

Mr. President: I do not think I am qualified to pronounce upon the point raised by the Honourable Member from Madras; but will meet the convenience of everybody concerned if, when a public holiday is declared by the local authority within whose province we happen to meet, we also observe that as a public holiday; as the Government would be placed in some difficulty if it attempted to carry on its operations without the backing of the Secretariat. Therefore I propose that we should observe the holiday which has been decreed by the Chief Commissioner. When adjourning the House on Monday I shall adjourn it till Wednesday and I presume that Government will carry their business over from Tuesday to Wednesday.

The Assembly then adjourned till Eleven of the Clock on Monday, the 12th February, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 12th February, 1923

The Assembly met in the Assembly Chamber at Eleven of the Clock
Mr. President was in the Chair

QUESTIONS AND ANSWERS

VACANCIES DURING PROBATIONARY PERIOD ON RAILWAYS

336 ***Rai Bahadur G. C. Nag:** With reference to the answer given on the 15th January 1923, to unstarred question No 5 is it a fact that vacancies in permanent posts sometimes occur before the probationary period of any of the probationers, and if so, is it the normal practice on railways to make temporary arrangements for filling such vacancies to admit of probationers being permanently appointed thereto on completion of their probationary period?

Mr. C. D. M. Hindley: Unforeseen vacancies naturally do occur. There is no normal practice for dealing with such unforeseen vacancies. Each case has to be decided on its merits taking into consideration its own particular circumstances.

RULES OF COMPANIES WORKING STATE RAILWAYS

337 ***Rai Bahadur G. C. Nag:** With reference to the answer given on the 15th January, 1923 to unstarred question No 84, is it a fact that companies working State railways do not furnish Government with copies of their rules?

Mr. C. D. M. Hindley: There are no orders requiring them to do so. The policy of Government is to interfere as little as possible with details of domestic management.

ESTABLISHMENT OF THE RAILWAY BOARD

338 ***Rai Bahadur G. C. Nag:** With reference to the statement of "Establishment of the Railway Board" appearing in the Railway Revenue Budget for 1922-23, will Government kindly state (a) which of the posts require engineering qualifications, (b) whether any of such posts have ever been filled by officers of the company-worked railways, (c) whether any of such posts have ever been filled by Indians, and (d) if the reply to either (b) or (c) is in the negative, why not?

Mr. C. D. M. Hindley: (a) The only posts in which engineering qualifications are required are

(1) Chief Engineer,

(2) Two Assistant Secretaries,

(3) Additional Assistant Secretary.

(4) ...

(d) The posts are filled by selection and hitherto Indian and Companies officers with suitable qualifications and whose services could be spared have not been available when the vacancies occurred.

I. C. S. AND LOCAL VERNACULARS.

339. ***Mr. B. N. Misra:** (1) Is it a fact that the Indian Civil servants are compelled to pass in Local Vernaculars?

(2) If so, is there any time limit during which they are required to pass in Local Vernaculars?

The Honourable Sir Malcolm Hailey: (1) Yes.

(2) No period is prescribed but officers have the best incentive to pass their departmental examinations quickly as until they do so they are not eligible for increments of pay.

Mr. K. Ahmed: Is it desirable for any judicial officer of the service to perform any functions in the Court, as for instance, to hear evidence . . .

Mr. President: The Honourable Member is asking for an opinion, not for information.

Mr. K. Ahmed: Is it not a fact, Sir, that members of the service cannot possibly discharge their onerous duties when they are sitting on the judicial bench, unless they pass examinations in the vernacular, to take down the evidence of witnesses?

Mr. President: I think that is a matter of opinion too.

Mr. K. Ahmed: Is it not obvious, Sir, that it is impossible for members of the service, unless they know the vernaculars, to record evidence and to write out judgments thereon?

WAITING ROOMS FOR INTERMEDIATE AND THIRD CLASS PASSENGERS.

340. ***Khan Bahadur Sarfaraz Hussain Khan:** (a) Is it a fact that the male and female passengers of Intermediate and Third Classes are not provided with separate waiting rooms?

(b) If not, do the Government propose to order such arrangements to be made as to prevent the male and female passengers of the Intermediate and Third Classes from grouping together at one and the same place?

Mr. C. D. M. Hindley: (a) and (b). It is understood that Railways provide separate waiting accommodation for intermediate and third class lady passengers where necessary.

In this connection the Honourable Member is referred to the answer given on the 14th March, 1921, in this Assembly to question No. 464, asked by Rai Bahadur Pandit Jawahar Lal Bhargava regarding waiting accommodation for third class lady passengers.

WAITING ROOMS AT DELHI STATION.

341. ***Khan Bahadur Sarfaraz Hussain Khan:** (a) Is the Government aware that the 1st and 2nd class waiting rooms at the Delhi Junction have been removed to the upper storey of the station?

(b) If so, will they be pleased to order their removal to some such place as may be close to, and on the same floor, as the Refreshment Rooms?

Mr. C. D. M. Hindley: (a) Yes.

(b) The Railway Administration intend to open the main refreshment rooms in the upper storey shortly. A lift has been installed for the convenience of passengers.

STAMP PRINTING IN INDIA.

842. ***Mr. B. S. Kamat:** With reference to the question of Stamps Printing in India, and the discussion thereon in the Assembly in March, 1922, will Government be pleased to furnish the following information:

- (i) Have any steps been taken to notify to Messrs. De la Rue that their contract may not be renewed after 1924;
- (ii) Have any steps been taken to find out if any Firms in India, either Indian or European, are willing and able to undertake the contract and if necessary, to import and instal the necessary special plant for stamp printing? If the answer is in the affirmative, will Government please state the nature of their inquiries and the result? Had Government offered to guarantee the contract for a definite number of years?
- (iii) Is it true that the Controller of Stamps, Stationery, and Printing was addressed by an Indian Firm of Printers in this matter in 1922, and that he replied that this contract would be given only for one year at a time unlike the contract for 10 years given to Messrs. De la Rue & Co.?
- (iv) Is it true that Government have deputed one officer (Mr. Ascoli?) to England to study the question of stamp printing? When is this officer likely to return? What experience had he of printing processes before going to England?
- (v) What are the present arrangements for printing Post Cards and embossed envelopes?
- (vi) What are the rates and the terms and conditions settled with Messrs. De la Rue & Co., in the matter of their existing contracts?

The Honourable Mr. C. A. Innes: (i) No. The contract does not expire until the 31st December, 1924, and it is only necessary to give six months written notice of an intention to terminate it.

(ii) No detailed inquiries have so far been instituted by Government but information on the subject has been supplied to two firms who have addressed the Controller on the matter.

(iii) Yes, an Indian firm did make certain inquiries of the Controller of Printing, Stationery and Stamps, in this connection in March, 1922. That officer did not say that any new contract would only be an annual one.

(iv) Colonel Willis, an officer of the Mint Department, has been deputed to England to examine the question of the possibility of printing Currency Notes in India. He has also been asked to take up the question of the printing of stamps, and Mr. Ascoli who is on leave in England has been associated with him in the latter inquiry. Mr. Ascoli is expected to return from leave in July next. For some months before he went Home he was on special duty in connection with the re-organisation of the printing presses under the Government of India and in the course of this work he acquired considerable experience of printing processes in India.

(v) Postcards and embossed envelopes are printed by Messrs. De la Rue and Company, though at times it has been necessary to get Postcards printed in this country, *e.g.*, when the new half-anna Postcards were introduced.

(vi) The contract with Messrs. De la Rue and Company is a lengthy document consisting of 82 clauses and 7 schedules and covers 82 large pages of print; it is available in my office for inspection by the Honourable Member or any other Honourable Member of this House.

OFFICIALS AS M. L. A.'s.

343. ***Maulvi Miyan Asjad-ul-lah**: Is it a fact that a person who is an official or who is in service of the Crown in India is not qualified for election to be member of the Indian Legislature?

Sir Henry Moncrieff Smith: If the Honourable Member will refer to sub-section (1) of section 63E of the Government of India Act, he will find that the answer to his question is "yes".

SPECIAL TRAINS FOR ENGLISH MAILS.

344. ***Mr. W. M. Hussanally**: 1. Upon what lines of Railway in India are special trains run to and from Bombay carrying English mails and passengers?

2. What was the total cost of running these trains in the last financial or calendar year details for which may be available?

3. Do these trains carry passengers other than those going to or returning from the United Kingdom? If not, why?

4. What is the amount of time saved by running these special trains?

5. Do these trains pay for their running from passenger fares? If not, what was the total loss to the public exchequer during the last financial or calendar year?

6. Is any extra postage charged for mails carried by these special trains? If so, what was the amount of this extra postage gained during the past financial or calendar year?

7. Has the Government considered the advisability of stopping these trains until better times? If not, do Government propose to consider the matter?

8. Is it a fact that ordinary mail and passenger trains are held up at roadside stations to allow the special trains to pass on?

Mr. C. D. M. Hindley: The Honourable Member is referred to the reply given to question No. 138 asked by Mr. N. M. Joshi in this Assembly on 7th September, 1922, on a similar subject.

MAIL CONTRACTS IN POONA.

345. ***Mr. A. B. Lathie**: Will the Government be pleased to state—

(a) For which years and for what respective places were mail contracts given to Messrs. Sultan Chivoy, Contractors, East Street, Poona?

(b) For which of these contracts were tenders invited from other Motor Companies in Bombay and Poona? and

(c) If reply to the part (b) of the question be in the negative in full or in part, why were tenders not invited?

Colonel Sir Sydney Crookshank: The necessary information is being obtained and will be supplied to the Honourable Member as soon as possible.

RECOMMENDATIONS OF ASSAM LABOUR INQUIRY COMMITTEE.

346. *Rai Bahadur G. C. Nag: Are the Government of India aware that the majority of the Assam Labour Inquiry Committee recommend that Act XIII of 1859 should cease to apply to the tea gardens in Assam, and that the Governor of Assam in Council accepts the recommendation? Do Government propose to bring in a Bill during the present session either to repeal Act XIII of 1859, or at least to give effect to the above recommendation by amending it?

The Honourable Sir Malcolm Hailey: Yes. Government are at present considering the replies of Local Governments to the reference made to them as a result of the discussion in the Assembly on the 10th September, 1921, on the Resolution moved by Mr. Joshi. The final replies have only recently been received. It is possible, however, for the Government of Assam by action under section 5 of the Act as amended in 1920, to secure that the Act shall not apply to some or all of the tea-gardens in Assam.

COMPOSITION OF THE SHIPPING COMMITTEE.

Mr. T. V. Seshagiri Ayyar: Will the Government be pleased to give to this House information regarding the composition of the Shipping Committee and also the qualifications of Sir John Biles who has been appointed a Member of the Committee, his previous pay, and his experience in the India Office also?

The Honourable Mr. C. A. Innes: I am sorry that I have not got available an answer regarding the composition of the Committee but Honourable Members know. I think, that its composition was published in the Gazette of India of Saturday last. As regards Sir John Biles, Kt., K.C.I.E., LL.D., he is Honorary Vice-President of the Institution of Naval Architects, Member of the Society of Naval Architects of the United States of America; Honorary Member of the Japanese Society of Naval Architects. He has been Naval Constructor with the Admiralty, Naval Architect and Manager to the Clydebank Shipyard; Professor of Naval Architecture, Glasgow University, and is senior partner in Sir J. H. Biles and Company, a firm of Naval Architects and Engineers. He has visited professionally the United States of America, Canada, Japan, China, India and Australia. He has served on at least nine Committees appointed by the Board of Trade to inquire into different marine questions. He is a Past Master of the Worshipful Company of Shipwrights and a Past President of the Engineering Section of the British Association. He is Consulting Naval Architect to the India Office. It is understood that he succeeded the late Sir E. Reed in this post.

The Mercantile Marine Department of the Board of Trade supplied on request the names of certain gentlemen with expert knowledge who had dealt with shipbuilding problems on a large scale and were capable of taking broad and long views on such matters. Sir John Biles was invited to serve on this Committee in view of the fact that he had already visited India and in regard to his well recognized position as an authority on shipbuilding.

I have no information as to what remuneration he has drawn from the India Office.

Mr. T. V. Seshagiri Ayyar: Has a Secretary been appointed to this Committee?

The Honourable Mr. C. A. Innes: Yes. Mr. J. H. Green.

Mr. T. V. Seshagiri Ayyar: Is it not generally the rule that where a European President is appointed to a Committee, an Indian Secretary is appointed and *vice versa* where there is an Indian President an English Secretary is appointed?

The Honourable Mr. C. A. Innes: I am not aware, Sir, of the existence of any such rule, but I may say that I offered the appointment to an Indian gentleman who refused it.

STATE MANAGEMENT OF RAILWAYS.

Sir Campbell Rhodes: Sir, I wish to ask the Honourable the Home Member the question of which I have given him private notice:

In view of the fact that the Bengal Chamber of Commerce has expressed very emphatic and definite views on the question of State Management of Railways, which views it naturally desires should be voiced in this Assembly by its President, and in view of the fact that Government have provisionally fixed for the discussion of Maulvi Miyan Asjad-ul-lah's Resolution two dates on which it is impossible for the President to attend owing to the Statutory Annual Meeting of the Chamber of Commerce on 27th instant, I beg to inquire whether it would be possible for the Government to allot some other day for the consideration of the Resolution.

The Honourable Sir Malcolm Halley: I am very sensible of the difficulty due to the fact that we have had to postpone the discussion of this important Resolution to a date on which it will be impossible for the President of the Bengal Chamber of Commerce to be in his place. The Bengal Chamber of Commerce is of course intimately concerned with this question, and moreover we ourselves would have welcomed the assistance of Sir Campbell Rhodes in our discussion on the subject, not only as a representative of the Chamber but on personal grounds. But, the difficulty of arranging another date is very great. It would mean of course that we should be obliged to postpone the discussion till March, but there are few dates available in that month, and it is possible that even those dates must be occupied by other urgent Government business. I am afraid, that in the circumstances I can see no way of surmounting this difficulty.

UNSTARRED QUESTIONS AND ANSWERS.

MHOW GRIEVANCES.

154. **Mr. Pyari Lal:** 1. Has the attention of the Government been drawn to an article headed "Mhow Grievances" published in the *Cantonment Advocate* of 10th November, 1922?

2. Is it a fact that Mr. A. A. Dadabhoy, a representative of the local House-Owners Association nominated to the Cantonment Committee, has been told that he could take part only in those meetings where question regarding house property is to be considered and that his participation in the deliberations of the Committee will be confined to that question only?

3. Is the Government aware that as a protest against this imposition of this limitation on his appointment as a member of the Committee, Mr.

Dadabhoj has never taken part in any meeting of the Cantonment Committee?

4. Is it a fact that as a result of Mr. Dadabhoj's absence from the Committee, the important interests of the House-Owners Association have gone unrepresented on the Committee?

5. Will the Government be pleased to state why this qualification has been imposed upon the appointment of the representative of the House-Owners Association and under what law?

Mr. E. Burdon: 1. Yes.

2—5. The Government of India have no information on the subject, but inquiries are being made. I will let the Honourable Member know the result in due course.

FEE IN CANTONMENT GENERAL HOSPITALS.

155. **Mr. Pyari Lal:** 1. Is the Government aware that fee is being charged in Cantonment General Hospitals for professional services rendered within the premises of the Hospital?

2. Is it a fact that the Cantonment Reform Committee has recommended the desirability of stopping this practice?

3. Do the Government propose to direct or suggest to the Cantonment Committees, the desirability of carrying out the recommendations of the Cantonment Reform Committee in this connection?

Mr. E. Burdon: 1. Fees are leviable for treatment in Cantonment Hospitals and dispensaries under the provisions of Section 207 read with Section 206 of the Cantonment Code.

2 and 3. The Honourable Member is presumably referring to the recommendation made by the Cantonment Reforms Committee in paragraph 64 of their report.

Government have no information that charges of the kind there described are in practice levied, but if the Honourable Member will report to the local military authorities any cases of the kind that have come to his notice, the Government of India feel sure that the matter will receive proper attention. They do not think it necessary to issue directions or suggestions on the subject to Cantonment Committees.

RAILWAY CATERING DEPARTMENTS.

156. **Sir Deva Prasad Sarvadhikary:** (a) Will the Government be pleased to state whether there are any catering Departments in the East Indian Railway and Eastern Bengal Railway on the same lines as that obtaining in the Bengal Nagpur Railway or lines similar thereto?

(b) If there are not, what are the reasons for absence thereof and what takes their place for providing food and refreshment for the travelling public on the journey?

(c) Is it proposed to introduce on the East Indian Railway and Eastern Bengal Railway arrangements like those obtaining on the Bengal Nagpur Railway.

Mr. O. D. M. Hindley: (a) The catering on the East Indian and Eastern Bengal Railways is not done by the Railways themselves as in the case of the Bengal Nagpur Railway.

(b) To introduce the departmental system at the present time, with high prices prevailing, would involve an expenditure on initial outlay which the railways cannot afford. Food and refreshments are provided by Contractors and Vendors under railway supervision and this arrangement has been in force for a number of years.

(c) No, not at present.

INDIAN STUDENTS IN ENGLAND.

157. **Sir Deva Prasad Sarvadhikary:** (a) Will the Government be pleased to state what action has been taken on the recommendations of the Lytton Committee about Indian students in England?

(b) If no action has been taken what action is proposed to be taken and when?

The Honourable Mr. A. C. Chatterjee: The Report has been published and circulated to local Governments and Administrations and is under the consideration of the Government of India. It is hoped that Local Governments will shortly be addressed in the matter.

MUTUAL BENEFIT SOCIETIES.

158. **Rao Bahadur C. S. Subrahmanayam:** 1. Has the Government framed rules under explanation to Section 10 (2) (iii) of the Indian Income-tax Act, 1922, *re:* Mutual Benefit Societies?

2. Is it a fact that in the Income-tax Manual, page 90, it is stated that no change in law has been made as no rules have been framed?

3. Will the Government be pleased to state whether the rules have been framed, since the publication of the Manual?

4. Will the Government be pleased to state when they will make these rules?

The Honourable Sir Basil Blackett: 1. No.

2. No. The statement in the Income-tax Manual is that "no action can be taken (under the explanation) until a rule is made".

3. No.

4. Applications have been received from several Societies but action has been postponed pending a decision of a High Court to which reference has been made as to whether profits of such Societies are taxable at all.

PRINTING OF STAMPS IN INDIA.

159. **Rao Bahadur C. S. Subrahmanayam:** 1. Will the Government be pleased to state what stage has been reached in the consideration of the question of printing Stamps in India?

2. Will the Government be pleased to state whether Indian States do use Indian-made stamps for their judicial, non-judicial and postal services and if so, which of them and for what purposes?

3. Will the Government be pleased to state how many printing establishments there are under the Government of India?

4. Have the Government instituted a system of exact costing in regard to the printing establishment of the Government?

5. With reference to the Honourable Mr. Chatterjee's answer to my question on the same subject, will the Government be pleased to lay on

the Table the results of any inquiry regarding the system of exact costing obtaining in the printing establishments under the Government of India, that may have been made already?

Mr. A. H. Ley: 1. The question of printing stamps in India has been taken up by Government, and Government are now awaiting a report from an officer who has been specially deputed to examine the practicability of the proposal.

2. The Government of India have no official information on the subject.

3. Twelve, including the printing establishments of minor Administrations, Residencies, Commercial Departments and State Railways.

4 and 5. There is already a system of costing in force in the main Government of India Presses, which shows the cost of each job including overhead charges, depreciation of machinery, etc. Except possibly in one or two minor respects, the existing system seems to be complete; but it is now being subjected to a close examination in order that Government may be satisfied that any defects are brought to light and remedied.

RAILWAY EXPENDITURE IN ENGLAND.

160. Rao Bahadur C. S. Subrahmanayam: (a) Will the Government be pleased to state the total amount spent in England on account of the Railways in India and on what class of materials?

(b) Has any attempt been made to get any of those supplies in India?

Mr. C. D. M. Hindley: (a) It is assumed that the Honourable Member desires to know the amount spent in England during the current year. The expenditure to end of November 1922, the latest period for which figures are available, is £5·68 millions.

Materials purchased in England for State-worked railways are those not produced or manufactured in India or not obtainable in India in the quantities required or to the conditions as to quality or price prescribed in the Stores Rules. Generally they include specialised machinery and plant, locomotives, wagons, steel rails, etc. The Company-worked railways have full powers to make their own arrangements for the supply of stores and usually purchase the same classes of materials in England.

(b) State-worked lines are governed by the Stores Rules the general conditions of which are that articles produced or manufactured in India should be purchased in India provided the quality is satisfactory and the price not unfavourable. In accordance with these Rules tenders are invited in India for such articles as are produced or manufactured in India of the requisite quality. Company-worked lines generally speaking follow a similar procedure.

REGISTRARS, ETC., OF JOINT STOCK COMPANIES.

161. Rao Bahadur C. S. Subrahmanayam: (a) Are the Registrars of Joint Stock Companies or their Assistants, Chartered Accountants or holders of diplomas in Accountancy?

(b) Will the Government be pleased to see that these or some of these posts are filled by men who possess such qualifications?

The Honourable Mr. C. A. Innes: (a) Under Section 248 (2) of the Indian Companies Act, 1913, appointments of Registrars and Assistant Registrars of Joint Stock Companies are made by Local Governments. The Government of India have not therefore detailed information about the qualifications of the particular officers, but it is understood that the first Registrars at Calcutta and Bombay were respectively a Chartered Accountant and a lawyer well trained in Company Law.

(b) The Government of India invited the attention at the time when the Companies Act was passed of Local Governments to the desirability of appointing a wholtime officer in the large commercial centres, at any rate, with special training and experience fitting him for the work required.

CONSTITUTION AND FUNCTIONS OF THE PUBLIC SERVICES COMMISSION.

162. Sir Deva Prasad Sarvadhikary: (a) Will the Government be pleased to state what action, if any, has been taken under section 96-C of the Government of India Act since the answers given to Mr. Samarth in the Assembly on the same subject?

(b) If no action has been taken, will the Government please state when and what action is proposed to be taken?

The Honourable Sir Malcolm Hailey: The constitution and functions of the Public Services Commission provided for in section 96-C of the Government of India Act cannot be determined until a decision has been reached on some of the questions involved in the larger problem of the increased Indianization of the services, which is now under consideration and will doubtless engage the attention of the Royal Commission. It has been decided, therefore, to hold the matter in abeyance for the present.

THE MALABAR (COMPLETION OF TRIALS) SUPPLEMENTING BILL.

The Honourable Sir Malcolm Hailey (Home Member): I beg to move: "That the Bill to supplement the Malabar (Completion of Trials) Act, 1922, be taken into consideration."

I fully explained the circumstances under which this Bill was introduced on Saturday last, and as it is of a formal nature, I need not further enlarge on either the principle or the details of the measure.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhamadan Rural): Sir, I welcome this Bill because it rectifies an error; but I have to draw the Honourable the Home Member's attention to an obvious duty on the part of the Government to rectify other errors, and also to rectify a very serious omission. In the first place, I fear that such omissions and errors have occurred in connection with the Ordinances passed by His Excellency the Governor General. It is obvious, because this is one instance of it. Now the particular matter to which I wish to draw the attention of the Honourable Member is that the last of the Ordinances, one of the provisions of which this Bill proposes to continue by an Act of the Legislature, expires next Monday, and there are other provisions under these Ordinances which have expired and which may result in very serious consequences, as I shall presently point out. I mentioned this matter to the late Home Member, Sir William Vincent, and what I suggested was

that after these Ordinances have expired, it would be necessary to allow the Indian Legislature to pass a General Indemnity Act with regard to the powers exercised under these Ordinances. On Saturday last when this Bill was laid on the table—it was not circulated before but laid on the table—I mentioned it to the present Home Member, Sir Malcolm Hailey. He asked me to give the matter my consideration; but yesterday being a Sunday I have been unable to refer to books and authorities. All the same I have looked into these Ordinances very carefully, all of them, and I am deliberately of opinion that it is absolutely necessary now on the part of the Government to get a General Indemnity Act passed with regard to them.

I shall take first the Ordinance, No. II of 1921, which purports to declare Martial Law with regard to Malabar. That Ordinance has got an indemnity section, section 23, but that has absolutely expired because the life of these Ordinances only lasts for six months. I am not saying this in any captious spirit, but I am pointing out to the Government an obligation, a duty, which is absolutely incumbent on them. Now the first Ordinance which was passed, Ordinance No. II of 1921, was passed on 26th August 1921. What did it purport to do? It purported to declare Martial Law in Malabar. That was quite right and we do not question the policy or justification at all. Now what is our present position with regard to the declaration of Martial Law? My Honourable friend will remember that there was a statutory provision, the Bengal Regulation of 1810. Yesterday being Sunday, I have not been able to look into the date of that Regulation, but my Honourable friend, Sir Henry Moncrieff Smith, will correct me if I am in error. It was a Regulation of 1810, the Bengal Martial Law Regulation, which was extended to the whole of India, and Martial Law could be declared thereunder. That was the position before it was repealed. Under the recommendations of the Repressive Laws Committee, that Regulation was repealed.

Mr. President: I should like the Honourable Member to explain how this matter is relevant to a measure which is extremely narrow in scope, namely, enabling appeals to be made to the High Court which would otherwise not be made, unless we pass this Bill.

Mr. J. Chaudhuri: Yes, I shall explain it this way. Sir, you will notice that the Statement of Objects and Reasons recites that on the expiration of the Malabar (Completion of Trials) Ordinance, this Act is to come into operation. This Ordinance—the Completion of Trials Ordinance, 1922—is the last Ordinance; it will expire next Monday. Some of the later Ordinances refer to some of the earlier ones, some of which have expired. My submission is that Government should come forward with a proper Indemnity Bill. They have now come forward with a Bill, a very proper Bill, for extending the Completion of Trials Ordinance, because if this Ordinance expired on Monday then a number of appeals which are pending before the Madras High Court and other appeals about to be filed will fall to the ground. The Local Legislature passed an Act for continuing the jurisdiction of the High Court of Madras with regard to appeals from trials held under the Malabar Ordinances in Madras; and one of the Acts which was passed by the Local Legislature was found to be *ultra vires*, that is, was against the statute law of India. Now, the Honourable the Home Member has come forward very justly with an Act which would rectify that *ultra vires* legislation. Now, I say since the last of these Ordinances expires on Monday, the 19th instant, and many have expired

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before, I ask the Government to bring forward an Indemnity Bill before this House.

Mr. President: The mere fact that the Honourable Member finds it necessary to ask the Government to bring forward another Bill shows that his remarks on this Bill are not relevant.

Mr. J. Chaudhuri: What I say is that this Bill

Mr. President: I am prepared to allow the Honourable Member to ask his question of the Government; I am not prepared to allow him to argue the merits of the question.

Mr. J. Chaudhuri: Then, Sir, I shall sum up by putting this question. What I would ask is this. We have got also a responsibility in regard to this matter. When these indemnity sections have all of them expired, I earnestly request the Home Member to bring before this House a general Indemnity Bill, and I can assure him that we are not so wanting in the sense of responsibility as to obstruct. But it is absolutely necessary in the interests of the public servants

Mr. President: The Honourable Member is now arguing the merits of the case; he had better put his question and see whether the Government is prepared to answer it.

Mr. J. Chaudhuri: I ask whether Government will consider that question, and I would point out the obligations of the Government with regard to sections 127 and 128 of the Government of India Act and also ask them to take into consideration the fact that Bengal Regulation with regard to martial law has been repealed. Whether it is repealed or not, in every instance where martial law has been in force an Indemnity Act has been brought before the House; that has been invariably the practice; and I am of opinion that without an Indemnity Act serious consequences may arise

Mr. President: The Honourable Member can use that argument when an Indemnity Bill is before us. I ask him now to confine his remarks to the subject of the present measure.

Mr. J. Chaudhuri: What I wish to point out is that it is an *ultra vires* legislation on the part of the Government of Madras which this Bill seeks to rectify by an Act of the Imperial Legislature. I say that this is not a complete Act; there are other Regulations and things done under the Ordinances which might have been *ultra vires*, and since the Ordinances have expired, they would be regarded as *ultra vires*, and I would therefore ask the Honourable the Home Member to bring forward another Bill embodying general indemnity for the protection of all military and civil officers as also private citizens who have acted under any of these Ordinances. That is all that I have got to say.

Mr. T. V. Seshaguri Ayyar (Madras: Nominated Non-Official): Sir, I wish to raise a point which I hope you will hold a little more relevant than the one which has been raised by my friend, Mr. Chaudhuri. It is this. I would put it in the nature of a question to the Honourable the Home Member—whether he considers that this constant resort to the central Legislature is desirable or necessary, whether the proper course would not be for moving the Parliament to so change the Government of India Act as to

make it unnecessary for Local Governments to seek the aid of the Central Legislature?

Mr. President: I am afraid the Honourable Member was a little sanguine in his opening remark—in thinking that his point was more relevant than that raised by Mr. Chaudhuri.

Mr. T. V. Seshagiri Ayyar: I am putting it in the nature of a question: whether it is not desirable that we should avoid this constant recourse to the Supreme Legislature, and so amend the Government of India Act as to make it possible for the Local Legislature to pass laws which would be applicable throughout the whole of the Presidency; otherwise we have to come here often and the result is that there will be a great deal of delay. I myself had to apply to the Central Legislature to extend an Act to the Presidency Town, because the Government of India Act was in that respect defective; and also the Government of Madras finds that in regard to the Religious Endowments Bill they cannot pass a law which would apply to the Presidency Towns because the Government of India Act is defective. I bring it to the notice of the Honourable the Home Member so that he may move Parliament for the purpose of correcting this defect and avoiding, if possible, unnecessary resort to the Central Legislature.

The Honourable Sir Malcolm Hailey: Mr. Chaudhuri mentioned to me on Saturday the point which he has elaborated to the House; I am afraid, that I was not able to give to it the same extensive study as he was able to bestow on it, because my Sunday was otherwise engaged—engaged in what will no doubt appear to those who have objections to the taking of animal life, a much less innocuous occupation. But I can nevertheless deal sufficiently with his point. He suggests the necessity of bringing in a general Indemnity Act which will cover anything done under martial law in Malabar and provide for any other case which like the one now under discussion reveals action taken *ultra vires*. A general Indemnity Act is of course a natural corollary to martial law. Those who remember the celebrated discussion in the Imperial Legislative Council of 1919 will bear me out when I say that it was amply proved to that Council that everywhere where martial law has been applied a general Indemnity Act has followed. But equally, it is not usual to bring forward such an Act until practically every incident of Martial law has closed; you cannot propose to the Legislature that they should give a general *carte blanche* to Government and must place it in possession of the completed story of Martial Law transactions when you are asking it to legislate for indemnity.

As regards Malabar and the incidents which occurred there, it is still a matter of consideration whether we should put forward a general Indemnity Bill, applying to all acts taken in pursuance of Martial Law. Mr. Chaudhuri suggested that the Bill we now propose in itself illustrates an action which needs covering as being *ultra vires*; but the statement which I made to the House on Saturday will show that we are not in this Bill dealing with any act committed outside the law by any officer in exercising Martial Law functions. Nor again are we as he suggests proposing to extend the operation of the Ordinances. The effect of the last of the Ordinances will expire on the 18th or 19th of this month and in view of that expiration the Madras Council itself passed an Act granting certain Magistrates the powers as a speedy procedure for disposing of a large number of cases still pending on their hands. That Council could not, however, in so doing affect the powers of the High Court because under the Letters Patent the local Legislature has no authority to do so, and that is the sole reason why it is

[Sir Malcolm Hailey.]

necessary for us to legislate in order to confer the necessary powers on the High Court. Our Bill, therefore, is very restricted in scope. It is merely necessary in order to supplement the legislative powers of the Madras Council.

Mr. Seshagiri Ayyar asked whether it was necessary to have such frequent resort to the Central Legislature in order to get over difficulties of this nature. That is a question as to how far we are prepared to legislate or to ask for legislation in order to allow local Legislatures to deal with modifications in the Letters Patent for the Presidency High Courts. I am sure that the Assembly will not desire that I should enter into this question this morning. It is a somewhat important matter and it is one to which we should desire to give a good deal of thought.

Mr. President: The question is:

"That the Bill to supplement the Malabar (Completion of Trials) Act, 1922, be taken into consideration."

The motion was adopted.

Clause 1 was added to the Bill.

Mr. J. Chaudhuri: Sir, with regard to the Title I have to point out . . .

Mr. President: If the Honourable Member had been watching, he would have seen that I gave him an opening. Clause 1 now stands part of the Bill.

Clause 2 was added to the Bill.

Mr. President: The question is that this be the Title to the Bill.

Mr. J. Chaudhuri: It is not clear, Sir, whether this Act is of this Legislature or of the Madras Legislature, and I want to draw the attention of the Honourable the Home Member to it. It is usual to cite the local Acts as the Bengal Act, Madras Act, and so on, and so this omission might lead to confusion, and therefore I would suggest that we should put down the title as the Malabar (Completion of Trials) Act, No. (Madras) of . . .

The Honourable Sir Malcolm Hailey: The Title is put in the present form, because we do not yet know the No. of the Act passed in Madras. But I think that the Honourable Member's intention will be sufficiently met if when we print up the Bill we place in the margin, the proper reference to the Madras Act.

The Title was added to the Bill.

The Preamble was added to the Bill.

The Honourable Sir Malcolm Hailey: Sir, I move that the Bill be passed.

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now proceed to the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State. On the last occasion clause 127 was postponed for further consideration in view of the fact that the amendment standing in the name of Mr. Agnihotri, though

acceptable in principle to Government, required re-drafting. I understand that it is now found that the amendment will be more appropriate in clause 127A.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions : Non-Muhammadan) : Sir, I want to move another amendment which stands in my name, and that is that the order under this section shall be appealable

Mr. President : We are now on amendment No. 339.

Mr. K. B. L. Agnihotri : As advised I beg to withdraw it, Sir.

Clause 127 was added to the Bill.

Mr. K. B. L. Agnihotri : Sir, I beg to move that for 127A, the following be substituted, namely :

" 127A (1). Section 489 of the said Code shall be re-numbered as sub-section (1) of section 489, and in that sub-section as re-numbered for the word 'fifty' the words 'one hundred' shall be substituted :

' (2) To the same section the following sub-section shall be added, namely :

' Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly '."

This clause relates to maintenance section in the Criminal Procedure Code, and this is the draft which the Government and myself have agreed to put into this clause. Therefore, Sir, I propose that this amendment be accepted by the House.

The motion was adopted.

Clause 127A as amended was added to the Bill.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Sir, in moving my amendment No. 342 to clause 129 (2), I wish to point out the law as it stands at present. Under the present Code of Criminal Procedure, a Public Prosecutor can only be appointed in respect of cases triable by the Court of Sessions. The amendment proposed by Government does away with that condition and makes it lawful for the Government to appoint a Public Prosecutor in all cases, whether triable by a Magistrate or by a Court of Sessions. Honourable Members will find that a Public Prosecutor may be appointed either generally or in any specified class of cases or in any particular case by the Governor General in Council or the Local Government. That is the general provision. In the clause under reference, provision is made for the appointment of a Public Prosecutor by the District Magistrate or, subject to the control of the District Magistrate, the Sub-Divisional Magistrate, and it is pointed out that, where such a Public Prosecutor has been appointed, no private Prosecutor can be appointed except in two cases and two cases only, namely, in the absence of the Public Prosecutor or where no Public Prosecutor has been so appointed. Reading the two clauses together, Honourable Members will find the law is boiled down to this that in all cases where a Public Prosecutor has been appointed for any area—let us say a district—no person can be appointed as a Public Prosecutor in any particular case, and therefore no person appointed as such can possess the right of withdrawal from the case. The amendment I propose for the acceptance of this House is intended to enable the District Magistrate or, subject to his control, the Sub-Divisional Magistrate to appoint any pleader as a Public Prosecutor only for the purposes of that case in which he appears,—not only in cases where the Public Prosecutor has not been appointed or is absent, but also in cases

[Dr. H. S. Gour.]

where the Public Prosecutor, though generally appointed for the district, is not interested in that particular case. Honourable Members will see that criminal cases in the Courts—and I am now referring to the magisterial cases—are sub-divided by the Criminal Procedure Code into compoundable and non-compoundable cases, but, as Honourable Members are aware, a case may be a compoundable case and yet the prosecutor may desire to withdraw from the case, either because he finds that his witnesses do not support the case or because, for other reasons he thinks it expedient to withdraw from the prosecution of the case. Now, in a case of this kind, let us assume instituted upon complaint and more or less of a *quasi*-criminal character, take the case of defamation, insult, adultery and the like, in which the Public Prosecutor, though appointed for the district, is not likely to be appointed for the conduct of the prosecution of that case,—what is to be the procedure? The law, as proposed by the Government, would disentitle a pleader appointed by the complainant to prosecute the case and while in full possession of the facts to withdraw from the prosecution because forsooth there exists in the district, in the shadowy background invisible to the Court and unknown to the parties concerned, a Public Prosecutor. Let us assume for the sake of argument that the pleader appointed in that particular case wishes to conform to the provisions of law and goes to the Public Prosecutor generally appointed for the district. He goes to him and says: "My client had complained against the accused for an insult. I find I have no witnesses and therefore I wish to withdraw from the case." The Public Prosecutor will say: "I know nothing about the facts of your case. The law must take its course. The case must go on and must be disposed of upon its merits." Therefore, the Public Prosecutor retained in that case is deprived of the liberty of cutting short a trial and has to prosecute the case, whether he wishes it or not, till its termination, ending in the discharge or acquittal of the accused. I submit this would involve in many cases sheer waste of time on the part of the Magistrate, and I do not see how the interests of justice would be served by disqualifying a private Prosecutor appointed by the Magistrate to conduct a prosecution in a particular case. I quite see the position of the Government of India would be that where in a particular district a Public Prosecutor has been appointed, he is in sole charge of criminal litigation on behalf of the Crown. He is a man who takes a detached and independent view of all criminal cases entrusted to him and he is the best law adviser of the Crown and, as the right of withdrawal is incident to the ordinary functions of a Public Prosecutor, he and he alone must possess that power. Now, on this point, I invite the attention of the House to the provision contained in the Code of Criminal Procedure, section 4, sub-clause (t). Honourable Members will find that provision lays down:

" 'Public Prosecutor' means any person appointed under section 492 and includes any person acting under the directions of a Public Prosecutor."

It is perfectly clear, therefore, that the power of withdrawal was not intended to be conferred upon a Public Prosecutor alone. It was equally intended by the Statute to confer the power of withdrawal upon the person acting under the directions of a Public Prosecutor, and he is for the purpose of withdrawing from the case included in the general definition of a Public Prosecutor. Therefore the argument that the Public Prosecutor should be the sole public servant who should possess the power of withdrawing from criminal prosecution is certainly not the policy of the law as embodied in

the present Code of Criminal Procedure. But even assuming for the sake of argument that that were the policy of law, my amendment provides that the person who is to be appointed to conduct a prosecution with the power of withdrawal is to be appointed by the District Magistrate or by the Sub Divisional Magistrate subject to his control, and that gives the legal representative of the Crown the District Magistrate, ample jurisdiction and discretion to decide whether he will entrust the prosecution of a particular case to the complainant's pleader and thereby confer upon him the right of withdrawal. As soon as an application is made to the District Magistrate by the complainant's pleader or by the complainant that he wishes the case to be prosecuted through a particular law agent and that he should be appointed a Public Prosecutor or a Prosecutor with the power of withdrawal within the meaning of section 492 clause (2), the District Magistrate will open his book and see whether the case in which the application is made for his sanction to prosecute is of such a character as might be left to a Public Prosecutor and if he finds that the State has a very remote interest or no interest at all in the case and that the offence is of a character in which the conflict is between two parties rather than between the State and a private person he will allow the prosecution to be conducted by the complainant's pleader. If, on the other hand the District Magistrate finds that the case is of a serious character and in the prosecution of which should not be entrusted to a private individual such as the complainant's pleader he will withhold his sanction. I therefore submit that any argument that might be addressed to this House on behalf of Government that it would take away a salutary check which at present exists in allowing all prosecutions to be conducted by an accredited Agent of the Crown will fall to the ground. I do not see Sir in what way the Government will be prejudiced by accepting my amendment. On the other hand I wish to draw the attention of the Government to the very great benefit and economy of time which will ensue if they accept my amendment. I have already pointed out that the jurisdiction of the Public Prosecutor is now to be extended from Sessions to Magisterial Court. I have further pointed out that if there is a Public Prosecutor appointed for a particular District not necessarily for the conduct of any particular case it would be an impediment and an insuperable impediment to the appointment of a Prosecutor under this section with the power of withdrawing from the case. I have further pointed out Sir that if such a person is appointed a Prosecutor it must always be as my amendment propose subject to the general control and sanction of the District Magistrate and I have further pointed out that in a very large number of cases if the matter is left to the sole discretion and judgment of the Public Prosecutor it would be left to the judgment of a person who has probably in many cases least knowledge of the facts of the case. I wish to point out further that in concentrating this power of withdrawal in all cases in a District in the Public Prosecutor, there would be a strong incentive on the part of a private litigant to employ the Public Prosecutor as his Counsel in the case. But that, surely, is not the object of Government. The object of Government is that all State prosecutions must be subject to State control. That object is perfectly intelligible to Honourable Members. It is intelligible to me and I am not combating their views on that subject. The further object the Government have in view that the Public Prosecutor, if he exists, or if he is appointed in any District, he and he alone must possess the power of withdrawal, is a matter upon which I have already addressed this House. I therefore submit that we shall gain nothing by allowing the Government

[Dr. H. S. Gour.]

amendment to be passed into law and we shall, I submit, greatly improve the Code if we make the provisions of section 492, sub-clause (2), a little more elastic to suit cases instituted upon private complaint, at the instance of a private complainant, in which the State is not directly and intimately concerned, and which is after all a matter of quarrel between two parties, the complainant and the accused. What objection can there be to the complainant or his pleader asking the District Magistrate, "Please allow my pleader to appear in this case and prosecute the case possessing the power of withdrawal from the case if he is unable to prove his case or if otherwise he should be so minded." These are matters, Sir, upon which I hope the Government will meet Members of this House half way. I have given notice of my amendment in one particular form but on maturer consideration I find that the addition of ~~the~~ words would satisfy the requirements of my amendment, that is, if after the words "where no Prosecutor has been appointed" "in any case" be added. That will completely satisfy me and serve the purpose I have in view. I have left copies of the amendment with the Secretary to the Assembly. (*An Honourable Member*: "How would the section read then?") The section would then read thus:

"The District Magistrate, or subject to the control of the District Magistrate, the sub-divisional Magistrate may, in the absence of the Public Prosecutor, or 12 Noon. where no Public Prosecutor has been appointed in any case, appoint any other person, not being an officer of Police below such rank as the Local Government may prescribe in this behalf, to be Public Prosecutor for the purpose of the case."

That ensures the fact that if the Public Prosecutor is appointed in any case he and he alone will conduct that prosecution, but if for any reason owing to the triviality of the offence or other character of the offence the Government do not wish to go to the expense of appointing a Public Prosecutor in any case, it should not debar the District Magistrate from giving power to any other pleader appearing on behalf of the complainant to conduct the prosecution. That, I submit, is all that I want. I think my request is reasonable and I ask the House to endorse it. With these words I move my amendment.

Mr. President: Does the Honourable Member move the amendment as printed in No. 342?

Dr. H. S. Gour: I move it, but I have suggested this alternative change in the form which I think will serve my purpose. I may point out that I am absolutely indifferent how the section is worded. I am only anxious that the object I have in view is brought out. Language is of no consequence to me and I am quite prepared to accept any draft that the Government suggest in conformity with my views.

Mr. President: Amendment moved:

"In clause 129 (2) after the words 'same sub-section' insert the following:

'after the word 'may' the following words shall be inserted, namely: 'appoint a pleader to conduct the prosecution in any case pending in a Court subject to their jurisdiction, and they may and'."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): I think it would have been better for the House if Dr. Gour had made clear at the outset which was the amendment he intended to move. He spoke for something like 25 minutes and we all thought he was moving the amendment which appears on the paper. However, he has said he

is prepared to accept any wording that the Government may put into the Bill which will give him what he wants. I am suggesting to the House that the Bill as it stands gives him what he wants. There is no necessity for any amendment whatever. Dr. Gour's real motive seems to me to give a very wide extension to the category of compoundable offences. He said, where a case is a case between two parties, not a case between the State and a party, why should not a pleader, though he may not have been appointed a Public Prosecutor, be able to withdraw? The House spent some time—the Members of this House spent a great deal of time outside this Chamber—in examining the categories, the list of compoundable offences, and decided what offences should be compoundable and what offences should not and I think the House should be prepared to leave it at that. If there is to be a question of withdrawing from a prosecution in a case which is not, according to the decision of the House already arrived at, compoundable under the Code of Criminal Procedure, then the discretion should be in the hands of an impartial authority like the Public Prosecutor. Sir, I have some apprehension that Dr. Gour has not properly understood section 492 (2). First of all, under section 492 (1) the Government has the power to appoint a Public Prosecutor, and under sub-section (2) certain Magistrates have power to appoint a Public Prosecutor in cases where none has been appointed by the Government or any Public Prosecutor appointed by the Government is absent. I think all the lawyer Members of this House at all events know quite well that it is a most frequent thing for the District Magistrate to appoint a Public Prosecutor for the purposes of a particular case. One obvious reason for that is that one person cannot be in several places at the same time. The magisterial Courts in the district are numerous and possibly there is only one Public Prosecutor and he cannot attend to all the cases that are going on. Dr. Gour said, why should there be no power to withdraw a case, because somewhere in the shadowy background there exists a Public Prosecutor about whom the parties know nothing? That remark may have deceived the House. It is quite irrelevant to the subject we are discussing. The point is if the Public Prosecutor is in the shadowy background, a Public Prosecutor will have been appointed for the particular case by the Magistrate and that Public Prosecutor will not be in the background; he will be there conducting the case and he will have the opportunity to withdraw. If it is a case that is compoundable, it does not matter whether there is a Public Prosecutor there or not, or whether there is a person in Dr. Gour's words, appointed to conduct the prosecution or not. The complainant is quite capable of compounding the case. I listened to Dr. Gour's remarks to try and ascertain whether he proposed to draw any distinction between "a Public Prosecutor" and "a person appointed to conduct the prosecution". It seems to me they are going to be exactly the same thing. It is not, according to his own words, a person appointed by the party to conduct the prosecution on his behalf. He intends this person to be appointed under the Code in the regular way by a Magistrate, and therefore this person will be a Public Prosecutor just as much as the Public Prosecutor appointed by the Government or by the District Magistrate. Dr. Gour has moved only amendment No. 342 on the paper but he directed his arguments to amendment No. 344 which follows and which is most certainly consequential. That is why I have referred very freely to the Public Prosecutor's powers to withdraw—the withdrawal power coming in section 494 of the Code. The fact is that any Public Prosecutor under the amendment which the Bill proposes in the Code, whether he is appointed by the Government or whether he is

[Sir Henry Moncrieff Smith.]

appointed by a Magistrate, will now have power to withdraw from a prosecution, and it seems to me quite unnecessary to make any further extension of the provisions with regard to the appointment of the Public Prosecutor or with regard to his power to withdraw.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, not only is this amendment unnecessary but I am afraid it may work an injustice to the complainant. Under the law as it stands, under section 495, Honourable Members will notice, the complainant who wants to conduct a prosecution may do so either personally or by a pleader. If this amendment of Dr. Gour's is accepted and if you leave it to the District Magistrate to appoint a pleader to conduct the prosecution, it may imply that without such an appointment by the District Magistrate the complainant may not be entitled to appoint a pleader to conduct the prosecution. There is that risk. Apart from that, I think it is quite unsafe to leave the withdrawal of a prosecution of an offence which is not compoundable in the hands of private parties. Our system ought to aim at all prosecutions for offences in this country to be in the hands of independent prosecutors, prosecutors employed by the Crown. My ideal is to have a Director General of Prosecutions in every province and, under him, Prosecutors, Public Prosecutors, for every district, who will act as independent legal officers bringing a judicial mind to bear upon the conduct of prosecutions in this country. Private prosecutors, we know, Sir, often act from motives of vengeance, motives of spite, and a pleader engaged by a complainant oftentimes partakes of the feelings of the complainant. A Public Prosecutor ought to be above such sentiments and feelings. He is not there to get convictions, as has often been pointed out by Courts; the Public Prosecutor is there to get justice done, and therefore, in non-compoundable cases we ought not to leave it to a private public prosecutor to say, 'I withdraw from the case'; it ought to be left to the Public Prosecutor, and I therefore submit, Sir, that this amendment is unnecessary. The District Magistrate has now got the power to appoint persons to conduct a particular case. That, Sir, as has been pointed out, means to conduct a particular case as Public Prosecutor whether in the High Court and in the mufassil. There was never any difficulty felt, because there was a Public Prosecutor in the district who says you cannot appoint a Public Prosecutor to conduct a particular case. That difficulty was never felt,—I have been so appointed; I do not know where my Honourable friend gets the idea that it is only where the Public Prosecutor is not appointed or if the Public Prosecutor is absent from the district, then only a person can be appointed a Public Prosecutor for a case. In heavy batches of cases where riots take place, it is very common to appoint public prosecutors to conduct cases, although the Public Prosecutor of the district may be there and available. Therefore, there is nothing to prevent it, and I submit, Sir, that this amendment is unnecessary and likely to prove injurious to the complainant.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I think, Sir, the House will be delighted to have a house divided against itself; and a party divided against itself is perhaps a better spectacle than a house divided against itself. I am rather inclined to think that sufficient importance has not been attached to the idea which Dr. Gour has in his mind in this matter. A point which seems to have escaped the notice of

my Honourable friend, Mr. Rangachariar, and also of the Honourable Sir Henry Moncrieff Smith, is this. There may be cases in which the Public Prosecutor, even in a non-compoundable case, will not be in a position to conduct the prosecution; for example the Public Prosecutor may have attachments to one of the parties, and it may not be desirable that he should be in a position to conduct the prosecution. Under those circumstances, supposing a person is appointed to be a public prosecutor, should he not have the power to withdraw? Apparently a great deal has been made both by Sir Henry Moncrieff Smith and Mr. Rangachariar based upon the apprehensions which they express, namely, that it is not desirable that in non-compoundable cases private persons should have the right to compound. Sir, these two Members have been to a certain extent confusing the right to withdraw with the right to compound. The two are distinct rights, and I do not think they have placed before themselves the distinctive character of each of these rights. What Dr. Gour wants is this. Not only the District Magistrate and the Sub-Divisional Magistrate should have power to appoint a Public Prosecutor in cases where the Public Prosecutor is unable to be present, but in all cases where it is desirable that a new pleader, that a new public prosecutor, should be appointed for a particular case, the District Magistrate should have the power. He wants to enlarge the powers of the District and the Sub-Divisional Magistrate, and I doubt very much whether the language is quite apt for conveying that meaning. If his view finds favour with the Government, the amendment may be differently drafted, such language may be used as would effectuate the purpose. The intention is this. Not only in cases where according to section 492 (2) the Public Prosecutor is absent or where a Public Prosecutor is not able to be present, but also in cases where it is desirable to supersede him and appoint a person for a particular case, the power should be vested in the District Magistrate for the purpose; and his power should not be circumscribed by the two conditions. If that idea is kept in view, you may use whatever language you like, even though Dr. Gour may have used language which may not be quite appropriate for the purpose, but that purpose should be effectuated by amending section 492 (2) in the manner suggested by Dr. Gour.

Colonel Sir Henry Stanyon (United Provinces : European): Sir, it seems to me, with all respect, that there is a certain amount of confusion between the law as it now is and the law as it will be if the Bill now under consideration by this House is enacted. In the law as it now stands, we have a definition of public prosecutor covering every person appointed under section 492. But under section 494 we have the power of withdrawal from a prosecution permitted only to what I may describe as the original public prosecutor appointed by Government.

Sir Henry Moncrieff Smith: No, No. 492 is being amended.

Colonel Sir Henry Stanyon: Yes, but I am speaking of the existing law. In the Bill we have the appointment of a Public Prosecutor extended to every case, from a mere insult to a murder—from a case which may terminate in an apology to a case which terminates on the gallows—and the Mover of the amendment seems to have overlooked what I may call the consequential amendment of section 494 which has provided for the very inconsistency which he thinks to exist. The power of withdrawal will not be reserved under the amended Act to the prosecutor appointed by the Government but to every public prosecutor as defined in section 4 and as appointed under section 492. That is how I read the amendment. If that view is

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correct, then it seems to me that my friend, Mr. Rangachariar, has correctly described this proposed amendment as unnecessary. I have read the Bill very carefully, and I therefore agree with the view put forward by Sir Henry Moncrieff Smith and Mr. Rangachariar that in the circumstances, assuming that the proposed amendment of section 494 made by the Bill is carried, the amendment now proposed is unnecessary.

Mr. President: The question is that that amendment* be made.
The motion was negatived.

Mr. President: The question is that clause 129 stand part of the Bill.
The motion was adopted.

***Mr. K. B. L. Agnihotri:** Sir, I move the following amendment:

"In clause 130, sub-clause (i), after the word 'omitted' add the following:
'and after the words 'Public Prosecutor' the words 'or complainant in proceedings instituted on complaints' shall be inserted'."

Sir, this clause 130, sub-clause (1), refers to section 494 which authorises any public prosecutor to withdraw any case from any Court. The Honourable Dr. Gour, when he moved his amendment, wanted this power to be extended even to other persons, whether they be public prosecutors or not, whether or not the case was a cognizable one or whether or not the case was a compoundable one. The explanations that came from the Government Benches and the opponents of Dr. Gour went to show that any person could be appointed as a Public Prosecutor for any purpose, and, the person who was appointed as a Public Prosecutor could also withdraw the case. But who is to appoint a Public Prosecutor? The Public Prosecutor is to be appointed either by the District Magistrate or, subject to the control of the District Magistrate, by the Sub-Divisional Magistrate. That means that in every case in which a person wants to withdraw the case he will have to approach the District Magistrate or the Sub-Divisional Magistrate to appoint him as a Public Prosecutor in that particular case and for that particular purpose, that is to withdraw the case. This involves an unnecessary burden on a complainant of approaching the District Magistrate for this purpose. In this very section 494, we also provide that even the Public Prosecutor cannot withdraw a case without the consent of the Court in which the case be pending. Therefore, when the consent of the Court has already been provided as necessary in this section, where is the necessity of asking the complainant to go to the Sub-Divisional Magistrate or the District Magistrate for a formal appointment of the complainant or his pleader as a Public Prosecutor for the purpose of withdrawing the case? Even the District Magistrate, were he so minded to appoint the complainant or his pleader as a Public Prosecutor to withdraw the case, would invariably consult the Magistrate in whose court the case be pending, to find out as to whether the case was of such an importance that permission to withdraw should not be given. Why should this further obstruction be put in the way of the complainant or his pleader to go to the Public Prosecutor? I think it would meet the ends of justice and is a

* "In clause 129 (2) after the words 'same sub-section', insert the following:

'after the word 'may' the following words shall be inserted, namely: 'appoint a pleader to conduct the prosecution in any case pending in a Court subject to their jurisdiction, and they may, and'."

sufficient safeguard that the Court concerned, that is the Court in which the case be pending, is required to give its consent for the withdrawal of the case to the complainant or to any other person. Sir, there may be many cases which are not cognizable, i.e., in which the police cannot arrest the accused without a warrant. In those cases in which the police cannot arrest an accused without a warrant or in those cases which are not compoundable, it should also be provided that the complainant or his pleader could withdraw with the consent of the Court. The Court could very well look after the interests of the State or the public. If the police thought that the case was of importance and in which the public was interested, the Court may not allow its withdrawal; but in every petty case, say, for instance, of insult, to approach the District Magistrate for the appointment of a Public Prosecutor or to send the record for the perusal of the Public Prosecutor to be appointed by the Government, would be a very tedious job and would much delay the trial of criminal cases. Therefore, I beg to move my amendment; but I shall be willing to accept any amendment of my amendment if any be suggested by the Government and if the Government Member accepts the principle, which I am afraid they do not, because Sir Henry Moncrieff Smith had said that the withdrawal of cases in non-compoundable cases should only be left in the hands of the Public Prosecutor. But from what I have said before, it would seem to be undesirable that in many petty cases this question of withdrawal be left in the hands of the Public Prosecutor or the District Magistrate.

With these words, Sir, I commend my amendment for the consideration of the House.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I submit to the House that the Assembly has twice very emphatically given its opinion on the subject raised by the Honourable Member. When he moved his amendment No. 226, he proposed that in all warrant cases instituted upon complaint, if the complainant was absent on the day fixed for hearing, then the Magistrate should be able to discharge the accused. Again, in his amendment No. 263, he suggested that all cases instituted upon complaint should be compoundable. In both those cases, Sir, I believe that the amendments secured the support of only one person in this House. The issue raised by the present amendment is exactly the same, and I would submit, therefore, that it is rather a waste of the time of the House to move it. Of course, as I pointed out on the first occasion, and as was accepted by the House, such a proposal really leaves the door open to blackmail and abuse of justice. The amendment would also be entirely in the wrong place, because this Chapter deals with Public Prosecutors and not with private complainants.

The motion was negatived.

Clause 130 was added to the Bill.

Mr. T. V. Seshagiri Ayyar: My amendment seeks to substitute for the proposed proviso to clause 131, the following:

"Provided further that nothing in this section shall prevent a Magistrate acting under section 107, sub-section (4) or section 117, sub-section (3) from imposing such conditions as to him seem advisable before releasing the accused on bail."

This relates to the question of bail. Hitherto, there was no provision like the one which the draftsman on the present occasion has introduced. My object is that in regard to cases under section 107, clause (4), and section 117, sub-section (3), the Magistrate should have power to impose such conditions as would enable the accused person to be present whenever

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called upon. The House will find that section 107, clause (3), relates to proceedings for keeping the peace, and there is no reason why in such proceedings the Magistrate should not have power to impose conditions, because it does not really deal with an offence, it is really a preventive measure, and more than in non cognizable cases there should be every facility given to the Magistrate as well as to the accused to be bound by certain terms, and that the accused should not be detained in custody. Section 107, clause (3), says: "Where any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace," and so on. Then, it says "after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons."

My amendment suggests that, instead of sending him in custody, the Magistrate may release him on such conditions as to him may seem advisable. A bond may be taken from him, so that he may appear when called upon. If you pass the clause as it is and if you bring in these provisos under section 496—the result of it will be that the Magistrate will have no power to impose such conditions upon the person who is asked to keep the peace; and the accused must necessarily be detained in custody. The proviso says:

"Provided further that nothing in this section shall be deemed to affect the provisions of section 107 etc."

Under these circumstances the House will see no difficulty in regard to the first part of my amendment, that is, as regards 107 (4).

There is some little difficulty as regards 117 (3). I am prepared to admit that; but I think even there it is desirable to extend the power. Some provision must be made for imposing conditions even on persons who are brought before the Court under section 117 (4). If the House will turn to section 117, clause (3), the Members will find that pending the completion of the inquiry under sub-section (1) the Magistrate if he consider that immediate measures are necessary for the prevention of a breach of peace or a disturbance of public tranquillity and so on may direct the person in respect of whom the order under section 112 has been made to execute a bond with or without surety for keeping peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or in default until the inquiry is concluded.

No doubt there is some provision here for executing a bond for keeping the peace; but the accused is to be detained in custody pending the execution of the bond. Now take a case where a Magistrate wants a bond with sureties. It will take the accused some time to find a surety. Why should he be detained in custody till he is able to find a surety? Why should he not be released on certain conditions that he agrees to, and why should he not be called upon to execute a bond afterwards?

As regards 107 (4) there is no difficulty whatsoever. It is a clear case, and I think it is a case of omission on the part of Government. As regards 117 (3) it is desirable that a provision like the one that I am asking to be introduced should be substituted for the present proviso. Sir, I move the amendment standing in my name.

Mr. H. Tonkinson: Sir, those Honourable Members who have studied the report of the Lowndes' Committee will find that they treated an amendment of section 496 on similar lines to those now in the Bill as absolutely consequential, and I submit, Sir, for the consideration of this House that that is really the position as regards the proviso which my Honourable friend proposes to omit from the Bill and for which he proposes to substitute another proviso. Of course section 496 refers to a person other than a person accused of a non-bailable offence. It therefore covers cases dealt with in the proviso and unless some such proviso is included, then the provisions of section 496 will practically, or might be thought to, override the provisions of section 107 (4) and section 117 (3), which have already been approved by this House.

As regards section 107 (4) my Honourable friend suggests that there is no doubt that his amendment should be accepted. I think, Sir, that this House has already, in connection with the amendment moved by my Honourable friend, Mr. Rangachariar, on the 18th January, rejected that contention. My Honourable friend's motion was that any person who is detained in custody under sub-section (4) or is brought under arrest and so on should be able at once to make the final bond and secure release. That proposal was rejected, because it is covered by section 117(3). And that is my point now, Sir, as regards 107 (4). Section 107 (3) relates to a case when a Magistrate who does not have jurisdiction decides that immediate measures for the prevention of a breach of the public peace are necessary and arrests a person. He sends him to a Magistrate having jurisdiction and under sub-section (4) of section 107 the Magistrate is able to detain him in custody until he takes further action under the Chapter. The further action is taken practically at once, because the order under section 112 is read out and then immediately the provisions of section 117 (3) apply. We have those definite provisions, they have already been accepted by the House and I submit, Sir, that we certainly ought not to substitute for the proviso in the Bill the proviso recommended by my Honourable friend.

I would proceed a little further, Sir, with reference to the exact form of the amendment which has been moved. I would like, Sir, to ask my Honourable friend what conditions the Magistrate is going to include in the bond which he would cause to be executed if this proviso is accepted.

Mr. T. V. Seshagiri Ayyar: Not to address a meeting for a particular period.

Mr. H. Tonkinson: Well, he can say "You shall not leave your house, never go outside your own house." Well, Sir, we have definitely in section 117 (3) covered both the cases of 107 (4) and 117 (3) and there is really no necessity for the amendment which my Honourable friend has moved.

Rao Bahadur T. Rangachariar: Sir, I am afraid my Honourable friend, Mr. Tonkinson, has not sufficiently realised the difference between executing a bond as required by section 117 and a bail bond as required by section 496. The bail bond is for appearance at the inquiry whereas the bond required in section 117 (3) is the bond which will eventually have to be executed on the completion of the inquiry with sureties for keeping the peace or for good behaviour. That is the bond which he is called upon to execute under section 117 (3). Now, Sir, in a case where the person is not convicted of any offence—in fact he is not even accused of an offence—the Magistrate should not have the power to detain him in custody when he is prepared to execute a bond for his appearance. That is all my

[Rao Bahadur T. Rangachariar.]

Honourable friend proposes. My amendment was to give absolute power to give bail, which I dropped in favour of Mr. Seshagiri Ayyar's modest amendment, because a Magistrate taking a bail bond may impose also certain conditions suited to the case. Therefore I do not see how anybody suffers. It is not that we are anxious to shut a man up in jail whether he is a good man or a bad man. It is not an easy job to find sureties. Many an innocent person is kept in jail because he is not able to find sureties. In the case of a bail bond for appearance I am sure people will be more readily found to stand surety, but to get people to stand surety for good behaviour and for keeping the peace may be more difficult. Therefore there is a good deal of force in Mr. Seshagiri Ayyar's amendment, and my Honourable friend Mr. Tonkinson tried to confuse the issue by referring it an amendment of mine at a former stage which was altogether a different amendment from the present one. There I asked that the man may be released if he executes an *ad interim* bond. That was my amendment—an *ad interim* bond on the same terms and on the same conditions as would apply to a bond which he will have to execute, that is, the security bond itself. But Mr. Seshagiri Ayyar's idea is not a security bond, but a bail bond under section 496, namely, a bail bond for appearance. Therefore, Sir, I support the amendment.

Sir Henry Moncrieff Smith: Sir, just one word. Mr. Rangachariar has explained that the intention of Mr. Seshagiri Ayyar's amendment is to enable a Magistrate, instead of acting under section 117 (3) and taking an *interim* bond for good behaviour during the proceedings, to take bail for appearance with conditions imposed. I desire, Sir, to point out to the House that Mr. Seshagiri Ayyar's amendment will not achieve that. It merely lays down, Sir, that when a Magistrate acts under section 117 (3), that is to say, takes an *interim* bond from the accused, or gives the accused an opportunity of furnishing an *interim* bond for his good behaviour, the Magistrate will then in addition to the terms of the bond be able to impose further conditions. As Mr. Tonkinson pointed out, by adopting this amendment the House will be giving to the Magistrate an opportunity to impose all sorts of onerous conditions on the accused. All we want, Sir, is that the accused during the pendency of the proceedings should be of good behaviour; we do not want to empower the Magistrate to say in addition to that—as Mr. Tonkinson suggested—"You shall not leave your house; you shall stay in a particular place and you are to report yourself at the police station every day." All these conditions will be possible under Mr. Seshagiri Ayyar's amendment and I think it is distinctly undesirable that that power should be put in the hands of a Magistrate.

Colonel Sir Henry Stanyon: Sir, I venture to oppose the amendment. It seems to me that the proviso entered in clause 131 of the Bill is as necessary for Legislative consistency as the amendment proposed by the Honourable Mover would be inconsistent. We have legislated already on sections 107 and 117 of the Criminal Procedure Code—preventive sections the primary objects of which are to prevent breaches of the peace and to secure good behaviour. A person brought up under section 107 to keep the peace is not a person accused of any offence whatever; therefore, as Mr. Tonkinson has very clearly pointed out, he is not a person accused of a non-bailable offence, and he can claim to be released on bail as a matter of right the moment he is brought before the court, if the proviso now proposed by the Bill is not introduced. By sections 107 and 117, as

amended by us, we have given a discretion to the Magistrate to detain such a person until the preventive sanctions have been obtained. If the proviso proposed by the Bill to be added to section 496 is not enacted we shall immediately take that discretion away; that is inconsistent. A small illustration will perhaps make clear what the effect of the amendment would be having in mind the clear explanation of the difference between a bond to keep the peace and a bail bond, given by my friend, Mr. Ramachariar. A and B anxious to get at each other like two fighting cocks are brought up before a Magistrate who requires them to execute bonds to keep the peace. The Magistrate is of opinion from the evidence before him that, if these two persons are not detained until that bond is executed and they have been bound down as far as they can be bound down to peace by such a bond, a breach of the peace between them will take place. Now, if these people can claim (as they would be able to do under the amendment now proposed or as they would be able to do if the proviso sought to be introduced by the Bill is not introduced) to be released on bail as soon as they are brought up, what is likely to happen? They will gladly find bail for the sake of going and having their fight. Where then would come in the preventive provisions of section 107? A man who is desirous about committing a breach of the peace against any person or body of persons will give a bail bond for his appearance without any difficulty, and then he will go and commit his breach of the peace and then appear in answer to his bail bond. No bond will be broken; there will be no forfeiture, but the breach of the peace which the section was intended to prevent will have taken place. Therefore, for the sake of consistency, the proviso which is sought to be introduced by the Bill is absolutely necessary, and I oppose the amendment.

The amendment was negatived.

Clause 131 was added to the Bill.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, I move this amendment* that stands in my name and for explanation make the following observations. The clause of which mine is an amendment is an amendment of section 497 of the Criminal Procedure Code. That provision relates to bail and as the law now stands under section 497 the Magistrate has got discretion to grant bail in non-bailable cases only where there appear reasonable grounds for believing that the accused is not guilty of the offence. Section 497 runs:

"When any person accused of any non-bailable offence is arrested or detained without warrant by the officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused."

Clause (i) of the Bill proposes to substitute words "an offence punishable with death or transportation for life" for the words "the offence of which he is accused." Now in one way this clause is intended to liberalise the bail provisions as they now stand by not fettering the discretion of the Magistrate in granting bail as it was fettered before so that if there were grounds for believing that the accused was guilty of the offence the Magistrate had no discretion to grant bail, but now he has, except in cases

* "In clause 132 (i), omit the words from 'in sub-section (1)' to the word 'substituted' and in their place substitute the following:

"in sub-section (1) the words beginning with the words 'but he shall not be' to the end of the sub-section shall be omitted."

[Mr. Harchandrai Vishindas.]

where the offence is punishable with death or transportation for life. But if you look into the question a little deeper, this provision in another respect is rather illiberal and goes backwards from the present law. Because under the present law, unless the Magistrate is of opinion that there are reasonable grounds for believing that the man is guilty of an offence punishable with death or transportation for life, he can release him on bail even in cases of such offences, that is to say, if he thinks, or I may put it roughly although I may not be precisely accurate, if the Magistrate thinks that the case is a doubtful one or if he does not think that the accused is guilty of the offences punishable with death or transportation for life. Under the present law he has got the discretion of granting bail in such cases also, but this proviso takes away that right from him, because the section reads thus :

"When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears, or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused."

Rao Bahadur T. Rangachariar: That was so even before.

Mr. Harchandrai Vishindas: I stand corrected, and so far as this part of my speech is concerned, I think I was wrong. Further, I say that the discretion even as regards these offences should not be withdrawn from the Magistrate, because I understand that the conditions attaching to the refusal of bail in all civilized countries, at least in some civilized countries that I am aware of, are that provision should be made to see that the accused person does not run away or escape justice, but otherwise so long as he is under trial his liberty should be granted to him until he is convicted. For that reason I would like that the whole of this clause, as it has been provided, should be withdrawn so that in all cases whether this condition which is prescribed in the last clause of the sub-section exists or not, the Magistrate should have discretion to grant bail.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, I have refrained consistently during this month from taking part in the debate over this Bill. I venture, however, this morning to intervene in this debate on the ground that the issue to-day seems to be somewhat important, and secondly on a much more slender ground, that at one time—I do recollect it—I was an unpaid Magistrate, and some years before that still I had my legal training at the University Examination.

Now, Sir, speaking of the merits of this amendment and the issue involved, it seems to me that the amendment which Government propose to make in the Criminal Procedure Code, and on which my friend, Mr. Harchandrai, has just now spoken, is not a desirable one. Section 497 (1) deals with non-bailable offences. The Magistrate under that section has the ordinary discretion to release an arrested person on bail, but that section proceeds to say that he shall not be released if there appear reasonable grounds for believing that he has been guilty of the offence with which he is charged. Government now come forward and say that they want to stiffen this section up. (A Voice: "No, no. It is just the other way about.") Government say that the accused shall not be released if the Magistrate has reasonable grounds to believe that he will be guilty of an offence punishable with death. That is the criterion which Government now

Sir Henry Moncrieff Smith: It is not the Government; it is the Joint Committee.

Mr. B. S. Kamat: Or rather the Joint Committee—the criterion which the Joint Committee seek to introduce is the nature of the punishment. Now we shall take an illustration. Supposing a man is charged under section 400 of the Indian Penal Code, which is a section which deals with breach of trust as a public servant or as a banker, or as a merchant or as an attorney or as a broker or as an agent. Now, technically speaking, that offence is a non-bailable offence and also the punishment provided for it is transportation for life. Both these conditions are satisfied, if I read the Indian Penal Code aright. Now in such a case what is the Magistrate to do? Take the case of a banker in Bombay who is charged, say, with breach of trust or an attorney with breach of trust about a document. Now if the Magistrate puts the strictest construction on this section, he will say the punishment in this case is transportation for life, and I am not going to release even the biggest banker on bail. Is that a correct criterion? The correct criterion should be not whether the punishment for that offence is transportation for life but whether the man will abscond. Now, I will take another section of the Indian Penal Code. Take section 477 which deals with tampering with a will or with the authority to adopt a son. Now supposing a man is charged before a Magistrate with these offences. Now these are non-bailable offences and these are also punishable with transportation for life as an extreme punishment. What is the Magistrate to do if he reads this amendment strictly according to the letter? He will have no other alternative but to refuse bail. Now, a man who is charged with these offences, really speaking, may deserve bail. The only criterion, therefore, which should be introduced is whether the man is likely to abscond and defeat the ends of justice. The wording as proposed by Government does not satisfy that criterion, and I therefore think that I should support this amendment.

Dr. H. S. Gour: Sir, the provisions relating to bail have been the subject-matter of controversy for a large number of years, and the fact that no less than 16 or 18 amendments find their place on the agenda paper shows the wide interest this section of the Criminal Procedure Code evoked in this House. There is no doubt, Sir, judging from the multiplicity of amendments that we are dissatisfied with the present draft, and judging from their multiplicity, there is no reason whatever, Sir, to doubt that we are not quite satisfied with our own drafts. But the fact remains that there is a strong consensus of opinion in this House that the whole of the provisions relating to bail require re-examination and over-hauling, and here, I submit, it is the duty of the Government and the Government draftsmen to meet the generally expressed wishes of this House and bring the provisions of section 497 in conformity with our wishes. Hon-

1 P.M.
ourable Members will find that there are two pertinent provisions embodied in the Code of Criminal Procedure which deal with the subject of bail. So far as the High Courts and the Courts of Session are concerned, they possess an unlimited and unfettered power to release any person on bail. That is section 498. But, when we descend from the High Court and the Court of Sessions to the Magistracy, we are immediately confronted with the qualifications which surround section 497 of the Criminal Procedure Code. Now, Sir, the release of a person on bail is often demanded after his arrest and before his trial and sometimes during his trial but before his conviction. In other words, the provisions of section 497 are brought into

[Dr. H. S. Gour.]

requisition in a case which is then *sub-judice*. What does the existing provision, however, provide? It says: no Magistrate shall release a person on bail if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused. The Magistrate is to prejudge the case and he is to say to the accused: I have reasonable grounds for believing that you have been guilty of this offence; therefore, whatever may be the reasons which would move me to release you on bail, you cannot be released on bail. That is the sole criterion from which Magistrates in India regard the question of bail. Now, if we turn to the English law, we shall find a very different criterion there for releasing persons on bail, and, in inviting this House to adopt either the one or the other, I shall ask the House to remember what is the underlying principle for arresting a person and releasing him on bail. It requires no large legal training such as my Honourable friend, the last speaker, possesses, nor need one be an unpaid Magistrate to understand that. When a man is arrested, the sole and single purpose of his arrest is that he should not run away, and, when he is released on bail, the sole criterion for releasing him on bail and fixing the quantity of bail is that he should not run away. (Mr. N. M. Samarth: "Nor commit suicide.") Very few people do that; and even people under arrest sometimes commit suicide. That is, then, the sole criterion. Well, I submit, if the Magistrate is assured that the man is not likely to run away—(The Honourable Sir Malcolm Hailey: "How?")—because the quantum of bail, the amount of bail which he gives is the best security against his absconding, is there any reason why he should be detained in custody? That, I submit, is what my friend the Mover of this amendment wants. You shall not prejudge a case, you shall not decide, before you have heard the evidence, whether the accused should be released on bail or not. You place yourself in a position of grave embarrassment to yourself, and you cause unnecessary suspicion in the mind of the accused against the impartiality of the very tribunal before whom his trial is pending. The Magistrate says: "I cannot release you on bail because during the course of this trial I have to examine and see whether you are not guilty, or, at any rate, whether there are not reasonable grounds for believing that you are guilty. I believe that there are reasonable grounds for believing that you are guilty." Well, the accused says: "Sir, you have prejudiced my case. You have prejudged me. You may not release me on bail, but it is perfectly obvious to me that after those observations I cannot consider you to be as impartial as I should expect a judicial tribunal to be." That, I submit, is a wrong view. That, I submit, places the Magistrate in a position of great awkwardness. That, I submit, is a principle of law which is not only contrary to the English law but contrary to the very first principles upon which arrest is made and bail granted. Therefore, Sir, this House demands that you shall place a right principle before the Magistracy for the release of persons on bail. What is the object you have in view? It is that the offender should not escape from justice. Make sure of it and make that the sole criterion for arresting, for keeping under arrest, or for releasing a person on bail. That, I submit, is a salutary principle. I have already pointed out to the Honourable Members that in the case of the High Court and the Court of Sessions, this is the principle. In fact, as I have said in the earlier part of my speech, they have an unlimited and unfettered power of releasing any person at any time on bail. Why should not the same power be conferred upon a Magistrate who has studied the case, who has probably recorded part of the evidence

and before whom the facts are laid by both sides with greater fullness than they can be in the miscellaneous papers filed before the Sessions Court or the High Court. I submit, Sir, that the Government should meet us halfway at any rate upon this point. The provisions of law which they ask the House to concur in are unacceptable to us. They must revise their draft and, if they can show that the object of the Legislature, that the object of the Government would be sufficiently fulfilled if the accused does not escape justice, they shall have combined commonsense with justice.

Now, Sir, one more point and I have done. Honourable Members will find that the Government draft that is to say, the draft in the Bill is a great improvement on the existing law. It proposes to remedy the rigour of the present Code of Criminal Procedure by allowing the release of persons in circumstances mentioned in the proviso, even in cases where the offence is punishable with death or transportation for life. That is a wholesome change. We welcome it, but, at the same time, I would ask the Government in this connection to see that by the mere enumeration of circumstances which they have provided in their proviso now sought to be added to section 497 they have left out a large number of cases *ejusdem generis* which they could not compendiously enumerate and which would perhaps more conveniently have been stated in a more general principle. If these two conditions are fulfilled there will be no necessity to press the numerous amendments of which notice has been given and I hope, Sir, that the Government will see their way to compromising with the various authors of the amendments upon the lines I have indicated.

Mr. H. Tonkinson: Sir my Honourable friend, Dr. Gour, has informed us of what must be clear to anyone from a perusal of this page of amendments that Honourable Members opposite have not been able to suggest any satisfactory criterion to propose in substitution for the provisions in the Bill.

The amendment now before us proposes that in all non-bailable cases there shall be a discretion with the Magistrate to allow the person to be released on bail. I do not know whether my Honourable friend would propose later on the omission of the proviso, for the proviso would be quite meaningless if he makes the first amendment. Well, now, my Honourable friends, Mr. Kamat and Dr. Gour, have both suggested that the reason why we take bail is to secure the attendance of the accused. I accept that suggestion entirely. I accept the dictum of Lord Russell of Killowen in the case of *Regina versus Rose* that "it cannot be too strongly urged upon Magistrates that bail is not intended to be punitive, but merely to secure the attendance of the prisoner at the trial, or to come up for judgment." I accept that as the proper test to be applied in these cases. But, Sir, how are you going to apply that test? The real question is, what are the considerations to be used in applying the test? And here, Sir, I cannot accept at all the suggestion of my Honourable friend, Dr. Gour, that the proposals in the Bill depart from the principles of the English law on the subject. The various rulings as to how the test laid down by Lord Chief Justice Russell of Killowen should be applied have been summarised as follows: The first test should be the nature of the accusation. That, Sir, is a very similar provision to the one which we have in the Bill. The next test is the nature of the evidence in support of the accusation. That, Sir, is an exactly corresponding provision to the words "reasonable grounds for believing" which my Honourable friend, Dr. Gour, takes so much exception.

[Mr. H. Tomkinson.]

so. The next consideration is the severity of the punishment which conviction will entail. It is quite clear, Sir, that if you have a case in which the punishment which will be inflicted is very severe, then it does not matter what bail you take; the man will try and get away.

Rao Bahadur T. Rangachariar: What is the next test? Is there no other test?

Mr. H. Tomkinson: The fourth test given in this leading English law book is whether the sureties are independent or indemnified by the accused. We have not got any provision of that kind. These are the only tests given and I submit, Sir, that they are exactly on the same lines as section 497 will be if amended as in the Bill. Let us see what the provisions of section 497 will be. As my Honourable friend Dr. Gour has pointed out, they are subject to section 498 under which a Court of Session or the High Court may release on bail in any case. Now, the Magistrate can in all non-bailable cases under this proposal release any person who is under the age of 16 years. He may in all non-bailable cases release any woman. He may in all non-bailable cases release any sick or infirm person. The only restriction is in the case of a man over the age of 16 years, who is not sick or infirm. If there are reasonable grounds for believing that that man is guilty of what offence? Of an offence punishable with death or transportation for life—then a Magistrate will not be able to release him on bail. I submit, it may be, and I agree myself, that the existing law in section 497 was unduly restrictive. But is it possible to say that in the conditions in India, these proposals in the Bill are unduly restrictive? Do we not, Sir, want to restrict our Magistrates to this extent? Even the best of our Magistrates make mistakes, and, as I have said, if there is a case which does not come within these provisions, it is always open to the accused to move a Court of Session or a High Court. I submit, Sir, that the proposals in the Bill should be accepted and that the amendment moved by my Honourable friend, Mr. Harchandrai Vishindas, should be rejected.

Colonel Sir Henry Stanyon: Sir, in the choice of several evils I venture to support this amendment. There is no question about it, in my humble opinion, that section 497, as at present law, is thoroughly bad. In sub-section (1) it invites the Magistrate to pre-judge against the defence. In sub-section (2) it invites the Magistrate to pre-judge against the prosecution. Sub-section (1) says: "he shall not be released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused," and sub-section (2) says that he shall be released "if there are no reasonable grounds for believing that the accused has committed the offence." That is a wrong criterion in principle, and it has been disastrous in practice. Magistrates, who, in general, are people desirous of doing honest and straightforward justice, have refrained from forming these prejudices in regard to cases before them. The result has been that in non-bailable cases the granting of bail has been steadily refused, and many persons have been detained whom justice required to be put on bail for the purpose of putting up their defence, or because of their status and so on. Some Members of the House, and I include myself among them, have been criticised in the Press for an undue leaning towards the criminal. That criticism seems to me to be wholly unfounded. It is the duty of the Magistrate to be honest and to do justice.

you provide punishment for a criminal. When you legislate a Criminal Procedure Code, you make law for the fair trial of a person who is presumably innocent until he is proved to be guilty. It has been admitted, in his very fair and impartial remarks on the subject, by my Honourable friend, Mr. Tonkinson, that the ground of arrest and detention of accused persons is simply and absolutely to secure that they shall duly appear to stand their trial. There is no other reason. The law should not ask the Court, until the whole of the evidence is before it, to form any opinion whatsoever on the merits. Hear both sides and then decide whether there are reasonable grounds for believing that the accused is guilty or not guilty. To the four considerations which have been put forward by Mr. Tonkinson in connection with the dictum of Lord Russell of Killowen I venture to mention a fifth, and that is, the status and circumstances of the person accused. A rich banker may be accused of embezzling Rs. 200. He may have large properties, his family, his home and everything that he would lose by absconding, and a good defence if he were allowed out on bail so that he could attend to it. But that is a case punishable with transportation for life and even under the amendment proposed in the Bill before us bail would be refused to such a man. That surely is one instance where without any technicality one's common sense perceives an injustice in the mode of procedure. What Judge or Magistrate or lawyer has not heard the zealous police officer, in perfect honesty and with the best of intentions say "If that accused is let out on bail I cannot prove my case." Is that a consideration which any Magistrate ought to be allowed to hear? Yet that is the kind of thing that is put before him under the present law upon applications made for bail. It is for these reasons that I would prefer the risk of leaving an unfettered discretion to the Magistrate to deal with each particular case upon all its merits—upon all the considerations which have been mentioned—what is the nature of the offence? What sort of evidence is disclosed? Has the accused confessed? What sort of man is he? Is he likely to run away? We should not specify these things or put them in a definition. They should remain available at the discretion of the Magistrate. We must instruct the Magistrate, and then let him exercise his discretion. Let that discretion be controlled by higher authority. I admit in matters of release on bail the higher authority may come rather late. But there are these difficulties in every direction and we have to meet them. We cannot aim at perfection but must do the best we can; and I think it is better to leave an absolute discretion to the Magistrate—a properly trained Magistrate—than to try and limit his discretion with such limitations as exist in the present law and as will continue to exist if we require him under the amendment proposed in the Bill, to pre-judge cases—the most serious cases of all, cases punishable with death or transportation for life. On these grounds I support the amendment.

Rai Bahadur S. N. Singh (Bihar and Orissa; Nominated Official): I rise to oppose this amendment. The present position is that in all non-bailable cases the accused person may be admitted to bail unless there are grounds for believing that he has been guilty of the offence of which he is accused. The amendment proposed in the Bill is to confine the refusal of bail to cases where the person is accused of an offence punishable with death or with transportation for life. The proposed provision is therefore a distinct improvement upon the existing position, as the Honourable Mover of the amendment has himself admitted. And, Sir, there is a very wholesome provision to the effect that if the Magistrate at any stage

[Rai Bahadur S. N. Singh.]

of the proceeding or trial does not think that the accused has committed the offence, he can admit him to bail. The object of keeping an accused person in custody is not only to prevent him from running away but also to prevent him from committing mischief outside custody, such as tampering with the evidence available against him, which, Sir, he would be tempted to do in such cases of serious offences. For these reasons I hope this amendment will be turned down.

Rao Bahadur T. Rangachariar: I move that the question be now put.

Mr. P. B. Haign (Bombay: Nominated Official): Sir, I have listened with very great respect to the remarks by my Honourable friend, Sir Henry Stanyon, on the subject of this amendment, but I feel constrained, in spite of his long experience, to differ from him. In the first place, I think he argued most of his case on the wording of the old section. He asked the House to remember that this section had been used in such a way that bail was refused in many cases in which it might perfectly, safely and legitimately have been given, on account of the way in which that section was worded. The object of the amendment which has been put forward by the Joint Committee is to remove that very objection from the section. It is admitted that the section was previously too restricted, namely, where the Magistrate was of opinion or had reasonable grounds for supposing that the accused had committed any non-bailable offence, bail should not be granted. But we are now confronted with a very different position. The number of offences in which bail cannot be granted under those provisions has now been very greatly reduced, and the question now before the House is whether an absolute discretion should be given to Magistrates in all cases or not. Well, with all respect to the opinion of my Honourable friend, Mr. Tonkinson, I would suggest in this country there must be some other considerations besides the mere appearance of the accused. (*Rao Bahadur T. Rangachariar*: "Why in this country?") In this country, because we are at present concerned with this country. I would ask my Honourable friend, Mr. Kamat, for example, whether he thinks it is really safe that when a murder has been committed and when a man has been arrested actually in the commission of the offence and is brought before the Court, a discretion should be given to the Magistrate even in such a case to allow the man to be released on bail. There are many cases in which it is obviously most dangerous that it should be possible for an accused in those circumstances to be let free; and, further, Honourable Members who support this amendment have persistently ignored the fact referred to by the Honourable Mr. Tonkinson that they, all of them, all accused in such cases, have an immediate remedy under section 498. They do not even require to go to the High Court; an immediate reference can be made to the Court of Session, and I submit, Sir, that that is a quite sufficient remedy in all cases of so grave a nature as are referred to in the sub-section as amended. Then, Sir, there is another argument which has been used both by Dr. Gour and Sir John Stanyon that the Magistrate has to prejudge the case because he is not to grant bail when there appear reasonable grounds for believing that the accused has been guilty of the offence of which he has been accused. Now, I submit, Sir, that it is not fair to say that this means that the Magistrate must prejudge the case. It merely means that on the evidence that is brought before him, he must see whether there is a *prima facie* ground for supposing that it is reasonable that this man is possibly guilty of this offence. That is quite a different matter from an actual judgment on the case.

Dr. H. S. Gour: It is a belief.

Mr. P. B. Haigh: I did not catch the observation.

Dr. H. S. Gour: There are reasonable grounds for believing.

Mr. P. B. Haigh: Exactly, it is a mere belief. He has not to come to a decision on the point, he has merely got to believe that there are reasonable grounds,—that is to say that the grounds that are put forward when the accused is brought there are such that he may reasonably believe that the accused has committed the offence; it commits him to nothing, and I do not believe that in actual practice Magistrates have been hampered by the provisions of this section. Dr. Gour has asked the Government to meet the Honourable Members on the other side half-way, and I submit this is exactly what this clause as now amended by the Bill does: had the clause been omitted as is now proposed by the other side, they would not have gone half-way but the whole way: Government have accepted the recommendations made by the Select Committee that the old provisions are too restrictive, and they are prepared to remove them, except in the case of specified offences of a very grave nature, and I submit that you could not possibly have a fairer compromise than that, and that in going so far, the Government may be said to have gone exactly half-way. Sir, I oppose this amendment.

Sr Henry Moncrieff Smith: Sir, I do not agree with my Honourable friend, Mr. Haigh, that Government has gone half-way. Government has gone very nearly the whole way. I think I should make the position of Government clear to the House; and it is this—they view this matter with the very gravest concern. Those Members of the Joint Committee who attended its meetings—and Mr. Harchandrai was not one of those—will know how very seriously this matter was argued, and how the Government's point of view was put forward, and how the Honourable the Home Member of that time attempted to persuade the Joint Committee not to go as far as they did,—and how he tried to persuade them to introduce some sort of safeguard in this matter. I only want to make it quite clear to the House, Sir, that Government does view this particular question of bail in non-bailable cases with the gravest concern. I have a few remarks to add to what Mr. Haigh has said on the subject of pre-judging. Now, Sir, in the first place, the words 'having reasonable grounds for believing,' I would ask the House to remember, will only apply to a very limited class of cases; they will not apply to cases punishable with transportation or death, and, therefore, the Magistrate himself, Sir, will ordinarily not be able to try them and will not have to pre-judge the cases at all, any more than he has to pre-judge the case when he has to make up his mind whether he is going to commit the accused or not. He has to do exactly the same thing in this case, as Mr. Haigh has said,—he has to decide whether there is a *prima facie* case against the accused or not; and if the Magistrate thinks that there is a *prima facie* case against the accused, he commits the accused for trial. But he will not be pre-judging the case even to that extent if he says that this is not a case in which bail should be allowed. Now, Sir, we heard a good deal about the one criterion that should be applied in this case,—and that is, whether the accused is likely to abscond or not. We heard it suggested that there are non-bailable offences which are committed by persons hitherto most respectable, and those persons will not be likely to run away, and, therefore, there is no need whatever

[Sir Henry Moncrieff Smith.]

in these cases to impose any restriction on the discretion of the Courts. Sir, we have got to examine this matter from both sides. The House is proposing to enable a stupid Magistrate—and there are stupid Magistrates—a weak Magistrate—and there are weak Magistrates—to let out on bail at once a murderer caught red-handed, a *ducoit* who has been terrorising his district for five years, who has been caught with the greatest of difficulty; you take him before a weak Magistrate, and you get bail at once,—and the reign of terror proceeds again for another five years before he is caught. There is one very important point which has not been mentioned in this debate at all. The whole question has been argued from the point of view of the Courts. Now if the House will look at section 497, they will find that it deals not only with the question of bail before the Courts but it deals with the question of bail by police officers too, and, here, Sir, is the House seriously proposing to give a police officer full powers to release on bail a person accused of the most serious offence, without giving him any discretion or any guidance as to the way he should exercise those powers? Sir, is it not a very dangerous thing to do? Police officers, we have been told over and over again in the course of this debate, are not always honest, are corrupt; and when it is a question of a very rich man in custody—I understand it is the very rich man that the House is feeling so seriously about—of the very rich man whom the House wants to be released on bail because he can afford to pay and because he has been hitherto respectable, will that man not be able to make it worth the while of the police officer to let him go, and will you ever again catch that man? There is no question about it, that he will never be caught again. The criterion of the likelihood of the accused absconding is a very sound criterion, but if you take the clause as is proposed by the Bill, we are not trenching upon that criterion at all. You take the most serious offences, those punishable with transportation and those punishable with death. Can any Magistrate, any Court, say to itself that the accused person brought before him, who, it has reasonable grounds to believe, has rendered himself liable to the punishment of transportation for life or liable to the punishment of death, is not likely to take an opportunity of absconding? One Honourable Member has suggested that once you get bail,—that is all you want, I think it was Dr. Gour,—what more security do you want than bail that he will appear? Sir, will a murderer, a *ducoit*, be bound by any tender feelings for his friend who has stood surety for him? Will he, Sir, say to himself: ‘my friend stood by me, he has got me out on bail, I must not let him down, I will surrender to the Court, and I will be hanged’? Sir, I do not think a criminal in this country, or the innocent person on his trial in this country as Sir Henry Stanyon has said, is likely to be affected by any considerations of that sort.

Sir Montagu Webb (Bombay: European): I move that the question be now put.

The motion was adopted.

Mr. President: Amendment moved:

“In clause 132 (i), omit the words from ‘in sub-section (1)’ to the word ‘substituted’ and in their place substitute the following:

‘in sub-section (1) the words beginning with the words ‘but he shall not be’ to the end of the sub-section shall be omitted’.”

The question I have to put is that that amendment be made.

The Assembly then divided as follows:

AYES—34.

Abdul Rahman, Munshi.

Abdulla, Mr. S. M.

Abul Kasem, Maulvi.

Agnihotri, Mr. K. B. L.

Ahmed, Mr. K.

Ahsan Khan, Mr. M.

Asad Ali, Mr.

Ayyar, Mr. T. V. Seshagiri.

Bajpai, Mr. S. P.

Basu, Mr. J. N.

Chaudhuri, Mr. J.

Das, Babu B. S.

Dass, Pandit R. K.

Fuizay Khan, Mr. M.

Ginwala, Mr. P. P.

Gour, Dr. H. S.

Gulab Singh, Sardar.

Jampadas Dwarkadas, Mr.

Kamat, Mr. B. S.

Lakshmi Narayan Lal, Mr.

Latthe, Mr. A. B.

Misra, Mr. B. N.

Mukherjee, Mr. J. N.

Nag, Mr. G. C.

Nand Lal, Dr.

Neogy, Mr. K. C.

Rangachariar, Mr. T.

Reddi, Mr. M. K.

Shahani, Mr. S. C.

Singh, Babu B. P.

Srinivasa Rao, Mr. P. V.

Stanyon, Col. Sir Henry.

Venkatapatiraju, Mr. B.

Vishindas, Mr. H.

NOES—41.

Abdul Rahim Khan, Mr.

Akram Hussain, Prince A. M. M.

Allen, Mr. B. C.

Barua, Mr. D. C.

Bijlkhan, Sardar G.

Blackett, Sir Basil.

Bradley-Birt, Mr. F. B.

Burdon, Mr. E.

Cabell, Mr. W. H. L.

Chatterjee, Mr. A. C.

Clow, Mr. A. G.

Cotelingam, Mr. J. P.

Crookshank, Sir Sydney.

Dalal, Sardar B. A.

Davies, Mr. R. W.

Faridoonji, Mr. R.

Haigh, Mr. P. B.

Hailey, the Honourable Sir Malcolm.

Hindley, Mr. C. D. M.

Holme, Mr. H. E.

Hullah, Mr. J.

Ikramullah Khan, Raja Mohd.

Innes, the Honourable Mr. C. A.

Ley, Mr. A. H.

Moir, Mr. T. E.

Moncrieff Smith, Sir Henry.

Muhammad Hussain, Mr. T.

Muhammad Ismail, Mr. S.

Mukherjee, Mr. T. P.

Percival, Mr. P. E.

Pyari Lal, Mr.

Ramayya Pantulu, Mr. J.

Rhodes, Sir Campbell.

Samarth, Mr. N. M.

Sarfara: Hussain Khan, Mr.

Singh, Mr. S. N.

Subrahmanayam, Mr. C. S.

Tonkinson, Mr. H.

Townsend, Mr. C. A. H.

Tulshan, Mr. Sheopershad.

Webb, Sir Montagu.

The motion was negatived.

The Assembly then adjourned for Lunch till Ten Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Ten Minutes to Three of the Clock. Mr. President was in the Chair.

Rao Bahadur T. Rangachariar: Sir, we have discussed this question at considerable length, and I need only say a few words in commending my amendment No. 352, which as Honourable Members will see from page 46 is as follows:

"In clause 132 (i), after the words 'for life' insert the following:

'and that the accused if released on bail would abscond and attempt to escape justice by avoiding or delaying an inquiry or trial'."

Honourable Members if they read the section will see how it has been amended by the Joint Committee. We have to acknowledge that considerable improvement has been made in the existing provision relating to bails. We acknowledge it with thanks. But at the same time the existing defects in the law, as forcibly pointed out by my Honourable friend, Sir Henry Stanyon, still remain in the most serious of cases,

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namely, offences punishable with death or transportation for life. If Honourable Members will just glance through the Schedule attached to the Code of Criminal Procedure they will find all sorts of offences which are punished with transportation for life—I counted about 47 this morning and I do not know if there are not more, I have not made an exhaustive count—ranging from criminal breach of trust to offences against the State. Therefore, Sir, it is refreshing to hear from the Treasury Benches an expression of the sentiments of which we have been gravely accused by the Anglo-Indian Press, that the Indian politicians betray such a lack of trust in the police and the magistracy that they do not realise their sense of responsibility, that they hold them up to ridicule and that the full measure of reforms for which they are yearning cannot come because of this over-distrust of the magistracy and the police. I am glad to have our sentiments echoed from the Treasury Benches. Sir, this morning we heard there are stupid magistrates, there are weak magistrates. Which is the more important? Is the accused to suffer at the hands of stupid magistrates or the prosecution to suffer? Is the accused to suffer at the hands of weak magistrates or the prosecution to suffer? That is our complaint. There are weak magistrates, and they succumb to the influences to the subtle influences, to the unseen influences at work, in order to get convictions. To borrow the phrase of my Honourable friend, Mr. Haigh, this is an **unfortunate country**. Everything must be different in this **unfortunate country**. I do not know why. I interjected a remark "why in this country?" My Honourable friend said "We live in this country." He had no other reason to give. As Sir Henry Stanyon pointed out, people should be presumed to be innocent until they are actually convicted by the Judge, Magistrate or jury as the case may be. That is a wholesome principle known to every system of civilised jurisprudence. If the Government will furnish the figures which they have of persons lodged in jail or in custody pending trial and afterwards eventually acquitted either by the trying judge or by the court of appeal, Government will, I daresay, repent, will have serious cause to repent, at the rigour of the existing provisions regarding bail. Even in England more than 50 per cent. of persons who are detained in custody pending trial because they are not able to find bail are eventually acquitted after detention in jail for three or four months pending the sessions trial. If that is so in England, much more so in this country. I wish the Government would give us the figures of people who are kept in custody pending trial and are eventually acquitted. Can they give us the figures for last year? Take any province. The figures of people who are eventually acquitted after being accused of crimes and yet kept in jail pending the trial will reveal an appalling number of persons, innocent persons kept in custody. Sir, they are deprived of their earnings in the meanwhile. Do we compensate these persons who are kept in jail? Do we provide for the maintenance of the families of those persons who are kept in jail? Therefore it seems somewhat odd that people should stand up here to defend the present system by which the discretion of the magistrate is sought to be tied down. Sir, we lost that amendment about leaving it to the good sense of the magistrate to see which case he should let on bail and which case he should not. Sir Henry Moncrieff Smith mentioned, I think, the case of a person caught red-handed committing a murder with the bloody instrument in his hand and asked "Is he to be let out on bail?" I say "No. Your magistrate will not let him out on bail, if he is a magistrate whom you have properly appointed." But if you appoint weak magistrates, stupid magistrates, that

is no reason why the law should be stupid, because your magistrates are stupid. Therefore that is no answer at all to a case of this sort. The provision as it stands says in effect, "Do not release him on bail if you have reasonable grounds for believing that he is guilty of an offence punishable with death or transportation for life." It is true that in such cases the magistrate does not actually convict; Sir Henry Moncrieff Smith is quite right in saying that such cases will probably go to the sessions court; not necessarily however; first class magistrates may deal with such cases and convict them of offences—although they may be charged with other offences—within their jurisdiction. But leaving it there, even as a com-

3 P.M.
mitting Magistrate he has to come to a judicial conclusion as to whether a *prima facie* case is made out or not before he commits the accused to stand his trial in the Sessions Court. You are now forcing his hands by the section as it stands to come to a conclusion before he has seen the witnesses,—because Honourable Members will notice this comes just at the time either when he is brought in custody or when he appears in Court—you are forcing his hands, even before a single witness is put in the witness box, to come to a conclusion. He simply sees the police diary or the police version or the prosecution version of the case, and he is asked to come to a conclusion beforehand that he has reasonable grounds for believing the man to be guilty. Sir, that is asking him too much. It is asking him to do injustice to the accused beforehand. Therefore it is not a good condition to impose; any way it is there.

Now you want to give one direction to the Magistrate under the clause as it stands. I want to impose another direction, an additional direction, namely, that not only should he have grounds for believing that he is guilty of an offence punishable with death or transportation but he should also be satisfied that if let on bail the accused is likely to evade justice. I won't say that is the only consideration, but that should be the main consideration as the Honourable Mr. Tonkinson very fairly admitted. The primary ground for consideration at this stage should be whether this man is likely to evade justice.

My Honourable friend, Mr. Samarth, interposed with a remark 'what about suicides'? I provide for it. If the Magistrate is satisfied on account of the nature of the case, or on account of the temperament of the individual or on account of the gravity of the sentence which may be imposed upon him that a particular accused is likely to commit suicide, then he evades justice, and my amendment safeguards that doubt, and I hope my honourable friend Mr. Samarth will have no more doubt in his mind in supporting my amendment. Sir, that ought to be the test, the only test which civilized countries should impose. Let us not be guided away by the vague expressions about this unfortunate country. Unfortunately my Anglo-Indian friends present here think that this country is peculiar—I hope not all of them will think so. We have got a very good exception in my Honourable friend Sir Henry Stanyon, and I hope others will join his rank. Sir, as the Government feel strongly in this matter, we also feel strongly. Let us not be guided away or led away by those who say 'Oh, the Government feel very strongly in this matter'. People attach the greatest importance that their liberties should not be deprived before they are convicted. At the slightest provocation Magistrates have shut up persons in custody. Poor fellows are unable to defend themselves. All sorts of conditions are imposed. They have to interview their pleader in the presence of a jailor. What instructions can the accused give under such conditions? Therefore, Sir, it is not right. We should

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give a fair trial and all opportunities to the accused to defend himself. He has got money, probably he is the only member, the only adult male member of the family who can raise money, while you shut him up in gaol; and what is he to do? Are you giving him really a fair trial by shutting him up like that? Therefore I say here 'A Magistrate shall not release an accused if he is satisfied that he is likely to evade justice and that there are reasonable grounds for believing him to be guilty'. Therefore, I don't allow full discretion to the Magistrate. I say if you control it do so with proper safeguards. Do not make it compulsory on him to refuse bail simply because he thinks there are reasonable grounds for believing the accused to be guilty. But let there be an additional safeguard, namely, only if he is further satisfied that the accused is likely to evade justice then alone he should refuse. Sir, I move my amendment.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadian Rural): Sir, in the discussion of this matter, I am afraid certain considerations which are not strictly relevant have been introduced. First, I should like to deal with that expression "reasonable grounds for believing that he has been guilty of offence". Now you may make too much of it, but it has never been understood to mean that a Magistrate has come to the conclusion that the man is guilty. The significance of that expression must be considered when taken with the Court with which we are dealing with in this clause. It is the Court of the Magistrate, not the Court of the Judge who is going to try the offender. That distinction should at once appeal to those who are engaged in the administration of law. That is, the man who is inquiring into the case punishable with death or transportation for life is not the authority who is going to decide as to the guilt of the offender. He only collects the evidence, puts it together and then sends up the evidence and the accused to a higher Court for trial, if he feels that the case ought to be inquired into by a higher Court and not thrown out at once. So, when you take that clause with reference to the authority that is going to apply it, then I think all the argument that the Court is going to prejudge the case falls to the ground. How is it to prejudge? What materials has it to come to a conclusion? I think, with all deference, that difficulty must vanish. Because, after all, the Magistrates are human just as we are. They have got certain reports and depositions. They must in a sense come to some conclusion. If it is not an extreme case, like the one put by Sir Henry Moncrieff Smith of a man caught red-handed, but if there is plenty of evidence that the man has committed murder, no Magistrate, whatever the form of law may be, can shut his eyes or shut his mind and say that the man is innocent. Why, even Judges who try cases, when they start on a case, before going through the evidence, form some kind of first impressions. But their intellectual training, their culture makes them separate the two, separate their first impressions from the final conclusion which they are bound to come to after hearing the evidence, and we must assume in this discussion that the men have got some intellectual calibre, some training in sifting evidence and dealing with cases. If we look at it in that light, I think much of the argument that has been levelled at that clause and the psychological difficulties that that clause would introduce will disappear.

Now Sir, the clause which my friend, Mr. Rangachariar wants to introduce is a clause which will work considerable hardship on the accused themselves. Now, I will tell you. Pause for a moment and consider how a Magistrate is to decide whether the man will escape and avoid justice.

It depends on the temperament of the accused. A very sensitive man, a man who feels the disgrace of a possible conviction and has worked himself to a desperate state of mind, possibly may run away and may go and drown himself or poison himself. Therefore, what criterion do you provide for a Magistrate to find out whether the accused person is a man who will escape (and therefore he will not give him bail) or he is a man who will not escape (and therefore he will give him bail). Is it easy for any Magistrate to come to a conclusion on that clause? Probably this clause will work hardship and I will presently show how it will work hardship. Suppose there is not a very wealthy man but an ordinarily wealthy man. The Magistrate will say, "If I leave this man he would recompense or recuperate the men who have stood as sureties and will run away to some other territory and abscond. Therefore he must be kept in jail." The consideration which will weigh with Magistrates or Courts in letting a man on bail is that he is a respectable man, a man of property and he will not run away. But if you put this clause in the Statute, if, as has been said oftentimes, you crystallise what is a ground of discretion by a clause in the Statute, you run the danger of people who are now getting bail being refused bail, because the Magistrate might say, "He is a respectable man, honourably connected, having respectable relations and leading a respectable life." Probably the disgrace that will follow as a result of the trial might drive him to desperation. Therefore I will keep him in jail." He might say that. While you are getting hold of one extreme, you ought also to consider the other extreme to which this clause will lead. Therefore, this clause is a dangerous clause to tack on to the section, I think as far as Sessions Courts and the High Courts are concerned, barring individual idiosyncrasies, no Legislature can correct them. These Courts generally are inclined to let people on bail on reading the depositions and on seeing the facts before them. As to Magistrates, that is a different business. One thing which I have frequently noticed in the discussion of the various provisions of the Code is not the defect in the law, not the defect in the terms of the law or the enunciation of the law, but in the actual working of the law in the lower courts, and for that, all I can say is that the executive governments of the various provinces are responsible. There is a habit—I mention that in order to make the Assembly understand how it is that such a dead set is made against the Criminal Procedure Code—there is a habit in every Local Government to issue circulars behind the back of the High Courts, circulars which have nothing to do with the recorded decisions and reported decisions of courts. Every Local Government, the District Magistrate, issues circulars saying "You ought to be careful not to let people indiscriminately on bail." I mean some circulars are issued in the form of instructions to subordinate Magistrates who undoubtedly depend for their advancement on the head of the District, circumscribing the discretion vested in them by the law. It is that that is at the root of all the criticism which we have heard here. It is not against the authors of the present Code or the old Code which has been transmitted to us these sixty or seventy years by eminent jurists and lawyers. There is nothing wrong in the language of the Code. When we tried to tack on words to the Code, I sat down in great sorrow at the language which has stood the test of years and years being mangled here, and probably the consequences may be dire in the future interpretation of this section. But the cause of all the trouble which you have been hearing, Sir, is that the executive governments in the various provinces, ignoring the decisions or the interpretations of the High Courts of the actual provisions of the Code, have been issuing circulars tightening the provisions of the Code and

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 enjoining upon subordinate Magistrates not to exercise a free discretion in the administration of Justice. It is those circulars that have been at the bottom of all these criticisms. I say we here cannot prevent the issuing of the circulars there. It should be a matter for the provinces, for the Provincial Councils to take note of such circulars, bring them up before the local Legislative Councils and see that they are not issued. If you go and mangle the law and add clause after clause to sections which are the result of the labours of very eminent lawyers, jurists and administrators, I am very much afraid that the result will not be what we all heartily desire. The clause, as it stands, gives sufficient discretion for letting off an accused on bail, and if this amendment be introduced, it will cause great trouble. This question of escape is a dictum of the Judges and that dictum is followed in the Higher Courts, but in the Magistrates' Courts it is not followed. I do not see how you can expect a Magistrate to follow that dictum and ask him to follow these dicta and to exercise his discretion this way or that way frequently when the accused is under trial. Why should we assume that in every case the accused person before trial is an innocent man. It is all judicially speaking quite right, but why in the discussion of a provision in the Legislature do you start with the ground that the case is false, that an innocent man has been falsely charged? Is that not an extreme way of looking at the thing?

The case is under inquiry, and so long as it is under inquiry,—it may take a few weeks, and in some difficult cases it may be 2 or 3 months—there must be hardship. That hardship you cannot avoid by any number of clauses in the statute. You cannot prevent one man prosecuting another man, you cannot prevent a policeman making a false charge. You can only await the result of the trial and take such remedies as the law provides. But if you go and mangle these provisions here, I do not think you will thereby be helping a large class of men who are now treated fairly by the Courts. Take the extreme limit of transportation for life. I do not think for a moment that a man who is accused with an offence punishable with death is going to be asked to be let off on bail, but even in such cases after the evidence is concluded and recorded, the Courts have let the men off on bail pending trial. I know such cases from my own experience. Therefore, I do not think that the weakening of this clause will do any good. Therefore I oppose the amendment of my Honourable friend, Mr. Rangachariar.

Mr. H. E. Holme (United Provinces: Nominated official): Sir, with due respect it seems to me that the proposed amendment must be either useless or mischievous, for either the Magistrate will decide on general principles that there is a danger of the accused absconding and evading justice in which case the words will be unnecessary, or else he will consider it his duty not to refuse to release the accused on bail unless and until he has satisfied himself that it is positively proved that the accused is likely to abscond and to hold that if in any case that cannot be said, the accused must be released on bail. As regards the argument that it is necessary for an accused to be at liberty during the trial in order to instruct his Counsel properly and to conduct his case, that argument would apply even if there were a danger of his absconding and therefore it does not seem to be conclusive. As regards the fear expressed that the Magistrate will have to prejudice the case, I should like to point out that, as matters stand, every Court has to, if the word is an appropriate one, provisionally prejudice the case at every stage. The Magistrate has to bear in mind all

through the possibility of its being his duty to discharge the accused at any stage before the charge is framed. The framing of a charge is itself a kind of prejudging, because it implies that if the accused does not cross-examine the witnesses or put in a defence, he will be convicted. As regards the apprehension expressed that many offences punishable with transportation for life are not offences in respect of which bail should be refused, that would be an argument against their being designated non-bailable in the Penal Code; and as regards the instance put forward by an Honourable Member, in many such cases the "respectable" man will be the most likely to abscond, as has often been seen in the case of rich bankers charged with embezzlement. In conclusion, I would deprecate too much attention being paid to the argument that anything which is objectionable to the speaker is opposed to the laws of all civilized countries. We have not before us the laws of all civilized countries, and even if we had, it would be unsafe to conclude that they would be incapable of improvement. Sir, I oppose the amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I rise to support the amendment: After hearing my Honourable friend, the Mover of the amendment, I thought it would not be necessary to supplement his observations by anything that I might add to the discussion. But his speech has been followed by certain others, and owing to the new points which were intended to be made in the course of the debate, I feel I ought to say a word or two in reply to what has fallen from some of my Honourable friends. The first point that I take is that the amendment has been described as either mischievous or unnecessary. Now, Sir, if the matter of granting or withholding bail had been left entirely open for the exercise of free discretion by the Magistrate, we might say that the amendment could be taken as an attempt to restrict the exercise of such discretion. There might be some danger in that. But, as a matter of fact, we are now laying down certain lines along which we ask the Magistrate to exercise his discretion, and we are at present concerned with those lines and those lines alone. Now, it is perfectly clear that the amendment of section 497, Criminal Procedure Code, which the Treasury Benches have proposed is undoubtedly a great improvement upon the law as it originally stood and we are thankful for it. But even with that improvement, the question still remains whether the demands of justice have been fully satisfied thereby. Now, Sir, some objection has been raised on the ground that we should not have any feeling of tenderness for an accused person, and that any too wide a statement or proposition like the one stated above, is injurious to the interests of justice. But, we cannot help it after all. The British system is such that you must presume that a person who has been accused of an offence must be taken to be innocent until proof of his offence has been brought home to him. We cannot help it. We all have to act on that principle and the amendment proposed is only an attempt to give effect to that principle. The various amendments which have been proposed with regard to clause 132 of the Bill, are attempts to improve the amendment of the law brought forward by the Government Bill, still further. Now, Sir, what are the facts? What have we done by proposing the further amendments? We have in a manner indicated that in all cases punishable with transportation or death, the Magistrate shall not release the offender only if there appear reasonable grounds to believe that he has been guilty of an offence punishable with death or transportation for life. Now what we have got to consider is whether we should generalise the two classes of offences in that way and by so doing, include

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cases which ought to be left out of the category in question. My Honourable friend, Mr. Rangachariar, has already invited the attention of the House to the fact that offences in the Penal Code which are punishable with transportation for life are, some of them, triable by Magistrates and not by Sessions Courts, alone. I have examined some of the sections of the Penal Code. For instance, we might take section 409, criminal breach of trust as a public servant, etc.; section 394, hurt caused in committing or attempting to commit robbery, 326, grievous hurt caused with a dangerous weapon; offences relating to coins; and many others might be discovered which are triable by Magistrates also. If they are examined, generally speaking, it will be clear that the determination of the offence in a criminal case depends very often upon ascertainment of facts by a tedious process of examination of evidence. So that, if we brought all these cases contemplated by the Bill under careful examination, it will appear that the Magistrate in considering the question of bail will be often handicapped in the exercise of his discretion, if we lay down the law in the manner the Bill proposes to do. Now, Sir, it may be different where a murderer is caught red-handed. In such a case I think it will be the plain duty of the Magistrate not to give bail. But very often we find that murderers and people accused of other heinous offences are acquitted after trial. Therefore, if we hamper the exercise of the Magistrate's discretion in the way suggested by the Bill, we shall not be working justice in many cases, by shutting out bail; and the result will be such as has been pointed out by my Honourable friend, Mr. Rangachariar. Now, Sir, we take up the case of the police officer. It has been suggested by the Treasury Benches that we contemplate in section 497 of the Code, not only Courts but police officers as well. But what can a police officer do in these cases? He can only keep an accused person in custody for 24 hours. After that he has got to take him before a Magistrate, and an order has to be obtained by him for a remand. So that, that is the chief point to be considered with reference to police officers. He is practically unable to do mischief in such cases. In the second place we have got to consider that an undue exercise of favour in respect of an accused person for reasons best known to the police officer, in the matter of bail, will be regulated, if I may say so, by the fact that, if he (the police officer) has to send up an accused person, he will have to say that a good case has been made out against him. Well, in the same breath he cannot say "I find good reasons for letting him off on bail." Either he has got to say that no *prima facie* case has been made out against the accused person, or that such a case has not been made out. Therefore, I submit that the mischief which is apprehended in the case of police officers is not at all a likely event. I submit, Sir, the question of the police officer in this connection may be safely left out of consideration, under the circumstances.

As regards the question of a Magistrate believing, or making up its mind as to an alleged offence, before the conclusion of the trial, I may say, as has been already pointed out, that in the matter of framing a charge by a Magistrate preliminary to commitment, as also in a case triable exclusively by a Court of Session, the law requires that the Magistrate should exercise his discretion in the matter. We have been led into psychological considerations such as those which have emanated from my Honourable friend, Mr. Subrahmanayam. But is there not such a thing as unconscious cerebration? A Magistrate at first sight comes to believe certain things.

Although the impression he then forms may not remain in his mind in a definite form, yet it may, all the same, work imperceptibly in his mind. The principle of the English law is such that it endeavours to place a Magistrate in a situation where things like the above may not work upon his mind at all. Therefore, Sir, wherever it is possible we should always try not to assume that an accused person is guilty before he is proved to be so, on the principle that an accused person is not guilty until his guilt is established. I submit, Sir, here is a case for the accused, with regard to the question of bail. What we have got to consider is—and the deciding factor in the case should always be, whether we are hampering the defence by unnecessarily restraining his movements;—unnecessarily, I say, only in such cases where he is a person who is sure not to try and escape justice. Where he is expected to do so, we shall be justified in putting a restraint upon his liberty of action; in other cases it will help justice if his movements are not restricted during trial. In such matters, the case is always one of balancing advantages against disadvantages. No proposition I may, perhaps, say, can be stated which is not open to criticism; but in all cases of the kind we have in view, we have got to judge between the two opposite aspects of the question, and the determining factor in the present instance, as I have said, ought to be the principle which has been so clearly accepted by the Honourable Mr. Tonkinson, and the principle which was so clearly enunciated by my Honourable friend to my left, Colonel Stanyon. Sir, if all the pros and cons of the question be taken into consideration, it will be clear that the supposed criminality of an accused person should not be brought into the scale at all, in granting him bail, supposing that a preconceived criminality of an accused person can influence the mind of a Judge. We make law in order that Magistrates may follow it, and therefore if the law is such that it will restrict the free exercise of the discretion of a Magistrate we ought not to have it. We should try and facilitate its free exercise in such cases and not restrict it by saying "In such and such a case you might not grant bail," though justice might require otherwise. That is the view, Sir, this House ought to take in the matter.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): In forming a correct judgment upon this and the cognate amendments, I venture to submit it is necessary for Honourable Members to bear certain considerations in mind. In the first place, it must be borne in mind that the very classification of offences into bailable and non-bailable implies certain essential considerations. Offences which are comparatively insignificant or of less importance have by law been made bailable. In all those cases the accused is to be allowed his liberty after the institution of the prosecution until he is found guilty and has been convicted of the offence, the particular offence with which he may be charged. On the other hand as regards non-bailable offences it must be borne in mind that these are offences of a more serious character in so far as law and order and maintenance of peace in the country are concerned. That is the very reason, the basis of this class of offences being made non-bailable. That consideration, I respectfully submit, ought to be borne in mind. Again these non-bailable offences may in themselves be possessed of varying degrees of seriousness, some of less importance in so far as public tranquillity and law and order are concerned, and others of more seriousness and of greater importance. And of all these more serious offences it is obvious that the class of offences for which the Legislature has made capital punishment or life imprisonment as a punishment adequate or desirable.

[Dr. Mian Sir Muhammad Shafi.]

must in the very nature of things be regarded as the most serious. In the amendment which we ourselves have introduced into this section it will be noticed that we have made this last class of offences, the most serious of all offences, as the exception, in so far as grant of bail even in the case of non-bailable offences is concerned. I would ask Honourable Members to bear this fact in mind.

In the second place, let us turn to the actual effect of the amended section as it will stand, should this House accept the amendment which we have proposed and reject the amendments which certain non-official Members have put forward. What will be its effect? While in the existing state of law in respect of all non-bailable offences before a court the court is given discretion to release an accused person on bail, nevertheless it is laid down that in *all* non-bailable cases the court shall not let an accused person out on bail if certain circumstances specified in the present section exist. In the amendment which we propose in the case of certain classes of accused persons mentioned in the proviso we give the fullest possible discretion to the Magistrate, no matter how serious may be the offence with which such accused person may be charged, to release these accused persons on bail. It is only in the case of a limited number even of this class of persons that we ask the House to lay down that an accused person shall not be let out on bail. And, Sir, in this connection permit me to invite attention to this fact that cases before a Magistrate may either be cases with reference to which he himself has exclusive jurisdiction to try, that is to say, his functions are not limited to what is known as a preliminary inquiry before commitment and also cases in which his functions are so limited. In the case of those offences the trial of which ultimately will be held either in the Sessions Court or in the High Court, as the case may be, his functions are merely limited to what is known as the preliminary inquiry before commitment. Now there is nothing in the amended section as we propose to prevent the Magistrate from letting an accused person out on bail in all such cases until a certain stage. When a certain stage has arisen, that is to say, when on the evidence before him there is reason to believe that the accused person has committed the offence, it is only then that there is an express prohibition that he shall not release the accused person on bail. I see my Honourable friends, Dr. Gour and Rao Bahadur Rangachariar, shake their heads. Let me make the position clear. Now section 497 as amended will run as follows: "When any person is accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station"—let us eliminate that for the moment—"or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life."

Dr. H. S. Gour: When he is brought before the Court.

The Honourable Dr. Mian Sir Muhammad Shafi: Just one minute. As soon as he is brought before the Court, the Court has the fullest power to release him on bail, but he shall not be released if certain circumstances exist, that is to say, if the Court,—may be upon perusal of the police inquiry, may be after taking a certain amount of evidence actually produced before him in Court—has reason to believe that the accused has committed the offence, it is then and then alone that we lay down this prohibition that the accused shall not be so released. At what stage of the

inquiry or of the case the mind of the Court will, with relation to the commission of the offence, reach the position, *i.e.*, believe that the accused has committed the offence, will depend upon the circumstances of each case. That exact position, the mental position so far as the Court is concerned may, as I said just now, be reached at the very first instance, that is to say, after perusing the record of the police investigation or hearing the complainant or it may be reached after half the evidence for the prosecution has been heard or it may be reached right at the end of the inquiry, *i.e.*, when the whole of the evidence has been recorded. But as soon as that position has been reached, the prohibition embodied in this clause comes in. Until that position has been reached, there is nothing to prevent the Magistrate from letting an accused person out on bail even in most serious cases. If this were not the correct interpretation of the clause as we propose—after all, remember that all penal enactments must be construed as far as reasonably may be in favour of the accused person—that is a well known principle of law,—and if the interpretation which my Honourable friends, Dr. Gour and Rao Bahadur Rangachariar, seek to place upon this were to be the correct interpretation, I am afraid you would be driving a coach and four through that principle of interpretation to which I have just referred. If this were not the correct interpretation, then what is the meaning of these words “he may be released on bail”? Those words become absolutely meaningless. If the intention is that in all cases where the police thinks that an accused person has committed an offence and have sent a man up for trial, the Magistrate also is bound *ipso facto* to believe that the accused has committed the offence, then what is the meaning of those words “he may release the accused person on bail”? As I said those words become absolutely meaningless. No, Sir. I venture to submit the intention is this, that the Magistrate has discretion in all non-bailable cases to let an accused person out on bail, even though the offences are non-bailable, but, as soon as, from the facts of the case, from the evidence placed before him or from the circumstances with which he has already become acquainted from the record of the case, he has reason to believe that the accused has committed an offence, it is then and then only that his hands are tied; he no longer possesses any discretion. He must then refuse to release the accused person on bail. And in this connection, let me invite attention to the careful manner in which this clause is drafted. What is the language? It is this: “If there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life.” Compare the phraseology adopted in this with the phraseology adopted in, say, section 254 of the Criminal Procedure Code, which relates to the framing of charges in warrant cases against the accused. Now, what is the phraseology adopted in this section 254? Section 254 says:

“If, when such evidence and examination have been made or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence, then he shall frame a charge.”

Now, if you compare the phraseology adopted in 497, “there appear reasonable grounds for believing that he has been guilty of the offence” with this, it is obvious, at any rate to my mind that the stage contemplated is the stage of a *prima facie* case having been established against the accused.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Much stronger.

The Honourable Dr. Mian Sir Muhammad Shaif: This one is much stronger.

Dr. H. S. Gour: No. 497 is much stronger.

The Honourable Dr. Mian Sir Muhammad Shafi: At any rate, there is not much distinction to be drawn between these two. Then, I say, Sir, as this prohibition is limited to the most serious class of non-bailable offences and as the offences are in their very nature non-bailable, when once the Magistrate has, upon the record before him, upon the facts before him, upon the evidence or upon the other circumstances established in the case, reason to believe that the offence has been committed, then we as legislators ought to see that the power to release the accused on bail should no longer be exercised after that stage has been reached. To hold otherwise, I submit, would be contrary to all principles of criminal administration.

Now, it was said by my Honourable and learned friend, Sir Henry for whose opinion I entertain the highest respect, that this amounts really to prejudging the case. I submit, it does not. I submit there is no question of prejudging the case. From his own judicial experience, he must have over and over again felt that in the trial of criminal cases a certain stage has been reached, upon the evidence produced before him, when there is reason to think or to believe that the accused person has committed an offence. That does not mean that the case has been prejudged. It only means that a certain amount of evidence has been tendered by the prosecution, or a certain set of facts and circumstances have been established by the prosecution, which have changed the position at the beginning of the trial, viz., the presumption with which the Judge begins in the course of a criminal trial that the accused must be presumed to be innocent and must continue to be presumed to be innocent until his guilt is established, to a somewhat different position, that position being that although the Judge is not yet completely convinced in his mind that the accused is guilty, yet from the facts placed before him, and from the evidence produced by the prosecution, the Judge has reason to believe that the accused has committed the offence. At that stage, I submit his discretionary power of granting bail in these most serious class of non-bailable offences ought to be taken away from him, because the offences are non-bailable and because these offences are the most serious class of non-bailable offences, and the Court trying the accused is neither the Sessions Judge nor the High Court but a Magistrate. I submit that in such cases this discretion ought to be taken away from him, and that is exactly what the clause as we propose contemplates.

Sir, it was said that the sole object of arrest is to prevent a person from running away or from protracting or delaying the trial. As a general rule that is a perfectly legitimate criterion. I admit that that is the main purpose of arrest. But cases might be conceived where other considerations also come in. Let me give but one case, which is not only possible but which we, some of us who have practised at the Bar long enough, can well conceive. A man falls out with two brothers. Bitter enmity subsists between that one man on the one side and the two brothers on the other. He has a fight with these two brothers intending to kill them, but succeeds only in killing one and injuring the other. He is arrested by the police. There is ample evidence against him to prove that he murdered one of the two brothers, and he knows himself that he cannot escape. He knows that he is sure to be convicted and hanged. Well, now, in a case like that, is it not conceivable that he would like to be released on bail in order to go and kill the other brother also before he is hanged? (Laughter.) With all deference, I am afraid that my Honourable friends from the South do

not know what stuff people of the north are made of. It is perfectly conceivable that that man may be anxious to be released on bail in order to achieve the very object with which he assaulted the two brothers, which object he failed to achieve in the first instance, and succeeded only in killing the one and simply injuring the other brother; and knowing that he will be hanged, before he is actually hanged, he may take advantage of his release on bail to go and kill the other brother. Sir, with all deference it is hardly right to say that the sole consideration is his presence at the next date of hearing. There may be other considerations also which come in in cases of this kind.

It seems to me that taking all the circumstances into consideration, seeing that admittedly the clause as we propose it is a decided advance, a decided improvement in the existing law, seeing also that the clause as we propose it gives the fullest discretion to the Magistrate in even the most serious class of cases in certain instances to release on bail and prohibit release on bail only when circumstances or facts have been established which have led the Magistrate to believe or have reason to believe that the accused has committed the offence—only in this very narrow circle is he prohibited from releasing the accused on bail in this most serious of all crimes—I submit that the Legislature ought not to go beyond that, that the Legislature should limit in such cases the discretion of the Magistrate in so far as release on bail in non-bailable cases is concerned.

Dr. Nand Lal (West Punjab Non-Muhammadan). Sir, the Honourable Mr. Subrahmanyan while advocating the cause of the opposition, told us and we feel surprised for that piece of advice, that the Magistrate has got only to collect the evidence and to send the case up for trial. I differ from him. My knowledge of the criminal law tells me that that is not the case at all. Magistrates and Courts are not to be taken as post offices. Magistrates and Criminal Courts have got to see whether there is any evidence or not even in murder cases. When there is a preliminary inquiry if there is no evidence which can show a *prima facie* case, then the accused is entitled to a discharge. Therefore, this ground which has been set forth by the Honourable Mr. Subrahmanyan has got no force.

The second ground which he set forth was that the Magistrates are cultured people and highly trained and therefore they will not allow themselves to do injustice and they will not allow themselves to refuse bail. Then in the same breath he asks, how can a Magistrate, how can a Criminal Court, know that the accused will abscond or will not abscond? This argument is inconsistent. In the first place the Magistrate is said to be cultured and very well trained, and then it is said it is impossible for the Magistrate to find out whether the accused will abscond or not. I place his argument before this Honourable House, and I think the House will agree with me that his argument, in itself, is inconsistent. When a Magistrate is a trained and cultured man and the prosecution raises this contention that the accused will probably abscond or avoid the proceedings in the inquiry, the Magistrate will give consideration to it,—an application for

bail on behalf of the accused, on the one side, and the reply on behalf of the prosecution, on the other side; the Magistrate then, after having weighed both the contentions, will come to some conclusion. Where is the impossibility as to how the Magistrate will be able to find whether the accused will abscond or not? The other contention which has been raised by my learned friend, the Honourable Mr. Subrahmanyan, is, what is the profit, what is the gain? Well, the gain is this,—that the

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accused] will be able to defend himself properly. This is the gain, and that ought to be the object of the administration of justice; this will be the profit that the justice will be done to the accused, and he will not be deprived of that right which is allowed to him. That is the gain. Then the Honourable Mr. Subrahmanayam says that the Magistrate will not allow bail if he comes to this conclusion that the accused will abscond away. Only a few minutes back he said it is extremely difficult for the Magistrate to find out whether the accused will run away or not; and after four minutes he raised this point, that if the accused is allowed bail, then the probability is that he will abscond away. I think there is no consistency in these arguments at all. Why will he run away or abscond away? If he is a man of this type, no surety will come forward; his associates, his friends, his relations would not like to stand as sureties simply because he may leave the precincts of the Court or the District in which he is going to be tried. Then my Honourable friend says, it is better that discretion should be given to the Magistrate and the Magistrate's discretion should not be hampered. If he will read the terms of the amendment, they are, if I rightly follow them, "that the accused, if released on bail, would abscond and attempt to escape justice by avoiding or delaying an inquiry or trial." This is the second condition which has been laid down. What are those two conditions which will guide the Magistrate in allowing or disallowing the bail? They are these; (1) that the character of the offence will be so and so, that is an offence punishable with transportation for life or with death (2) The second condition which has been recommended by this amendment is as already described above if there were grounds to believe that the accused if released on bail, will have the opportunity of tampering with the evidence, which is against him or he is going to delay the inquiry; then in those cases the Magistrate will not allow bail. A very reasonable amendment: it covers all the conditions, and therefore I do not find any force in the opposition. The Honourable Mian Sir Muhammad Shafi told us that in serious cases the bail will be allowed under certain conditions, and the provision which has been recommended by the Select Committee is very much improved. I endorse this view that certainly there has been some improvement in the provisions which have been sent up to us for consideration by the Select Committee, and the Select Committee should be thankful, but there is a room for improvement still and on account of that we are discussing the whole thing. He says that only in case of certain offences;—very limited offences which are punishable with transportation for life or death, we have laid down these strict conditions. Of course it is true but our fear is this that even in regard to these cases, if some accused, in some cases, are not allowed bail, there will be room for injustice. The Magistrate should not disallow bail simply because the offence falls within the purview of certain sections which provide a capital punishment or one of transportation for life. That should not be the criterion that, because the punishment provided for the offence is transportation for life or death, therefore, bail should be disallowed. That should not be the measure for accepting or rejecting applications for bail, but something else. What is that something else? It is this as to whether there is a probability that the accused will abscond, whether his real intention is to escape justice or whether his desire is to prolong the inquiry. The mere fact that a complaint is under section 302 or a complaint under a section which provides punishment of transportation for life or death, should not induce the Magistrate or criminal Court to refuse to give bail.

Then the Honourable Mian Sir Muhammad Shafi says that the provision which has been recommended is very lenient. I am sorry I cannot share that view. Words which are of some importance and in favour of this amendment have been lost sight of. They are "if there appear reasonable grounds for believing," not presuming but believing. There could be no belief unless there is some sort of cogent evidence to induce him to believe. Presumption may be based on an inference, but, when you put down the word "believe", then there should be something which may go to show really the accused is guilty. Then, further on, the provision says "that he has been guilty of the offence." So the Magistrate will be prejudging the whole case. But when we go to the provisions of section 254 which has been alluded to by my learned friend—I shall read only the relevant portion—you will find the words "that there is ground for presuming that the accused has committed an offence". Mind that there is a ground for presuming only. Therefore, according to my way of construing the provisions of section 254, I am persuaded to come to this conclusion that the provision under section 497 is stricter, is harder, than that under section 254.

Then my Honourable friend says that there would be great temptation in the way of the accused, who will abscond, to destroy the evidence or to retaliate on other persons, and this argument has been illustrated. The illustration which was given was "that there is a person A who has got animosity with two brothers, and one of them has been murdered by him. Supposing this murderer is allowed bail, when he (murderer) secures his freedom, so far as bail is concerned, he will murder the other brother also. The second brother, who has escaped murder, would be brought before the Magistrate and would say before him 'I say this murder was committed by the accused'. Therefore, the accused will be tempted to do away with the life of the second brother also, in order to destroy the evidence." And therefore bail should not be allowed. My answer to this illustration is that if there is a case like that, then the Magistrate will not allow bail. The Treasury Benches have said, in so many words, that their Magistrates are very competent and one of the advocates of that view has given a very good certificate to them—they are cultured and trained people, he said. They won't allow bail in such cases. (*An Honourable Member*: "He shall".) There is no word "shall". The word "may" is given. There is no compulsion in such cases; and this is the recommendation which has substantially been made by the amendment. "If the object of the accused who is seeking bail is to avoid justice or prolong the inquiry, then bail will not be allowed." Sir, it is not the attempt nor the desire of this Assembly that the man who has committed an offence and who is guilty may go scot-free. But the serious desire of this Assembly is that he should be given fair trial, that he may not be hampered, that he may not have an excuse for saying "I was not allowed bail; I had no relation, no friend, no associate and therefore I am going to jail though an innocent man, and I have wrongly been declared to be guilty." That is the very sincere desire of this Assembly and this desire is couched in this amendment. Therefore with these few words I support the amendment.

The Honourable Sir Malcolm Hailey: If I rise to add to what has already been said so admirably by my friends to-day on this question, particularly by Mr. Subrahmanayam, it is because I feel it incumbent on me to do so for one reason only. We have been told that Government feels deeply on this question. Now in arguing matters which are prin-

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cially of legal procedure, matters such as are involved in the Criminal Procedure Code, I am sure none of us really wish to suggest considerations not strictly relevant to the issue, nor to sway a decision by allusions to the general attitude of Government or its critics. We do not on our side say that those who have criticised the proposals of the Lowndes Committee or the Joint Committee have motives that are not in every way proper and public-spirited; I hope that the Assembly will give us credit also on our side, if we do feel deeply on a question like this, for basing that feeling on grounds which at all events have some solid reason and some propriety behind them.

References tending I think rather to obscure the real issue, have been made to the very large number of people who are unfortunately placed in the lock-up pending trial, not having been admitted to bail, and we have been asked to quote the numbers of such persons who afterwards are acquitted. It must not be forgotten however that any figures we could quote on the subject would refer entirely to a previous state of affairs—that is to say, the state of affairs obtaining under the present law—a law which we have proposed to ameliorate to the best of our ability, and the rigours of which we have attempted to remove. On a balanced survey of the situation in regard to bail I am certain that the Members of the House will readily acquit Government of any desire to press too hardly on the accused, or of any desire to so dispose its judicial arrangements that innocent men should be put to hardship in proving their innocence. If, as is said, Government feels deeply on this question, the feeling is one only, namely, the desire that the real criminals should not escape; and if we have any one motive in the matter, it is to make life possible and safe for the ordinary man—the man whose property is subject to theft, the man whose life is in danger from dacoity, the man whose possessions or whose safety is likely to be invaded by the more violent members of society. And we have a special responsibility in regard to legislation of this nature, because after all the actual administration of justice and law and order lies with the Local Governments; we do feel that we ought not ourselves to assent willingly to any modification of the criminal procedure which would seriously embarrass the authorities responsible for the maintenance of justice. With every desire to be liberal, that consideration must remain paramount in our minds. Now, it is perfectly true that the primary consideration which must govern Courts in giving bail is whether the accused will or will not appear to take his trial. There are however some other considerations which I do not think we ought to lose sight of. It is true, as Sir Muhammad Shafi pointed out, that we cannot pin ourselves down entirely to that one point. Every one with an acquaintance of district life and especially with life in those districts where violent crime is prevalent, knows that there are circumstances in which it is dangerous to allow at liberty, pending trial, a man of exceptionally violent character or influence for evil. One knows that such a man can, by mere terrorism, absolutely suppress evidence, perfectly trustworthy and reliable evidence that would otherwise have been given against him. I quote only one example, not a definite example of the harm done by releasing such man on bail, but an example illustrating what that harm might be. The House will remember a celebrated case in which a number of accused who were not let out on bail were held under trial in the Alipore Jail. Inside that jail itself they murdered an approver. Now, if men will do that when they are not released on bail, it may be left to

the imagination what they may sometimes do if they are released on bail. I feel that in the matter of bail we do after all occupy a strong and reasonable position. We have greatly liberalised the existing law; the stages are so well known to the House that I need not weary it by repeating them; but in the first place of course a man who desires bail can always apply to the Sessions Judge or the High Court, on whom no restrictions are placed in respect of its grant. It is surely reasonable that in dealing with other Courts and with the police we should apply some restrictions? Mr. Rangachariar has made great play with what Sir Henry Moncrieff Smith said this morning on the subject of weak or stupid Magistrates. I only want to say that Sir Henry Moncrieff Smith this morning was arguing on a slightly different case, a case with which at present we have no particular concern—I mean, the proposal that in all cases bail could be given without any restriction whatsoever. His remarks consequently hardly apply to the present case, for we now are dealing only with the right to give bail save in the case of persons believed to be guilty of grave misdemeanours. I believe the majority of the House will feel it reasonable, that we should lay down some restrictions in the grant of bail by Magistrates, seeing how serious the results may be to the society at large of allowing dangerous criminals to escape under cover of their bail. The safeguards proposed seem to be the minimum. We have been told that men should be held as absolutely innocent before they are convicted and that it is improper to place upon the Magistrate the obligation of deciding whether there is reasonable ground for believing that the accused person is guilty, before bail is granted to him. But does he really have to decide that? Let us be perfectly frank and honest about it. He only decides that there is a *prima facie* case. Does any one believe that any one ever has been prejudiced in the course of his trial by the fact that he has been refused bail? (Voices: "Very often.") Let us be clear however as to the exact grounds. Does any here believe that any man has been prejudiced when he came before a Sessions Court or before a Magistrate for trial on one of the graver offences, by the fact that the Magistrate has in refusing bail, prejudiced the case in the sense and to the extent alleged? Do you believe that? If you really believe that, you are in danger of falling into an extraordinarily illogical position—if you follow Mr. Rangachariar; that is to say, you are actually preparing to lay down that the Magistrate shall prejudge the accused not once but twice: he shall not only say, first, that there is a *prima facie* case against this man, but, second, that he definitely believes that he is going to abscond and that he seeks to delay or evade justice. If there is substance in this objection, the accused is doubly damned in advance.

Then as to the second restriction; discretion to grant bail is full save in cases in which the penalty is death or transportation for life. Much play has been made of the fact that transportation for life applies to a somewhat large number of offences. Well, we are at present engaged in considering legislation regarding the abolition of transportation, and there is no reason whatever why, when we bring that legislation into force, we should not, in so doing, take the opportunity of making the restriction in this section, which now applies to transportation, apply only to the graver offences punishable with long terms of imprisonment. We are not particular in insisting on details if the principle is maintained. But leaving that aspect of the case alone, you are not justified in arguing only on the somewhat milder cases of the defaulting clerk or possibly even the defaulting banker (though in England we know how readily he defaults)—you are not justified in arguing only on these cases, because,

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after all, you must provide also for your major and really serious cases in which transportation for life is the penalty, and for which when we abolish transportation, a long term of imprisonment must be the penalty. These, I say, you must keep. Now, Sir, those are the very simple requirements that we have laid down, and which up to date the House has accepted; what does Mr. Rangachariar ask us to add? Mark that in all cases of this kind, the law should seek to apply as far as possible a clear and certain test, a test which will allow the man who makes an application to a Magistrate to know the grounds on which he ought to put that application forward and on which he can fairly hope to succeed. The test should be clear enough to provide the Magistrate with some standard or criterion for decision. Well, we ourselves have got these in the provision as drafted by the Select Committee. But Mr. Rangachariar would add a test which is no test at all, and a criterion which is impossible to work. The applicant will have to prove a negative,—that he is not likely to abscond; the Magistrate will have to satisfy himself as to his intentions. How, I don't know; and no one can tell us how to secure the gift of prophecy to Magistrates, but that is the first of Mr. Rangachariar's requirements. It is a problem in psychology—to inquire into the future intentions of a man with whom presumably the Magistrate has no previous personal acquaintance, or it is to be hoped he has none. That is a task which may well baffle the Magistrate—a task, I think, even more difficult than the one which Mr. Azmihotri set us the other day when he asked us to decide the exact second at which police influence died out in a man's mind. Think of the alternatives: "This is a rich man and he has much to lose; so he will not cut his bail. Yet the disgrace of conviction is all the greater for a rich man; he can therefore afford to cut his bail and indemnify his surety. So probably he will abscond." Or should he say I don't know the answer to that puzzle. Or again: "This is a poor man; he has no position to lose and so conviction will not mean so much. So perhaps he will not abscond. Yet he has no property to forfeit, so perhaps he will." On the whole it looks to me as if the case is rather weighted against the poor man; we have heard so much about the respectable man who will not abscond, that it looks as if Mr. Rangachariar's intention is to favour the rich man; if so, I can only say that we ought not to make an alteration in our law which should weight the case against the poor man. But, as I say, his new provision provides no criterion and no test at all, for it involves a Magistrate in a speculation into the man's future intentions, a speculation of the most difficult nature, for neither the antecedents nor the outward circumstances of the accused can help the Court to probe into the attitude of his mind in regard to future action. The invariable result, let me point out to the Assembly, will be that, if an application of this kind is refused, then there will be a further application to the revisionary Court, and the speculation as to the future intentions of the accused will be canvassed again and in an equally obscure atmosphere of guess work and uncertainty. But Mr. Rangachariar does not end there. We thought, when we first discussed this question, that all that we were required to do was to make sure that the man turns up to stand his trial. He adds, at the end of his proviso, certain mysterious words which I frankly confess have baffled me so far. He adds: "and attempt to escape justice by avoiding or delaying an inquiry or trial." Now, it will be remarked that he thereby lays on the Magistrate the necessity of investigating a double condition, both as to the intention of absconding and his ultimate reasons for doing so.

Rao Bahadur T. Rangachariar: That is the language of the Calcutta High Court, if I may say so.

The Honourable Sir Malcolm Hailey: That may be so, but that is a very different thing from putting the prescription into law. The High Courts, after all, are not the sole repositories of wisdom, when it comes to legislation, great as is their position when it comes to interpreting law. I ask anybody here, looking at that section, to place himself in the position of a Magistrate who has to decide the two things, first, whether the accused if given bail is likely to abscond, and secondly, whether his motive in absconding is only to avoid justice by avoiding or delaying an inquiry or trial (for he might have many other and even more undesirable motives); he will indeed feel that he has set the Magistrate a baffling task. But let me conclude. We have liberalised our law already. Now, legislation of this kind must always be progressive. We have taken one great leap, which I think will be viewed by some people with misgiving. Is it reasonable to ask us, and to ask the Local Government who are responsible for the administration of justice and law and order, to go even further at one operation? Again, is it proper to place on the Magistrates the extraordinarily difficult task of deciding on the intentions of the accused, with all the knowledge that if he decides the conundrum in the wrong way he may make it possible for real criminals to escape from justice by the simple process of evading their bail? I say it is not reasonable to ask us to go these lengths after we have gone so far already in the liberalisation of the law.

Rai Bahadur S. N. Singh: I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: Amendment moved:

"In clause 132 (1) after the words 'for life' insert the following: 'and that the accused if released on bail would abscond and attempt to escape justice by avoiding or delaying an inquiry or trial.'"

The question I have to put is that that amendment be made.

The motion was negatived.

Dr. H. S. Gour: Sir, the amendment I have to move is as follows:

"In sub-clause (1) of clause 132 after the words and figures 'sub-section (1)' insert the words 'without special cause' after the words 'so released'."

The object of my amendment is to provide for the release of a person accused of an offence punishable with death or transportation for life for a special cause. Honourable Members will see that the Select Committee themselves recognise this principle in the proviso which they have added to the section, for they have provided that in all cases punishable with death or transportation for life, any person under the age of 16 or any woman or any sick or infirm person may be released on bail. The only difference between me and the Government is this. They have specified four cases of special cause when a person may be released on bail. I want them to make this clause more elastic to provide for contingencies which may occur in practice. I will give the Honourable Members a simple illustration of the limitations which are apparent on this proviso. It has been provided that the Court may direct that any person under the age of 16 may be so released. If the inquiry shows that the accused is just 16 or one day more than 16, the Magistrate will have to say, "That one day makes all the difference in your case, between your enlargement on bail and incarceration in prison. Surely, Government never intended that the proviso should work an injustice as it would in the case I have quoted. Take

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another illustration. It has been recognised, and rightly recognised, by the Select Committee that a person who is sick or infirm is entitled to apply for his release on bail even in non-bailable cases punishable with death or transportation for life. But now suppose, though the person himself is neither sick nor infirm, his wife or his only child is dangerously ill, let us assume, from bubonic plague, and his withdrawal from his wife or child means a probable, if not certain, death of his relation. Is not that a special cause which would justify the Court in releasing the accused on bail? Then other cases might be conceived where in the circumstances of the case and for special cause the Magistrate should exercise his power of releasing the accused on bail. You have yourselves recognised the principle that in non-bailable cases of the character described here the accused may be released on bail for special cause. The only difference is that your enumeration of "special cause" is incomplete and I want to complete it by adding a general clause, namely, "special cause" in the main section, to enlarge its scope. I do not think, if the Government are in a reasonable attitude—(A Voice: "No") some Members here say they are not—I believe they are in a reasonable attitude.—I have not the slightest doubt that they will see that my amendment really supplements the proviso and is a salutary improvement which would meet unforeseen and probable contingencies, and that if my amendment is not passed it will make the proviso inelastic and rigid and shut out from its beneficent provisions some cases, which I have said, are easily conceivable and which I assert are deserving of equal commiseration with those enumerated in the proviso. Sir, I move my amendment.

Sir Henry Moncrieff Smith: Reasonably or unreasonably, I am afraid I must oppose my Honourable friend's amendment, chiefly on the ground of what I may call its hopeless vagueness. The words are "without special cause". The Courts will ask themselves, "What had the Legislature in its mind when it used these words?" The Court will say, "It is perfectly true that the Legislature has put in a proviso regarding a minor or a woman or a sick or infirm person. Now this 'special cause' that the Legislature has introduced into section 497(1) must be something quite different, something on different lines from that. What the cause is going to be, the Magistrate I think will find some difficulty to decide. Dr. Gour has suggested that there are innumerable special cases not covered by the proviso, but, Sir, he has only mentioned one, and that is the case of the accused husband with a wife who is dangerously sick. Sir, I do not see that we can provide for that case. The accused person, the person we are dealing with, is one who is accused of an offence punishable with transportation for life or death, and the Court, Sir, has reason to believe that the person is guilty of that serious offence. Sir, if that person had a sick wife, I think he should have borne that in mind beforehand; the law cannot take any account of those considerations. If the man could commit such a serious crime, or do an act which led the Court to believe that he had committed such a serious crime, then, with his wife ill, Sir, is there any reason why the Court should release him on bail? The chief objection, however, to my friend's amendment is that it is hopelessly vague; it gives the Court no indication whatever of the special causes which are to enable it to allow an accused person out on bail. If there are special causes, Sir, if the Magistrate has gone wrong and refused bail in a case in which he should have given bail, my Honourable friend will remember that there is the Sessions Court next door and the High Court possibly not very far away, and it is always possible in every

case, whatever the crime may be, and whatever the circumstances may be, to go to those Courts, the Sessions Court and the High Court, and to ask for bail there.

Mr. President: The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, in clause 132, I am not moving all the amendments standing in my name in the Amendment No. 359 (a) and (b), but I beg your permission to move only clause (b), namely, omit sub-clause (iii). Sir, sub-clause (iii) reads: "the following sub-section shall be inserted after sub-section (2), namely: "An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing." Sir, it is much regretted—and as has been observed also by other speakers previous to me, I am constrained to observe that the attitude of the Government on the matter of bail has been unsatisfactory and undesirable.

The Honourable Sir Malcolm Hailey: I presume the Honourable Member means the attitude of the House.

Mr. K. B. L. Agnihotri: Oh, no. I mean the attitude of the Government in not accepting some reasonable amendments put forward by us—I need not attribute it to the House, because, to-day, I think, more than half belong to the Government Benches.

The Honourable Sir Malcolm Hailey: No, no.

Mr. K. B. L. Agnihotri: Sir, we heard some very lucid and weighty arguments advanced by the Honourable Sir Henry Stanyon and the Honourable Mr. Rangachariar in support of further liberalizing the provisions under section 497, but they have all been in vain. And under section 497 we now find that one clog after another has been put to fetter the discretion of the Magistrate. I do not know the reason for not including in this section any clause to the effect that the Magistrate should also give reasons for refusing or for not granting bail but, on the contrary, I find a provision made that he should assign, and write out his reasons, for granting bail. What will be the effect? The Magistrates, of whom, it has been said for the first time to-day, from the Government Benches that some are stupid, will take it as a limitation on their discretion and would be afraid of granting bail to an accused person even where he deserves it under section 497. Therefore, I propose that either there should also be a provision for requiring the Magistrate in cases of refusal to write out his reasons for refusing to grant bail or, if that provision is not to be made in this section 497, then it is much better that even this sub-clause (iii) be dropped.

Sir, I beg to move that sub-clause (iii) of clause 132 be omitted.

The motion was negatived.

Rao Bahadur T. Rangachariar: Before sub-clause (iv) is taken into consideration, I have got an amendment which has been drafted by the Legislative Department which will probably come in this place. It reads as follows:

"That in clause 132:

(a) in sub-clause (iii), for the word 'sub-section' the word 'sub-sections' be substituted and after the proposed new sub-section (3) the following sub-section be added, namely:

'(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence,

[Rao Bahadur T. Rangachariar.]

it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered."

(b) In sub-clause (iv) the proposed new sub-section (4) be re numbered (5) '."

The reason for this amendment is this. As Honourable Members are aware, at the conclusion of a trial in an original Court, often times judgment is not ready for delivery at once, but the Court has come to the conclusion, after taking the verdict of the assessors or the jury in a Sessions trial, or the Magistrate has made up his mind, that the accused is not guilty and, therefore, proposes to acquit him. As sections 366 and 367 stand, a doubt has been expressed whether really the accused could be set at liberty before judgment is actually pronounced. In fact, an unfortunate client of mine, was acquitted like this and judgment was delivered a week later. The complainant took the matter up to the High Court and a Full Bench had to sit to consider the question whether the whole trial was not vitiated by such a procedure. In order to avoid such things, this provision is necessary. Therefore, Sir, I move the amendment as it stands.

The motion was adopted.

Mr. K. B. L. Agnihotri: Sir, I move that:

"In clause 132 after sub-section (4) the sub-section that has just been added—the following sub-section shall be inserted, namely:

'The District Magistrate may release on bail any person accused of an offence in any case; and may revise an order of a Subordinate Magistrate refusing to grant bail in any case.'

Sir, at present as the law stands it is the High Court and the Sessions Judge that have been authorised to release persons on bail in any case or to revise the order of a Magistrate under section 498. But by this amendment I wish to provide that the District Magistrate may also be authorised to grant bail in any case and to revise the order of other Magistrates. I need not remind the House that there are districts where the Magistrates are distributed in the interior far away from the district headquarters and further away from the Sessions Court. For instance the tahsildars or the Honorary Magistrates in the mofussil. If the court of the Honorary Magistrate, or of the Tahsildars or of the Magistrates in the mofussil were to refuse bail to an accused person, then it works very hard for the accused or his friends who have to go up for bail a long distance to the Sessions Courts or a longer distance to the High Courts which are almost inaccessible to many such accused owing to the distance and owing to their poverty. In such cases it will not be undesirable but is an absolute necessity to authorise the District Magistrates to allow granting of bail. Such difficulties have arisen before and the Bombay High Court has held that the District Magistrate could not grant bail in a case where the subordinate Magistrate had declined to grant bail to an accused. So in order to avoid the trouble and inconvenience especially to the poor accused, it is necessary that this provision should be incorporated in this Bill. Therefore, Sir, I move this amendment.

Sir Henry Moncrieff Smith: Sir, I would merely point out to the House that under the law, in the first place the police officer, if it is a case in which the police have effected an arrest, can release on bail. Then, Sir, the Court itself before which the accused is produced can release the man on bail; and if up to this time the accused has not been successful he can go to the Sessions Court; and thereafter, Sir, he can go to the High Court. There are four separate stages at which the accused will be able

to get bail and I would suggest to the House that it is quite unnecessary that we should provide a further fifth opportunity for enabling the accused to obtain bail and be released.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move that:

"In clause 132 after sub-section (4) the following sub-section shall be inserted, namely:

"For an offence triable in a summary way any person accused of a non-bailable offence shall, during the pendency of trial, be released on bail by any Judge or Magistrate."

Sir, it will appear that I have omitted certain words in the amendment of which I gave notice and I wish to have your permission to move the amendment in the form in which I have just read. By this amendment I wish to provide that in petty cases or in summary trials the accused should be released on bail. If Honourable Members will refer to section 260 which provides for trials in a summary way they will find that there are many non-bailable offences that could be tried in a summary way where they are of a petty or of a trifling nature. Therefore, I wish to provide that in such cases which are triable in a summary way the accused should always be released on bail. It often happens, Sir, just as was pointed out by Sir Henry Stanyon, that a very well-to-do man or a man of exceptionally good character is accused of a non-bailable offence but of a very trifling character. In that case to keep the accused under lock-up will not be proper and will not meet the ends of justice. In such cases even if they end in conviction the accused would at the most be fined or released on probation under section 562, and so it is undesirable to keep him in the lock-up during the pendency of the trial. I know a case where a son of a big landlord happened to have in his possession a pair of shoes, old and worthless; he was channelled by the police and put up on trial under section 379 or 414, I am not sure which, and when an application was made before the Magistrate, he declined to release him on bail and the accused had to approach a higher authority who granted him bail. So in such cases it is hard to keep them in the lock-up like this. In another case a railway ticket inspector was put on trial for having been in wrongful possession of a pair of wooden pegs and he was not released on bail even though the value of the pegs was only four annas. Such cases are very hard for the accused and therefore, Sir, I suggest that it may not be left to the discretion of the Magistrate in such cases to grant bail, but that in such petty cases the accused should as of right be entitled to be released on bail. With these words I beg to move my amendment.

Mr. H. Tonkinson: Sir, the amendment which has been moved will take away in these cases the discretion from the Courts; that

5 P.M. is to say, in all these cases it will be compulsory upon the Courts to release a person on bail. I would merely invite the attention of the House to the fact that section 457, for example, is included in section 260. Such an offence would of course not in actual practice be tried in a summary way, but an offence under that section is in the words of the amendment "triable in a summary way," so that your burglar, the man who has committed house-breaking by night with intention to commit theft, must necessarily by this amendment be released on bail.

The motion was negatived.

Rao Bahadur T. Rangachariar: Sir, mine is not an amendment to give a fifth or further opportunity to the accused person to be enlarged on bail. My amendment is that the one opportunity he had may not be taken away from him. Here the clause provides that "a High Court or Court of Session, and in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody." This gives the power to these authorities to cancel a bail already given, and that, Sir, without any limitation, without any reason, the Court can do so. Now I provide that it can only do so if it is satisfied that the accused is attempting to abscond or escape justice. There must be some reason on which a bail once granted should be revoked. I heard of a case where a Magistrate ordered the release on bail and then directly a police Inspector turned up and when the accused had gone about 20 or 30 yards, the police Inspector came up and said to the Magistrate "Why did you release him on bail? He made a noise about it, and then the Magistrate at once cancelled the bail. It ought not to be left to the free will and pleasure of these authorities to cancel the bail once granted. It should only be revoked on proper cause. I have suggested a proper cause, and I submit, Sir, that can be the only proper cause for which a bail should be cancelled. I therefore, Sir, move the amendment, and I hope and trust the Government will not see its way to oppose it. I see a very ominous shake from my Honourable friend Sir Henry Moncrieff Smith that my amendment is doomed. However, I am satisfied with having tried my best in this direction. I move my amendment which runs as under:

"In clause 132 (iv) in proposed sub-section (4) after the word 'may' and before the word 'commit' insert the words 'on being satisfied that the accused is attempting to abscond or escape justice'."

Sir Henry Moncrieff Smith: Sir, I would ask the Honourable Mover of this amendment what is going to happen when the High Court or the Court of Session has caused a person to be arrested and then it is not satisfied that the accused is attempting to abscond or evade justice? As a matter of fact, Sir, Mr. Rangachariar probably put his words into the wrong place of the section.

Rao Bahadur T. Rangachariar: Put them in the right place then.

Sir Henry Moncrieff Smith: As it stands, it will mean this, that the High Court has a person brought before it in custody, and then it has to be satisfied that the person is trying to abscond even before he is committed to custody.

I would suggest to Mr. Rangachariar that once a man is in custody before the High Court, it is rather difficult for the High Court to say to itself: This man is attempting to abscond. He has no chance of absconding. But, Sir, in any case how is the Court going to be satisfied that the man is attempting to abscond? I would suggest to the House that there is no question of attempting to abscond at all. If a man is going to abscond, he absconds. There is no question of attempting, there is no half-way house between them. The man is gone. And therefore, Sir, I think this amendment will not help the accused, it will not help the Court, and that we should throw it out.

The motion was negatived.

Mr. President: The question is that clause 132, as amended, stand part of the Bill.

Mr. K. B. L. Agnihotri: Sir, before you put that question, may I point out that we adjourned the consideration of some provisions under clause 11 to be dealt with in the Chapter on bail. So I think that will have to be considered before the question is put in this connection, and I move that the consideration of this section 132 be postponed.

Sir Henry Moncrieff Smith: Sir, I would suggest that we have already postponed the consideration of this matter for Mr. Agnihotri's benefit for some weeks and I assumed that Mr. Agnihotri would now be prepared to come forward with an amendment on the bail sections which would meet his point with regard to arrest without warrant. I have received no notice of an amendment, Sir, from Mr. Agnihotri.

Mr. K. B. L. Agnihotri: Unfortunately, it only struck me just now.

Clause 132, as amended, was added to the Bill.

Clauses 133, 134 and 135 were added to the Bill.

Mr. J. Ramayya Pantulu: Sir, I propose:

"In clause 136 in proposed section 514 A, omit the words 'under this Code'."

I believe, Sir, the words "under this Code" here are meant to qualify the words "becomes insolvent" and not the word "dies" also. But I have not been able to understand, Sir, what the authors of this section mean by a person becoming insolvent under this Code. I have not been able to discover any provisions in the Criminal Procedure Code regarding insolvency. Therefore, I propose, Sir, that the words "under this Code" be omitted.

Mr. H. Tonkinson: Sir, I admit that my Honourable friend, Mr. Pantulu, has discovered a printing mistake in the Bill. Sir, it is true that people do not become insolvent or die under the Code. I think, however, that we must retain the words "under this Code" and I would therefore propose the following amendment in lieu of that which has been moved by my Honourable friend:

"That in clause 136 in proposed new section 514-A, for the words 'becomes under this Code' the words 'under this Code becomes' be substituted."

Mr. J. Ramayya Pantulu: I agree.

Mr. President: Has the Honourable Member leave to withdraw his amendment?

Mr. Pantulu's amendment was, by leave of the Assembly, withdrawn.

Mr. President: Further amendment moved:

"That in clause 136, in proposed new section 514-A, for the words 'becomes under this Code' the words 'under this Code becomes' be substituted."

The question I have to put is that that amendment be made.

The motion was adopted.

Mr. Harchandrai Vishindas: May I suggest, Sir, that you will be pleased to have the House adjourned as we have a Conference to attend?

Mr. President: I will consider that presently.

Clause 136, as amended, was added to the Bill.

Mr. J. Ramayya Pantulu: Sir, I move only the second part of my amendment:

"In clause 137, in proposed section 516-A, for the words 'such evidence as it thinks necessary' substitute the words 'its reasons'."

The section runs:

"When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of."

I do not think that anything is gained by requiring the court to record any evidence. I think that what is necessary is to require the Court to record its reasons for ordering the property to be disposed of. The Court might record any evidence that it thinks necessary. It will make some sort of inquiry before passing the order, and it is only necessary to require the Court in such cases to record its reasons for ordering the property to be disposed of. With these words, Sir, I move my amendment.

Mr. President: Amendment moved:

"In clause 137 in proposed section 516 A, for the words 'such evidence as it thinks necessary' substitute the words 'its reasons'."

Mr. H. Tonkinson: Sir, I would merely point out to the House that the Bill as it stands does not require that evidence shall be recorded. The evidence which it might be desirable to record will be evidence identifying the property and so on. It is certainly most desirable in such cases to identify the property by evidence before you make an order for the disposal of property pending trial. For these reasons, Sir, I oppose the amendment.

The motion was negatived.

Mr. President: The question is that clause 137 stand part of the Bill.
The motion was adopted.

Mr. President: The question is that clause 138 stand part of the Bill.
The motion was adopted.

Mr. J. Ramayya Pantulu: I propose, Sir, that in clause 139, sub-clause (ii), the words "or at any time within one month from the date of the conviction" be omitted.

This clause, Sir, refers to section 522. The section as it is runs as follows:

"Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same."

The Bill proposes to amend this by inserting:

"when convicting such person or at any time within one month from the date of the conviction."

Well, this section gives power to a Magistrate when convicting a person of an offence attended with criminal force to make an order, if any person is found to have been dispossessed of any property by the commission of that offence, restoring the property to the person. The section as it stands does not fix any limit

of time within which that order should be passed. But the Bill provides that such order should be passed either at the time when the accused person is convicted or within a month after that. I propose that the words giving power for the order to be passed within a month after the conviction be omitted. For, I do not see why any time is necessary for a Court to pass an order restoring possession of property to the person who has been dispossessed. All the evidence that is required to enable him to come to a decision on that point has already been recorded in the course of the trial of that offence, and the very fact that the Magistrate has found the man guilty of that offence ought to be sufficient to enable the Court to come to a decision as to whether any person has been forcibly dispossessed of property or not. I do not think that the section contemplates any inquiry subsequent to the disposal of the original case. All the evidence that is necessary to enable the Magistrate to form a judgment in the matter has already been adduced and recorded. That being so, I do not see why any time should be given to the Magistrate to make this order, especially as no such time is given in the present Code. I, therefore, propose the omission of the words as mentioned in my amendment.

Mr. H. Tonkinson Sir, my Honourable friend suggests that section 522 of the Code at present, if I have understood him aright, requires that possession shall be given simultaneously with the conviction. I do not know if I have understood him aright, but that is what I understood my Honourable friend to say.

Mr. J. Ramayya Pantulu: It leaves the question open. There is no time limit fixed.

Mr. H. Tonkinson: The present clause is to some extent doubtful. There was an old ruling reported in 4 Calcutta Weekly Notes which was to the effect that the order must be simultaneous with the conviction but that has been very frequently dissented from since and there is at any rate one recorded case in which possession was restored after 22 months. Now, Sir, in the Bill of 1914 we proposed to enable such an order to be passed within six months after the conviction. The Lowndes Committee thought it was desirable to reduce that period and they said, they accepted the amendment but they substituted a period of one month for six months from the date of conviction as the time during which an application for restoration must be made, because they said "We do not think that an order of restoration need be made simultaneously with the conviction, but we think that any application for such an order should be made promptly and that one month is sufficient time to allow for this purpose." Surely, Sir, the Bill is really reasonable in this respect. The complainant may imagine that as soon as the conviction has been secured in a criminal case, he will immediately secure possession of the immoveable property. But then, if he finds that he does not get the property back, why should he not be able to apply promptly and get an order from the Criminal Court that he should be replaced in possession? For these reasons, Sir, I oppose the amendment.

The amendment was negatived.

Mr. President: The question is that clauses 139 and 140 stand part of the Bill.

The motion was adopted.

Mr. B. N. Misra (Orissa Division: Non-Muhammadian): Sir, may I submit, before I move my amendment, that this is a very important clause and besides my amendment there are six other amendments which will take a very long time. Honourable Members are anxious to attend a conference as has been represented by Mr. Harchandrai Vishindas. So, we will be obliged if you will kindly adjourn the business now.

Mr. President: We have been considering this Bill now for a very considerable period; and in view of the state of public business I am afraid I must proceed with it a little further to-night.

Mr. B. N. Misra: My amendment* relates to clause 141 which relates to section 526 of the Criminal Procedure Code. This section deals with application for transfer of cases from Magistrate's Courts or appeals from Sessions Judges. Whenever it appears that they cannot get a fair and impartial inquiry in the lower court, under this section they are to move the High Court for a transfer of their case. My amendment relates . . .

Mr. President: Which amendment is the Honourable Member moving? Is he moving both together?

Mr. B. N. Misra: Practically the two parts are connected.

Mr. President: The discussion ought really to turn on the omission of sub-clause (ii). The Honourable Member will move the omission of sub-clause (ii) first. We will go to the other part of the amendment later on.

Mr. B. N. Misra: Side by side, I shall have also to speak about the other. My arguments for both are practically of the same nature. My amendment relates to section 526, clause (5). Sir, clause 5 provides that when an accused person makes an application under this section, the High Court may ask him to execute a bond with or without sureties on condition that, if convicted, he will pay the costs of the prosecution. That was the old section. The present section provides the condition that he will, if convicted, pay any amount which the High Court has power under this section to award by way of costs to the person opposing the application; and the other portion, clause (2), is a new one, entirely a new one; it says that whenever any application for the exercise of the power conferred by this section is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay, by way of costs, to any person who has opposed the application, any expenses reasonably incurred by such person in consequence of the application. This is entirely new. Sir, under the original provision, when an order was made by the High Court that, on conviction of a certain person, he will be liable to pay the costs of the prosecutor, it was a case which was never pressed because when the accused was convicted, really the anger of the prosecution ceased, and the man was also in jail;—no doubt it could compel the accused to pay the costs of the prosecution. Then there was no provision made for the costs incurred in the High Court. Really, the cost that were then intended, were the costs of the prosecution in the lower Court; in such cases generally the costs are a very small amount, even if the costs were paid, they were not such a heavy amount and they did not really cause such hardship to the accused. The old Code never made it compulsory for payment of costs by both the parties. It was only in cases of conviction that the accused was asked to pay the costs,—if he was convicted. In cases under 526, it is the prosecution also

* "In clause 141, omit sub-clause (ia) and sub-clause (ii)."

who can apply for a transfer. There was no provision made that even if the prosecution or the complainant or the Crown made the application, they were liable to pay any costs. But the amendment as it now stands makes any applicant liable to pay to the other party opposing the application. In the present case it is not only the accused that has to pay the costs of the prosecution, but, if the prosecution applied, and lost his application, he has to pay the costs of the accused. I submit this is really a hardship. It does not make provision, for the payment of costs when the application is granted. When an application is granted, it is obvious that on account of the misconduct or on account of the misbehaviour of the Magistrate the party did not expect to get a fair trial or fair justice. It is obvious, that is why he was driven to go to the High Court. In such a case when the application is granted, I think in fairness the Government ought to provide that the Magistrate on whose account the party came before the High Court ought to pay the costs. I think Government will not do such a thing against the Magistrate whose conduct drove the party to go before the High Court. I submit, Sir, really it is the conduct of the Magistrate that drives a party to go to the High Court. Parties ordinarily do not go to High Court unless they really apprehend injustice—I mean, they apprehend an unfair trial. They apprehend that they cannot get justice. Sir, section 526 says that whenever it is made to appear to the High Court that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or that some question of law of unusual difficulty is likely to arise—there are also other matters such as a view of the place is necessary and so forth,—or that such an order is expedient for the ends of justice or is required by any provision of this Code—it may make an order to transfer a case from one court to another court. So it is not, simply because, a party apprehends that he cannot get justice in the lower Court but there are many other grounds for which a party can make an application before the High Court. It is not because the accused says that he has not committed a crime or that he is innocent that a case comes before the High Court but for several other reasons. It may be that the accused wants that the trial should not take place before the particular court from whom he suspects that he cannot get fair justice. It is mainly on this ground that a party comes before the High Court. If the High Court refuses the application, it will under the new provision allow the costs reasonably incurred by the party opposing the application. The Criminal Procedure Code contemplated costs to be awarded under certain sections. We know that under section 148 costs are to be awarded by a Magistrate when there is a dispute about immoveable property, and we see also under the same Code costs are allowed under section 488 in maintenance cases. The only section that contemplates costs to be paid to the prosecution is section 545 and under that section the costs that are allowed are only the costs incurred by the prosecution, such as the costs for the Court fees and other things. There are several rulings, Sir, 4 Bombay and 24 Law Reporter Madras L. L. R. If compensation is to be paid to the prosecution, it has to be paid out of the fine and not under a separate sentence.

(At this stage Sir Campbell Rhodes took the Chair which was vacated by Mr. President.)

The particular case, 24 Madras, which I wish to place before the House is this: "The accused was convicted of having caused hurt and fined Rs. 15 and was also ordered to pay compensation of Rs. 12-4, or Rs. 2-4 being Court fees paid by the complainant and Rs. 10 being

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damages for other expenses incurred. *Held* that the levy of Court fees of Rs. 2-4 was warranted by section 31 of the Court-fees Act, VIII of 1870, as the duty of the Court to award Court and process fees in addition to the fine is imperative. But under this section the Court has the discretion to award the expenses of the prosecution, which must be taken to exclude those expenses in regard to which the Court has no discretion. Expenses other than Court fees incurred in the prosecution can only be awarded to the complainant out of the fine levied from the accused and cannot be levied from the accused in addition to the fine."

In a case like this, when a man comes before the High Court, the party who opposes the application is to be paid costs. This is an additional cost now being put under the present amendment. We know, Sir, the heavy costs that are incurred in applications before the High Court. Sometimes, if you engage counsels like Mr. Norton or Mr. Hassan Inān, they demand Rs. 1,000 per day. In such cases, if a party opposing an application has engaged such a counsel and paid heavy fees, perhaps the Court may say that these heavy fees were reasonably incurred. It will be really preventing people from making any application before the High Court or from going to the High Court. Sir, when a man comes to the High Court, practically he is under the tyranny of the Magistrate. That is why he comes and now you put another pressure on him in the High Court that he will have to pay so much. Practically he will never dare come before the High Court and make an application for transfer of a case. This will really result in serious injustice, and it will encourage such Magistrates as cannot exercise their discretion properly to do any thing they like. There is grave danger that a party cannot have a fair trial. This will be putting a premium on the high-handedness of Magistrates because the applicants cannot go before the High Court. Sir, I notice that the Honourable Members have left the Chamber. I have no hopes about my amendment being carried. I still say that this is really a very hard provision for one party to pay all the money to the other party for opposing the application in the High Court. I do not know why this provision, which is entirely a new one, has been introduced in this Bill for the first time.

Sir, the second part of my amendment is about frivolous and vexatious applications. Of course it will be something for the lower Court, which is trying the case, to find out and say if the case is frivolous or vexatious. How can the Honourable the High Court find out if a certain application is frivolous or vexatious? The procedure laid down under this section is that a party making an application will have to verify it by an affidavit. The High Court has no opportunity of knowing whether an affidavit is frivolous or vexatious unless there is an inquiry or trial. It is not contemplated that the High Court should find out whether the allegations made in the affidavit are true or false. In such a case, how can the Honourable Judges of the High Court find out that the application is frivolous or vexatious. I submit, Sir, it will be simply shutting out the doors to a party coming before the High Court asking for a transfer, which is really a very wholesome procedure and which very often checks the vagaries of the lower Courts. Sir, the High Court Judges cannot have sufficient materials to adjudge whether an application is frivolous or vexatious. I do not think the Honourable Members of the Government Bench do really wish—that the High Court should adjudge an application to be frivolous or vexatious without any materials before them. In the case of enhancement of punish-

ment at least there is some material before the High Court. In the present case what material is here before their Lordships? Simply there is an affidavit, and they say "we believe it or not;" there is no other material. How can they call it frivolous or vexatious, or ask the party to pay the expenses reasonably incurred by such a person in consequence of the application? I submit that on both grounds it is unjust to introduce the provision that costs should be paid in the High Court by an applicant who loses. Sir, with these few words I commend my amendment to the House.

Mr. H. Tonkinson: Sir, I think it will only be necessary to say a very few words with reference to this amendment. The proposal in the Bill was introduced because of the manner in which section 520 is used, or rather abused, at present. As a matter of fact when the Lowndes Committee noted upon this point they said they were satisfied that advantage is frequently taken of the section to obtain an adjournment which would otherwise be refused without the least intimation of making any application to the High Court. "It is reported to us for instance that in the Dacca Division during the past three years adjournments were obtained in not less than 125 cases in which no attempt was made to move the High Court." Well, Sir, that is the reason why such a provision has been introduced. Now, look at the provision. The application must be frivolous and vexatious. This must be found by the High Court and not on an affidavit as suggested by my Honourable friend, but when the application is finally dismissed. You have then got the whole of the trial record before the Court. It is when the final order is made that this order is passed. And when the High Court finds that the application was frivolous or vexatious the clause only provides that it may direct that the expenses reasonably incurred by the person opposing the application shall be paid.

The amendment to omit sub-clause (b) of clause 141 was negatived.

Sir Henry Moncrieff Smith: Sir, I understand my Honourable friend has also moved the first part of his amendment—in fact most of his speech was directed towards it. The first amendment having been defeated this amendment followed as a matter of course because sub-section (5) is merely consequential throughout sub-section (6A). It has, however, been brought to notice that there is a mistake in sub-section (5), a consequential amendment which should have been made and which the Joint Committee overlooked. Sub-section (6A) lays down that in every case where the High Court is of opinion that the application was frivolous or vexatious it should have power to award costs to any person who has opposed the application. Sub-section (5) enables these costs to be paid in cases where the accused is convicted. But, Sir, as I said, sub-section (6A) enables these costs to be awarded in every case whether the accused is convicted or not; the criterion simply is that the application was frivolous or vexatious. Further these words are out of place and should be amended to bring them into line with (6A) which the House has now approved. I would therefore with the indulgence of the House move:

"That in clause 141 in sub-clause (b) after the figure (5) the following be inserted, namely, 'for the word 'convicted' the words 'so ordered' be substituted and.'"

The amendment was adopted.

Mr. J. Ramayya Pantulu: I propose, Sir, that in clause 141, sub-clause (iii) in proposed sub-section (8) after the word 'inquiry' the words "prior to the accused entering on his defence," be inserted. This section relates to applications made to the High Court for transfer of cases. The

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existing law is contained in sub-section (8) of section 526. It runs as follows:

"If, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending, his intention to make an application under this section in respect of the case, the Court shall exercise powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made and an order being made thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal."

Well, the Bill modifies this provision, and the modified section runs thus:

"If in the course of any trial or inquiry or before the commencement or hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under this section in respect of such case or appeal, the Court shall adjourn the case or postpone the appeal for such a period as will afford a reasonable time for the application to be made and an order to be obtained thereon."

It will be seen that so far as trials and inquiries are concerned, the amendment proposed in the Bill makes it compulsory on the Court to adjourn the case on application being made therefor at any stage of the inquiry or trial.

(At this stage Mr. President resumed the Chair.)

Whereas under the existing law, such an application can be entertained,-- the Court is bound to entertain such an application if made before the commencement of the hearing. The proposed section makes it compulsory for the Court to adjourn whenever the applications may be made during the trial or inquiry so far as trials and inquiries are concerned. My proposal is that such an application should be entertained, and the Court should be bound to grant an adjournment only when such an application is made before an accused person is put on his defence or before he is charged. I quite conceive that applications on this behalf may be made by the prosecution as well as by the accused, but in either case, I suppose the main ground on which the application for a transfer from a court will be made to the High Court will be that justice and impartial trial cannot be expected from that particular Court. I think the complainant or the accused ought to be able to form a judgment as to the impartiality of the Judge by the time the prosecution is concluded and the accused is put on his trial. From the practical point of view, Sir, the procedure that is prescribed in the new section is likely to result in much delay in the trial of cases. A very frequent sort of cases which arise is this. A charge has been framed against the accused, and the defence evidence has been recorded and the Magistrate adjourns the case for delivering judgment. Supposing at that time the Magistrate is transferred and is waiting to be relieved by his successor. He has heard the case completely and he has only to write the judgment. And at that time, if the accused thinks that the case has gone against him and that he is likely to be convicted, his only chance lies in getting an adjournment of the case in the hope that this Magistrate or Judge may be transferred and, when the new Judge or Magistrate comes, he may have a fresh trial. This is a very frequent trick that is adopted by accused persons to apply for an adjournment to enable him to apply for a transfer after the case has been practically closed. In such cases, it will be very undesirable that the Court should be bound to grant an adjournment. Of course, there is nothing to prevent a Court from granting an adjournment, at any time, even as it is. Under the new section also it can grant an adjournment, whenever a person makes an application, whatever be the stage of the

trial at which that application is made. In cases such as that I have mentioned, it will result in great delay as the new Magistrate will have to start a retrial of the whole case. I, therefore, Sir, propose that in this section, after the word "inquiry" the words "prior to the accused entering on his defence" be inserted.

Sir Henry Moncrieff Smith: Sir, we have no objection to the principle of the Honourable Member's amendment. His proposal is, I understand, in principle to keep the law as it stands at the moment and to keep it as it stood in the Bill as introduced. I would suggest, however, on the subject of drafting, that his words do not come in very well after the word "inquiry" because in an inquiry the accused is not called upon to enter on his defence. Therefore, I would suggest that they be inserted after the word "shall". The present law is that, if an application is made in the case of an inquiry or trial, then the Court shall give an adjournment before the accused enters on his defence so as to enable him to have a reasonable opportunity for making the application. I think it would read better, Sir, if these words "prior to the accused entering on his defence" were inserted not after the word "inquiry" but after the words "the Court shall", and then, Sir, insert the word "shall" before the word "postpone". It will read:

"The Court shall, prior to the accused entering on his defence, adjourn the case or shall postpone the appeal."

Mr. J. Ramayya Pantulu: Sir, I do not know whether that will be all right, but, since you are agreeing to the principle you can put it as you like best.

Sir Henry Moncrieff Smith: Sir, the draftsman suggests that in place of the words proposed to be inserted by Mr. Pantulu the words "before a charge is framed against the accused" might be inserted. It is much the same thing. Of course, the words "entering on his defence" would not apply to an inquiry, but in an inquiry a charge is framed, and therefore the stage of the trial is practically the same, the framing of the charge and calling upon the accused for his defence.

Mr. President: Amendment moved:

"In the proposed amendment, omit the words 'prior to the accused entering on his defence' in order to insert the words 'before a charge is framed against the accused'."

Further amendment moved:

"In line (1) of sub-section (8) to substitute the words 'inquiry or trial' for the words 'trial or inquiry'."

The question is that that amendment be made.

The motion was adopted.

Mr. President: Further amendment moved:

"That the words 'before a charge is framed against the accused' be inserted after the word 'trial' in the sub-section as amended."

Mr. J. Ramayya Pantulu: That will exclude summons cases. The words "after the accused is put on his defence" will be general.

Sir Henry Moncrieff Smith: I would suggest that after all Mr. Pantulu's original amendment would be suitable after what we have already done in the sub-section.

Sir Henry Moncrieff Smith's amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That the words 'prior to the accused entering on his defence' be inserted after the word 'trial' in subsection (8) as amended."

The motion was adopted.

Clauses 141 as amended, 142 and 143 were added to the Bill.

The Honourable Sir Malcolm Hailey: Sir, I beg to move that:

"In clause 143, sub-clause (a), for the words 'in clause (d), the word 'want' the following be substituted, namely:

'the word 'want' where it occurs for the second time'."

I do not think I need present to this House so this very luminous amendment.

The motion was adopted.

Sir Henry Moncrieff Smith: Sir, I should like to move the amendment which stands in the name of Mr. Seshagiri Ayyar, namely:

"For sub-clause (a) of clause 144 the following be substituted:

'(i) Clause (4) shall be omitted'."

The reason being, Sir, that we thought on consideration of Mr. Seshagiri Ayyar's amendment that it was very sound and that clause (b) of section 537 was of no use.

The motion was adopted.

Clause 144 as amended, was added to the Bill.

Clauses 145, 146, 147, 148 and 149 were added to the Bill.

The Honourable Sir Malcolm Hailey: I beg to move:

"That in clause 150 for the words 'and not' the words 'and the method of recovery of which is not' be substituted."

The motion was adopted.

Clause 150, as amended, was added to the Bill.

Clauses 151, 152, 153 and 154 were added to the Bill.

Mr. J. Ramayya Pantulu: I propose that the consideration of the Schedule may be postponed till Wednesday.

Sir Henry Moncrieff Smith: I move:

"That in clause 155 the necessary amendments be made to give effect to the decision of the House with regard to compoundable offences."

Mr. President: The question is that in clause 155 the necessary consequential amendments be made to give effect to the decision of this House in relation to compoundable offences.

The motion was adopted.

Clause 155, as amended, was added to the Bill.

Clauses 156 and 157 were added to the Bill.

The Honourable Sir Malcolm Hailey: I could have wished, Sir, that all our debates on this Bill had been conducted with a harmony such as now prevails. But we are approaching the end of our good work, though we seem to be pursuing it alone. I now propose:

"That in clause 158:

"(1) for sub-clause (i), (ii) the following be substituted, namely:

"(ii) the words 'and cannot be received by distress of the moveable property of the said (name of complainant)' shall be omitted."

Mr. President: The question is that that amendment be made.

The motion was adopted.

The Honourable Sir Malcolm Hailey: I move: Sir

"That in clause 158, in sub-clause (i), for the word 'moveable' be omitted."

Mr. President: The question is that that amendment be made.

The motion was adopted.

Mr. President: The amendment that clause 158 is amended stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 157 stand part of the Bill.

The motion was adopted.

Sir Henry Moncreiff Smith: Sir, with the kind leave of the House I should like to move the following amendment:

"That after clause 156 of the Bill the following clause be inserted, namely:

"160. This Act shall come into force as ordered to by the Governor General in Council may by order in the Gazette of India appoint."

The reason for the amendment, Sir, is, I think, obvious. When the Legislature is making a very large number of amendments in the Code of Criminal Procedure applicable to the whole country, unless we have a commencement clause of this kind then a law will come into force when it is assented to by the Governor General. It is obvious that we must give considerable notice to the Magistrates and to the lawyers of this country of the amendments that are being made, so that on one particular date which may be appointed hereafter, the whole of the new law shall come into force.

Mr. President: The question is that that clause be added to the Bill.

The motion was adopted.

The Honourable Sir Malcolm Hailey: Sir, we have one or two clauses which we postponed for final consideration on previous occasions. But I do not think we could very well proceed to their discussion this evening, and I would therefore suggest, Sir, that, if you have no objection, we might now adjourn the further consideration of the Criminal Procedure Code.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 14th February, 1923.

LEGISLATIVE ASSEMBLY.

Wednesday, 14th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

MEMBER SWORN:

Mr. Lancelot Graham, M.L.A. (Legislative Department: Nominated Official).

UNSTARRED QUESTIONS AND ANSWERS.

DEATHS IN DELHI DUE TO COMMISSION OF AN OFFENCE.

163. **Lala Girdharilal Agarwala:** 1. How many dead bodies of human beings were discovered in Delhi including an area within 5 miles of Viceregal Lodge during the last 5 years, in which cases death was reported to have been caused by violence or commission of an offence and in how many of those cases the offender remained unpunished?

2. How many cases of deaths by violence or commission of an offence were reported or discovered in Delhi including an area within 5 miles of the Viceregal Lodge and in how many of them no offender was punished?

The Honourable Sir Malcolm Halley: The two parts of the question appear to cover the same ground. During the years 1918 to 1922 the number of deaths reported as due to the commission of an offence in the area specified was 60. Of these 9 were found to be due to natural causes. Of the remaining 51 cases 24 were untraced, and in the 27 cases committed for trial, the accused were acquitted in 8 and convicted in 19 cases.

HISTORICAL BUILDINGS IN DELHI FORT.

164. **Mr. Mohammad Faiyaz Khan:** Will the Government be pleased to state the number of Historical Buildings pulled down in the Delhi Fort since 1900?

The Honourable Mr. A. C. Chatterjee: No Historical Buildings have been pulled down in the Delhi Fort since 1900.

HISTORICAL BUILDINGS IN AGRA FORT.

165. **Mr. Mohammad Faiyaz Khan:** Is there any truth in the statement that some of the Historical Buildings in the Fort, Agra, are going to be demolished for making barracks for soldiers?

The Honourable Mr. A. C. Chatterjee: There is no truth in the statement.

IMPORTS OF MOTOR CARS AND CYCLES.

166. **Mr. Mohammad Faiyaz Khan:** Will the Government be pleased to state the number of motor cars, and motor cycles imported into India each year from 1905 till the end of 1922 from England, United States of America, Canada, France, Germany and Italy?

The Honourable Mr. C. A. Innes: The Honourable Member is referred to the "Annual Statement of the Sea-borne Trade of British India" and "Monthly Accounts relating to the Sea-borne Trade and Navigation of British India" which contain all the statistical information available about the import of motor cars and motor cycles. A copy of these publications is in the Library.

THE INDIAN COTTON CESS BILL.

Mr. J. Hullah (Revenue and Agriculture Secretary): Sir, I present the report of the Joint Committee on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I have to make a statement which I am sure that everybody in the House will receive with great regret. The Honourable Leader of the House is unavoidably prevented from being present to-day. He was taken ill in the night and cannot possibly take his seat this morning. I am sure I am expressing the hope of every one in this House when I say that we all hope that he will not be long prevented from discharging his duties in this House. (Hear, hear.)

THE REPEALING AND AMENDING BILL.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I move for leave to introduce a Bill to amend certain enactments and to repeal certain other enactments.

I do not think, Sir, that I need enter into an elaborate explanation of the provisions of this Bill. It is a Bill which the Central Legislature has laid before it from time to time to remove certain formal defects that are occasionally discovered in our law and to remove certain anachronisms. If Honourable Members will refer to the Schedule of the Bill which is in their hands, they will see that there is a column of explanations. Those explanations, Sir, give the reason for every small amendment which this Bill proposes to make in the Statute Book.

Mr. President: The question is.

"That leave be given to introduce a Bill to amend certain enactments and to repeal certain other enactments."

The motion was adopted.

Sir Henry Moncrieff Smith: Sir, I introduce the Bill.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The Assembly will now proceed further to consider the Bill further to amend the Code of Criminal Procedure, 1898, and the Courts Act, 1870, as passed by the Council of State.

The amendment to clause 11 standing in the name of Mr. Agnihotri was under consideration. Discussion will now proceed on clause 11. The amendment put from the Chair on the occasion when clause 11 was under consideration was:

"In clause 11 for the proposed sub-section (3) in sub-clause (2), substitute the following:

"(3) Every person arrested under this section shall forthwith be released on bail."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, this matter was before the House on a former occasion. It was then postponed because there was a general feeling in the House that this was not the proper place for this amendment and that we should consider it when we came to the Chapter of the Code which deals with bail. When, Sir, we did come to the Chapter which deals with bail, the Honourable Mover of this amendment had his attention invited to the point and he said he was not prepared to move amendments to section 496 or 497. I think the House will agree that the amendment that now stands before it is not a proper amendment to make in the Code. Mr. Agnihotri would enable or rather would require any person arrested without a warrant to be forthwith released on bail unless he was a proclaimed offender under clause *thirdly* or a deserter under clause *sixthly*. I would point out to the House that this would require all the persons under clause *first* to be released on bail as soon as they were arrested. Clause *first* is the clause under which nearly every serious criminal is arrested in the course of police investigations. In the course of an investigation of any serious crime the police arrest a man as soon as they have reasonable grounds for believing that he has committed the offence. They never wait, Sir, to get a warrant from a Court. Therefore, these persons are arrested without a warrant—persons who have been caught shortly after the committing of a murder, dacoits who were being pursued by the police after committing dacoity, and so on,—and these persons whom the police have been fortunate enough to arrest without delay would, under Mr. Agnihotri's amendment, be required to be released forthwith on bail. I think, Sir, the House will agree that this is going much too far and it is a most undesirable amendment to introduce into the Code. The House has had a very full discussion on sections 496 and 497 and it was pointed out to the House on Monday that the provisions of the Code as to bail were now far more lenient than they ever had been and the Government deprecated any further widening or loosening of the provisions. Sir, I oppose this amendment.

The amendment was negatived.

Clause 11, as amended, was added to the Bill.

Mr. President: Discussion will now proceed on clause 33.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, we postponed the consideration of this clause for two purposes. In the first place we wished to deal with the question which arises from the prevention by this clause of the use of the statements recorded by police officers for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. The second reason

[Mr. H. Tonkinson.]

why the consideration was postponed was to examine the effect of the amendment which has been accepted by the Assembly which compels the Court to allow inspection of the whole of these statements to the accused. As regards this question the position was indicated by the Honourable the Leader of the House in his statement on the 31st of January. He said then :

"Many of my friends here have, I think, a feeling that it is justifiable, in view of the previous decision of the House, to place in the Bill some proviso which would obviate the danger, to which many of us referred, of the whole of the statements referring to a large number of transactions being handed to the defence."

My Honourable friends, Sir Deva Prasad Sarvadhikary and Mr. Hussanally, were both clear on that point that some amendment of the provision was required. Well, Sir, we have considered this question at length and we have decided that no proviso which does not practically nullify the amendment made by the Assembly would be effective. The alternatives before us if the clause stands as it does now are that either detection will be practically impossible or else proper prosecution of cases in the Magistrates' Courts will be impossible. In these circumstances, Sir, we consider that either this clause must be set right in another place or else in the alternative the whole clause should be omitted and we should return to the existing law. It will be possible to consider that question later.

I now turn to the first point and I wish now to move the amendment of which I spoke on the 31st of January. The position as regards this amendment was indicated by the Honourable the Law Member in his statement on the 26th of January when he said after the amendment moved by Mr. Pantulu had been rejected :

"Sir, with your permission I should like to say a few words. My Honourable friend, Mr. Seshagiri Ayyar, and other Honourable gentlemen having agreed to the retention of the concluding words in this clause, we have, as must have become clear from the division which has just taken place, agreed to the retention of the words 'for any purpose' instead of 'as evidence'; and I understand the position now to be that Honourable Members are prepared to accept the clause as it originally stands in the Bill. But I must make it clear that this will not in any way affect the provision embodied in section 172."

Then, my Honourable friend, Mr. Seshagiri Ayyar, remarked "subject to any further amendments."

The amendment which I then referred to, Sir, is I think an amendment accepted by Honourable Members opposite in principle. We wish to be able to use these statements to just exactly the same extent as the Court is now able to use the diary, and no more.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): No, that was not agreed to.

Mr. H. Tonkinson: If the Court is not able to use these statements in exactly the same way as the Court is now able to use the diary, that is to assist it, to aid it in the inquiry or trial, then there is practically no use in recording these statements at all. I therefore, Sir, move :

"That in clause 33 of the proposed new sub-section (ii) of section 62, the following proviso be added, namely :

"Provided further that the court may in the course of the inquiry or trial, send for the record of any such statement and may use such statement not as evidence in the case, but to aid it in the inquiry or trial."

Those are exactly the words of section 172.

Dr. H. S. Gour: Sir, as I told the Honourable Mr. Tonkinson on the last occasion, statements made to a police officer cannot legitimately be used to the prejudice of the accused. They are statements which may be used for the purpose of benefitting the defence, but never to its prejudice. I have no doubt the Honourable Member is not unaware of the leading case known as Dhal Singh's case. That was a case, Sir, in which a certain learned judge convicted the accused upon statements recorded by a police officer in the case diary. That case went to the Privy Council and the Privy Council observed that it was irregular and improper for a judge to use statements recorded in a case diary, which had never been subjected to cross-examination by the accused, to his prejudice, that such statements were intended to be used for the purpose of checking the evidence adduced by the prosecution, but not for the purpose of supplementing that evidence. It is like a judge using statements not accessible to the accused upon which the accused has had no chance of cross-examining the witnesses, and which so far as the statements are concerned are wholly unknown to him. I submit, Sir, the proviso which my friend, the Honourable Mr. Tonkinson, wishes to introduce in the Code will do away with the principle enunciated by their Lordships of the Privy Council, and which has been worked in practice by the courts in this country. I have no doubt my Honourable and learned friend, Sir Henry Stanyon, who has had long forensic and judicial experience of the administration of criminal law, will bear me out when I say that it would be dangerous to allow statements recorded in the police diary to be used as an aid by the judge in the disposal of criminal cases, and I therefore, Sir, oppose the amendment. The Honourable Mover of this amendment, in the course of his speech, referred to the acceptance of his view by Members on this side of the House. I think, Sir, I am voicing the sentiments of the Members on this side of the House when I say that it was never understood by any one that such a statement should ever be admissible in evidence, or be used as an aid by the judge concerned in the trial of criminal cases to the prejudice of the accused.

Sir Henry Moncrieff Smith: Sir, I think, in spite of what my Honourable friend, Dr. Gour, has said, it is a fact that on the previous occasion when this matter was discussed, there was a feeling in this House that some amendment was necessary to get rid of the effect of the words "for any purpose." Dr. Gour's remarks on this amendment have lacked their usual relevancy; in fact I doubted, as I listened to Dr. Gour, whether he understood the amendment which my friend, Mr. Tonkinson, had put forward. Dr. Gour cited one case on which he based the whole of his arguments. He said it was a case in which police diaries had been improperly used by a Court as evidence to corroborate and substantiate the case for the prosecution. Sir, that undoubtedly was a most improper case, but it has nothing whatever to do with the amendment which Mr. Tonkinson is now putting before the House. Sir, in the first place, we are not dealing with police diaries, we are dealing with statements. In the second place, we are not proposing to use those statements as evidence, we are merely proposing to enable the court to use them in exactly the same manner as the court can use the police diaries under section 172 of the Code.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, with all respect, I am unable to understand the attitude taken up by Government in regard to this matter. This House has resolved, with regard

[Colonel Sir Henry Stanyon.]

to statements made by persons in the course of the police investigation,—persons who afterwards come up as witnesses at the trial,—that the accused shall have access to those statements and be furnished with copies of them. It has been said in general terms, but has not been sufficiently defined so as to make me capable of understanding it, that such a provision will make the prosecution of cases impossible. A witness comes up the day after a murder and says that he saw a person like the accused hurrying away from the place where the murder was committed. Later on he comes before the Magistrate and says

Sir Henry Moncrieff Smith: May I point out that these remarks are irrelevant. Mr. Tonkinson is not in the House for the moment, but Mr. Tonkinson's amendment relates to the words "for any purpose"

Dr. H. S. Gour: May I rise to a point of order? Who is presiding here to determine whether the remarks are in order or not?

Mr. President: Order, order. The Honourable Member may leave the Chair to decide for itself. Sir Henry Stanyon.

Colonel Sir Henry Stanyon: I was putting forward an illustration in connection with a remark made, in introducing the amendment, by Mr. Tonkinson who said that if the original amendment before the House became law, prosecutions would be impossible. As I was saying, this witness comes up at the trial and states that with his own eyes he saw the accused committing the murder. Now is it or is it not just that everybody concerned with the prosecution and the defence, including the judge and the witness, should know of these differences in statement and should have some explanation of them from the witness? How is the prosecution rendered impossible? Conviction may be rendered impossible—that is another thing—but how is the prosecution rendered impossible by the fact of these two different statements being made public. The amendment which is to-day proposed to be introduced adds another instance to a difficulty which already exists. It is suggested that, like the case diary, these statements may be sent for and used by the Court for the purpose of aiding it in its inquiry and trial. "Used by the Court"—in what way? To influence its judgment? To affect it with regard to the credibility of a witness? If so, then, in fact, but not in the name of law, that statement is being used as evidence. My friend, Dr. Gour, cited Dhal Singh's case, not quite accurately. An influential landlord was convicted of murder and sentenced to death. The case came before the High Court of the province, before a Bench of which I was a member. I was responsible for writing the judgment.

Mr. H. Tonkinson: Sir, I rise to a point of order. The remarks of my Honourable and learned friend have nothing to do with the amendment now before the House. They refer, I think, Sir, entirely to the question of the provision—which will come up for discussion immediately afterwards—which was introduced by the Assembly on the 31st January, namely, the right given to the defence to inspect the evidence.

Mr. President: Has the Honourable Member anything to say on that point?

Colonel Sir Henry Stanyon: My intention was to show that in that case an open reference was made to case diary statements and that was criticised by their Lordships of the Privy Council (to whose decision we

must all bow) instead of, as would have been the more correct procedure, for the Judges to allow themselves to be secretly influenced by those same statements. They were honest enough to say in their judgment: "this is what makes us disbelieve the evidence for the defence." That is all that happened in that case. The conviction was upheld by their Lordships of the Privy Council. However, the point is this, that what is now sought to be introduced is another attempt to allow the prosecution to whisper in the ear of the Court. That is a principle which I respectfully submit is opposed to the rules of justice as understood in Great Britain and in British India. I cannot see to what disadvantage anybody concerned is put by the accused knowing what a witness who is giving fatal evidence against him had previously said.

Sir Henry Moncrieff Smith: Again, Sir, that is entirely irrelevant to the amendment before the House.

Colonel Sir Henry Stanyon: If the Honourable the President rules me out of order I shall bow to his decision. I say that this amendment would exaggerate and increase the evil of this whispering in the ear of the Court. I, therefore, strongly oppose the amendment.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, there are two points which ought to be kept distinct. The one is that this amendment does not go against the amendment carried in this House as regards the use of statements to the Police by the accused. This amendment does not affect it. As regards the propriety of the amendment, I respectfully agree with everything that was said by the Honourable Sir Henry Stanyon upon the matter. On the last occasion, when a similar matter came up, I pointed out that this would amount to what is known technically as "corrupting justice." A Magistrate should have access only to such papers upon which he is to base his judgment: he should have nothing else before him. If his mind is to be prejudiced by looking into certain records which are not open to the accused the result of it will be that the accused will be in a very difficult position, the Magistrate's mind having been secretly biased against him by his having looked into certain papers which he has no access to. And, moreover, as I said on the last occasion and I repeat it again, it is of the essence of criminal justice that the Magistrate's mind should be free from any taint of suspicion, that is favouring the accused or favouring the prosecution. If you put into his hand a statement which is not to be used as evidence, in which he is not to base his judgment, then you allow his judgment to be influenced by a document which is not public property. Sir, it is a dangerous thing to do and I do not think that anybody in this House agreed to an amendment of this nature being introduced. We never agreed to an amendment being introduced which would put into the hands of Magistrates a weapon which he can use against the accused without the accused having an opportunity of putting up any defence. Under these circumstances, I strongly oppose the amendment which has been proposed from the Government Benches.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, apart from the considerations which have been put forward in opposing the amendment, I think there is one great objection of principle to be raised against the form of the amendment proposed. It is practically a kind of giving with one hand and taking away with the other, or first laying down a principle and then qualifying it 100 per cent. Because the first part of

[Mr. Harchandrai Vishindas.]

the amendment proposes to exclude these statements from the category of evidence whereas the second part, although worded differently, actually keeps them as part of the evidence. I think it is wrong in principle to introduce legislation on these lines at all. Of course, it may be considered to be a strong word, but I think it is the proper word, to say that such a kind of legislation is "misleading." It misleads those who are responsible for the administration of justice, because a conscientious Magistrate or Judge, while looking at this section, will be puzzled as to what interpretation to put upon it. He would say to himself "if I am not to use it as evidence I am to use it as an aid to the administration of justice." How is it to be an aid to the administration of justice? Therefore, apart from the arguments on the merits which have been put forward by various speakers, I say it is a wrong principle to have any law of this kind on the Statute Book.

Mr. P. E. Percival (Bombay: Nominated Official): Sir, I wish to make one point clearer. As I understand the amendment, it is simply to the effect that these statements should be used in the same way as police diaries are used at the present moment. The question of showing the statements to the accused does not arise.

Dr. H. S. Gour: What is the meaning of "use it as an aid."

Mr. P. E. Percival: The amendment does not touch the question of showing the statements to the accused, or of keeping the statements away from the accused. The amendment only is to the effect that the statements of witnesses taken by the police may be used by the Court in exactly the same way as police diaries are at present used by the Court, and to which use no objection has been taken, nor has there been any opposition thereto in this Assembly up to now. Section 172 makes it quite clear that police diaries cannot be used as evidence, but can be used as an aid in such inquiry or trial. Now, under section 162, as it now stands, statements of witnesses to the police cannot be used for any purpose, unless we make the necessary amendment in section 162; and even if this amendment is made they can be used only for the same purpose as police diaries are used. It seems to me that if this amendment is not made, the only practical result will be that the police officers will include all depositions in their diaries instead of including them, as they should include them, in the statements of the witnesses. It is not a question—I wish to make this clear—one way or the other of showing the statements to the accused person. That is an entirely different question. The only question is whether the Courts should not be allowed to use these statements in exactly the same way as police diaries are used, and no objection has been taken by this Assembly to the use of such diaries up till now.

The amendment was negatived.

Mr. President: The question is that clause 33, as amended, stand part of the Bill.

Sir Henry Moncrieff Smith: Sir, clause 33, as it now stands, is to my mind quite an impossible clause. It has two defects. One defect has arisen from the fact that the House has just refused to pass the amendment moved by my Honourable friend, Mr. Tonkinson. We have it now that the statements recorded by the police cannot be used for any purpose whatever. What we had suggested was that those statements should

be used in exactly the same manner as the police diaries can be used and for exactly the same purposes for which the police diaries can be used under section 172. The second defect in clause 33 has been already referred to by Mr. Tonkinson this morning. We have now an absolute requirement, a mandate to the courts, when every witness steps into the witness box, to hand the defence a copy of the statement which that witness has made to the police. Sir, I do not want to re-open the discussion on this particular point. It was pointed out to the House the other day that it was very dangerous to hand over the whole statement. Mr. Hussanally pointed out that it was very dangerous to hand over the whole statement and Sir Deva Prasad Sarvadhikary entirely agreed. He said that we must have something that will make it possible for the Court to hand over at all events only such part as may be relevant or such part as may in the opinion of the Court be essential to hand over in the interests of justice. Sir, there section 162 stands. Statements made to the police cannot be used for any purpose, and they have nevertheless to be handed over in their entirety to the defence the moment the witness steps into the witness-box. I think, Sir, if the House would try to realise what the effect of that is, they would agree that the administration of justice will be most seriously hampered. What I want to suggest to the House is that rather than allow this clause to pass in this form—Government, Sir, will never, so far as they can help it, allow this clause to emerge from the Legislature in this form—the House should take the very simple expedient of deleting the clause entirely from the Bill and leaving section 162 of the Code as it stands unamended. Sir, we have a large number of rulings on section 162 of the Code as it stands. Those rulings are a guide to the Magistracy with reference to the use of statements made to the police. Those statements, Sir, can be handed to the defence for the purpose of contradicting witnesses and that is about all section 162 amounts to. I would therefore suggest to the House that on this motion that clause 33 as amended stand part of the Bill, it should give a negative vote which, as I say, will merely have the effect of maintaining section 162 in the law unamended. Government, as I said, Sir, will strenuously oppose to the very last moment clause 33 standing in the Bill in its present form. It will undoubtedly be necessary to take the matter before another House and try to persuade that other House to take a more reasonable view of the matter. I therefore, Sir, propose myself to vote against the standing of this clause in the Bill and I hope the House will support me in this matter.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, as my name has been mentioned by the Honourable Sir Moncrieff Smith, I think that I should point out to the House that if the amendment which I had then proposed and actually handed over to the Secretary of the Assembly had been accepted by the Government, all this difficulty would have been avoided. I proposed on the last occasion, that the Magistrate or the Court should have authority in special cases, for reasons to be recorded, to disallow copies of statements of witnesses being given to the accused. That amendment of mine was unfortunately not accepted by the Government and that has led to all this difficulty at this moment. As for the threat Sir Moncrieff Smith has held out to the House of the Government not agreeing to this clause being passed in this form and of their intention to move the other House to negative this clause and to amend it again, I do not think for a moment this House will be afraid of it and should not be. But to make matters more practical I would still propose

[Mr. W. M. Hussanally.]

the amendment which I then handed over to the Secretary of the Assembly, and if I am permitted to move it even at this stage by the Chair as well as by the Government, I think all difficulty will be avoided and the clause as then passed will have the effect of having everything that the Government wants.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I stand aghast at the attitude adopted by the Honourable Sir Monieriff Smith. What is it, Sir, that this Assembly has done to merit the covert rebuke which he has administered to it? He is going to appeal to a more reasonable Assembly! Sir, what is his complaint? His complaint is that this House adopted clause 162 as proposed by Government. Clause (1) of section 162, if Honourable Members will turn to page 12 they will find, has been adopted to its fullest extent by this House; I mean clause 33—section 162, clause (1). There was an attempt made by my Honourable friend, Mr. Pantulu Garu, to amend it. That attempt failed. So, the clause now accepted by the House is the very one proposed by Government. If he has any reason to be dissatisfied with anybody, he has reason to be dissatisfied with himself and his colleagues on the Treasury Bench. It is they that proposed this clause and this House had the good sense to accept the reasonable proposal made by the Government. Now, therefore, I do not see what the charge against this House is, that he should hold out this threat that he is going to another House, a more reasonable House,—a House in a more reasonable mood or more reasonable House, whatever it may be. Again turning to the proviso what is the crime, Sir, which this Assembly has committed? All that this Assembly has done is, it has modified the proviso as introduced by the Government. That is to say, we have provided that the accused should not be tried in the dark, that the accused should not be convicted on perjured evidence and that the prosecution should not hold up its sleeve former contradictory statements made by witnesses. The prosecution at a particular stage puts forward a witness as a witness to truth. The accused is given the right to inspect former statements made by that witness. Have we committed a very grave sin in giving that opportunity to the accused person who stands to lose his liberty and probably his life, because we give him an opportunity to inspect the previous statement made by a witness in the box? Certainly, I do not think any House, if it has any reason behind it, if it has any reason in its head, would object to such a clause, to such a power being given to the accused person when he is on his defence for his liberty and for his life. Sir, we are threatened with all sorts of horrors, all this arises out of the imaginary fear that the witness might have spoken not only to the particular case under investigation but to other cases—and this happens in very rare cases. That can be avoided by other methods. Why? Instructions can be given to police officers if really you are going to get a witness who will go about telling other stories than the story connected with the particular case then under investigation, to put those statements down not in the particular statement, but in their diaries, in which case it will be safe from inspection by the accused. Not only that. The Court has ample power always to instruct the pleader who appears—pleaders are officers of Courts—"you are not to use such and such portions because they do not relate to the accused." I suppose you can trust the pleader with a sense of responsibility. I suppose pleaders are amenable to the disciplinary jurisdiction of the Courts. I have known cases where the

most confidential papers are handed over to Counsel for accused because they are trusted and they ought to be trusted. In any administration, in any civilised administration pleaders should be trusted. Therefore, I do not think any real serious risk is taken. The risk that there might be statements relating to other matters may be avoided by the policeman not recording it in the particular record, but in his diary and Government can certainly give instructions to that effect to the police officers. Even otherwise, the Court, if the accused is defended by a pleader, can trust the pleader to use his discretion in the matter. It is not every matter which is introduced in a Court which is made public. Is there not power in the Court to say, if it is really such a serious case where the witness has disclosed facts which are going to affect the public interests or the interests of the State or the safety of the State—the Court is not powerless to hold the hearing *in camera* and not allow it to be published? Therefore, there are ways by which these imaginary fears can be safeguarded. Such being the case, this House has done but bare justice to the accused. This is a thing in which the people of this country have been agitating for a long time, namely, that this sort of secret trial, the policeman holding up in his sleeve certain statements given by a witness and not being at liberty to disclose them to the accused person who is on his trial, is a grave reflection upon the administration of criminal justice in this country. I am glad that this House has risen to the occasion and removed that reproach from that administration. Rather than being sorry for it, I hope the Government will be glad that they are, at any rate, at the last moment doing justice to the accused persons who are on their trial.

Mr. President: Do I understand the Honourable Member from Karachi to move his amendment?

Mr. W. M. Hussanally: If I am permitted to do so.

Mr. President: Amendment moved:

"In the proviso in clause 33 after the words 'Indian Evidence Act, 1872' add the words 'unless for special reasons to be recorded the Magistrate deems it inexpedient to grant a copy when he shall refuse to do so.'"

Mr. T. V. Seshagiri Ayyar: May I ask for a ruling from you, Sir, whether this amendment should not be taken to have been vetoed when it was not moved on the last occasion? It was on the paper but it was not moved.

Dr. H. S. Gour: The amendment now proposed to be moved will be inconsistent with the amendment already carried by the House.

Mr. President: The amendment was handed at the table in manuscript, and as far as I know it was never on the amendment paper.

Mr. T. V. Seshagiri Ayyar: If I remember aright, the Honourable Member had handed it over to the Chair. He says he handed it to the Secretary of the Assembly who must have handed it over to the Chair, and I take it from the fact that he did not move it or press it that it was given up.

Mr. President: It was never moved. It was certainly not put from the Chair and the question could not come before the House until it was put from the Chair on a motion moved.

Mr. T. V. Seshagiri Ayyar: If I understand aright, the position was this. Mr. Hussanally had not sent in his amendment in proper time. He had brought it later on and objection was taken on the Government side that it was not in proper time and therefore it should not be allowed to be moved. That is what, if I am right, took place. In those circumstances it was not pressed. Therefore, not having been allowed to move it as it was not in proper time, is it now open to the Honourable Member to move it again? A number of amendments in that way were rejected.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): My own recollection of the case is this. In the course of a speech my Honourable friend, Mr. Hussanally, made a suggestion that if an amendment of this kind were embodied the amended clause might be acceptable to the Government, but no such amendment was moved by him, until at the end he said, "I am prepared to move," and then the Government I think said, "Well, it can be left to another occasion."

Mr. W. M. Hussanally: I think Mr. Jamnadas Dwarkadas has correctly pointed out what happened on the last occasion.

Mr. President: The Official Report gives no indication whatsoever that the Honourable Member from Karachi moved any motion at all. The words with which he brought his speech to a close were:

"I would, therefore, Sir, with your permission suggest a sort of compromise between the two parties."

That is a long way from moving an amendment. Again it says:

"A compromise of this kind would suit both sides, and ought to be accepted by the Government as well as by my friends on this side."

Presumably, he threw out the idea in order to see whether it would catch on, and apparently it did not catch on. The Honourable Member is perfectly entitled to move the amendment now.

Mr. T. V. Seshagiri Ayyar: We have had no notice of this amendment and I take objection to its being moved now. If you allow it, it is another matter.

Mr. President: As the Honourable Member has just been pointing out, though formal notice has not been given, he has known the substance of the amendment since the 31st of January. The amendment is now before the House for consideration.

Mr. W. M. Hussanally: So far as I am concerned, I have nothing more to add to what I have already said.

Sir Montagu Webb (Bombay: European): May I ask that the amendment may be read out again as we have not got copies of it?

Mr. President: "In the proviso in clause 33 insert after the words 'Indian Evidence Act, 1872' the words 'unless for special reasons to be recorded the Magistrate deems it inexpedient to grant a copy when he shall refuse to do so'."

The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that clause 33, as amended, stand part of the Bill.

Mr. P. B. Haigh (Bombay: Nominated Official): Sir, I wish to refer to the speech just made on the general clause 33 by Mr. **12 Noon. Rangachariar**. I fear, Sir, that on this occasion in the opening part of his speech Mr. Rangachariar has departed from his usual fairness. He asked with indignation and scorn why the Government found fault with the Honourable Members sitting round Mr. Rangachariar because they had opposed clause 33 which was drafted by Government. Sir, I think we may complain that that is a merely debating point. Clause 33, if Honourable Members will refer to page 21, includes the whole of section 162, that is printed in italics.

Rao Bahadur T. Rangachariar: I said 162 (1) in clause 33. My wording was very exact.

Mr. P. B. Haigh: What difference does that make? Mr. Rangachariar spoke scornfully of Government because they complained that Honourable Members had passed clause 162 (1). 162 (1) contains a proviso. I ask the House to direct its attention to the exact wording. "No statement made by any person to a police officer, etc., shall be used for any purpose *save as hereinafter provided*." Then follows the proviso: "Provided that it may be used in particular circumstances therein detailed." That proviso has been cut out entirely by the amendment.

Rao Bahadur T. Rangachariar: The proviso is there.

Mr. P. B. Haigh: That proviso has been entirely changed in character by the amendment passed the other day and the first part of section 162 (1) is therefore rendered entirely meaningless. That is why Government justly object to having the clause passed as it has now been amended.

I wish to pass on to Mr. Rangachariar's general review of the position that has now been created by the amendment that was passed the other day. I would ask the House to remember that if a police officer is making a careful investigation of a case, then, in order to aid his own memory, in order that he may know exactly what every witness has said, he must if he is to do his work thoroughly in a difficult case take down the statements of important witnesses. And these statements cannot at that stage of investigation be expected to contain only matters that are strictly relevant to the inquiry and to the case as it will appear against the accused who is perhaps at this moment unknown. If the clause is passed, those statements must now be placed *in toto* in the hands of an accused person as soon as a witness who made them goes into the box. They will fall into the hands of the accused and he will thereby be possessed of all the information that was given by that witness to the police officer in the course of the inquiry whether it refers to the particular accused present, who is now in the box, or to other persons who have perhaps no connection with the crime or to persons who may be supposed to have had connection with the crime and are not yet detected or apprehended. All these things are to go into the hands of the accused. But Mr. Rangachariar says this can be easily cured. Why do not the superior officers of police or executive officers give instructions to their investigating officers, inspector and sub-inspectors, only to take down the statements in a proper manner. Now, Sir, I am surprised that a lawyer of experience like the Honourable Member should make such a suggestion. It seems to me that he is practically inviting the subordinate investigating officers of police to co the statements that are going to appear as the statements of the accused. Those statements are not signed by witnesses making the deposition.

[Mr. P. B. Haigh.]

They are not recorded solemnly on oath or in an office with people standing about. They are taken down on bits of paper in village chavadis, under trees, anywhere; and any sort of paper could be produced in those circumstances by the police officer and he could say "This is what the witness said to me and it fits in perfectly with his deposition in Court." A suggestion that instructions of this kind should be issued amounts to inviting subordinate police officers to prepare false statements in order to assist their case. Then there was another suggestion. There is no need, says the Honourable Member, for Government to be alarmed. Surely, he says, the Courts have power to prevent any mischief being done. The court can advise the pleader for the accused that grave public interests are involved, that he must not refer in the course of his speech to certain portions of the statements which he has just been allowed to see, that the matter must be kept entirely concealed. The pleader for the accused is, we are told, an officer of the court. He is subject to discipline. But I ask, what about the *accused*? The *accused* is not an officer of the court. The *accused* is the person who is to see these statements. There is nothing in section 162 about the statements being merely shown to the counsel or pleader for the accused or to an officer of the court. The *accused* is to see them. It is he who will find out exactly what witnesses have deposed against him or his associates. It is he who will be in a position to know what things have been suggested to the police about persons perhaps not connected with the case at all. Does the Honourable Member seriously suggest that no mischief can be done, that the court has full power, by merely instructing a pleader, to keep the matter confidential, to prevent any mischief being done. The Honourable Member knows perfectly well that if these statements are shown in their entirety to the accused person, there may on occasions be grave risk of injury to innocent persons and injury to the interests of the State. And yet he thinks that all this can be set aside by the mere suggestion that the court has full power to prevent any harm being done. I trust that the House containing as it does so many members of practical judicial experience will not accept an argument of this kind from the Honourable Member.

Finally the suggestion came from the Honourable Member that the court can always get over the matter by holding the case *in camera*. Sir, I am astounded that such a suggestion should come from the Honourable Member opposite. Even if the case is held *in camera* what difference does it make. The accused will see all these papers. The accused will be able to disclose the information. The accused will have every power to bring about injury to those who have spoken to the police against him and against his friends. Sir, this is really a serious matter which will gravely hamper the administration of justice and I submit that Government are perfectly justified in stating that as they have failed to persuade this House to reject that amendment, if they cannot persuade the House to reject the whole clause as it stands and restore the old clause, they will take the matter up in another House and safeguard the proper administration of public justice in the manner provided for by the constitution of this country. I trust that the House will reject this clause.

Dr. H. S. Gour: I am afraid the Honourable Sir Henry Moncrieff Smith has unnecessarily added a tone in the course of this discussion which I strongly deprecate and I do not think my Honourable friend, Mr. Haigh, was even entitled to refer to the powers of another House and to the veiled

threat that if this House is not amenable to reason, an appeal will be made to another House to correct its errors. As to this part of the constitution, it was quite unnecessary to remind this House about it. This House must decide this question fearlessly, and undismayed by any threat of correction by any other House or in any other place. I pass on, Sir, to reply to the more material objections raised by the Honourable Members. The Honourable Mr. Haigh saw daggers in the air, he told us that it will be a monstrous thing if statements recorded by the police officer in the course of an investigation were revealed to the accused, because those statements may contain other statements highly prejudicial to the interests of the State and which it would be therefore prejudicial to disclose to the accused. I am perfectly certain that the Honourable speaker was not unaware of the provisions of the Act of 1882, the old Criminal Procedure Code, which preceded the present enactment of 1898. What was the practice then? And how far was the safety of the State imperilled by the statements which were then available to the accused, and copies of which were delivered to him? Can my friends on the other side cite a single example that during these long years the statements taken by the police officer and made available to the accused ran the risk of which the Treasury Benches complain and of which their supporters, including the Honourable Member from Bombay, complain? That, I submit, is a short answer to the fears and apprehensions on the part of the Government Benches. I go further and say—you try the accused, the police officer has made an investigation into his case, the first statements of the witnesses have been taken down by him, these are the statements upon which the accused has been brought up on his trial. These statements have been subsequently improved upon or added to. The accused sees the statements made before the Court, and demands that contradictory statements made by the witnesses before the police should be made available to him so that his previous statements to the police be used to contradict him. Such a procedure is not only allowable by law but is directly contemplated in certain sections of the Indian Evidence Act which lays down that a witness may be contradicted with reference to his previous statements. His previous statements are there. The law allows that a witness may be contradicted with reference to his previous statements. What is the answer if the Government when they refuse the accused the permission to refer to statements which the law allows and which is a legitimate subject for cross-examination? It cannot be denied that witnesses in the course of the trial, as the case develops, keep on changing their statements. I do not say it is an invariable practice, but I do say that in many cases the true test and sometimes the sole test available to the accused is that the witness has gone back upon his previous statement which he made to the police and which he has since exaggerated for purposes best known to himself. If the Treasury Benches refuse to give copies of these statements, I ask them how is the accused to challenge the credibility of witnesses tendered by the prosecution? We are told that the Magistrate will look into it. I am sure, Sir, my friend, the Honourable Mr. Haigh, was present in the House when I pointed out, and it was also pointed out by the Honourable Sir Henry Stanyon, that the Magistrate cannot be, and is not, the proper person to act as the accused's cross-examining counsel. The Magistrate's duty is to hold the balance even and to leave the prosecution and accused to conduct their case in the best way they can. To say that the Magistrate or the Court is entitled to refer to these statements, as is embodied in the provision now before the House but not bound to give a copy of these statements to the accused, is to say that the Court has to find out what is in the mind of the accused and to di-

[Dr. H. S. Gour.]

work which is the legitimate work of the accused's counsel. How is the Court to know upon what points the counsel for the accused is going to cross-examine these witnesses? What is his defence, and for what purposes he wishes to use the statements of these witnesses made to the police in the course of the investigation? These are all matters of very serious importance, and those who have practised at the bar or presided on the Bench know too well that the provision, the existing provision, namely, that the Court shall refer to the statement, is wholly inadequate, and in many cases wholly illusory to protect the accused. I submit, therefore, that on the last occasion this House by a very large majority (*A Voice: "Only by two"*)—then at any rate by a much larger majority on this occasion, should decide that it would be in the interests of justice as also in the interests of the accused, and it would be, as Mr. Rangachariar rightly pointed out, in consonance with consistency, that these statements should be made available to the accused. After all, we are making no innovation. We are after all treading upon the old beaten ground; we are going back to the old practice; the innovation introduced by the Amending Act of 1898 has been found to be inadequate and insufficient in practice. Consequently we are going back to the old law, and I do not think that there need be any apprehension on the part of the Members of the Government or anybody speaking on behalf of the Government that there is likely to be any danger to the State, or that the prosecution would fail in cases where they do not deserve to fail. I therefore submit, Sir, that the amendment which was accepted on the last occasion and which was endorsed by the vote of this House ought to be reaffirmed on this occasion.

Mr. H. Tonkinson: Sir, I desire to object to the statements which have been made by two Honourable Members of this House to the effect that my Honourable friend Sir Henry Moncreff Smith used a threat. My Honourable friend merely said, what is a fact, that Government propose to use all their constitutional powers in putting this clause straight. That, Sir, is by no means a threat and I think it was quite a misnomer to say it was a threat. (*Dr. H. S. Gour: "Was it intimidation?"*) My Honourable friend Dr. Gour refers once again to the Code of 1882. I stated on January 31st and I repeat now that we are not going back to the Code of 1882 by the proposal in the Bill. We are going to an entirely different position. The Code of 1882 did not, as my Honourable friend says, allow inspection of the whole of these statements to the accused person. I read out the provisions of section 162 on that occasion and there is not the least doubt about it that my Honourable friend's statement is in this respect incorrect. We are dealing, Sir, with a proposal to allow inspection of the whole of these statements to the accused. That, Sir, my Honourable friend Mr. Rangachariar thinks may be harmful in a few isolated cases. I say, Sir, that it will be harmful in almost all the cases which are under investigation in this country. There is practically no case, Sir, in which these statements do not include information as to the sources of police information, and it is quite impossible, Sir, for any Government without grave anxiety to allow such a clause as this to be enacted. I would now merely remind the House that they are proposing to do something which is not done in any country in the world.

Mr. W. M. Hussanally: Sir, may I ask the Honourable Member to read the provisions of section 162 in the Code of 1882: we have not got that Code before us

Mr. H. Tonkinson: Section 162 of the Code of 1882 runs as follows :

"No statement other than a dying declaration made by any person to a police officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it or be used as evidence against the accused."

My Honourable friend Dr. Gour says we are going back to the law as embodied in that clause. He knows quite well that we are doing nothing of the sort.

Dr. H. S. Gour: If my Honourable friend is prepared to reproduce that section 162 we are prepared to accept it now.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, the point in dispute seems to me to be very simple and I am afraid a good many things have been said which do not pertain to the matter in dispute. We are all agreed that statements made by a witness to a police officer relating to an accused person who is under trial before the Court ought to be shown to that accused person. Up to this point there is not much dispute. (A Voice: "A lot of dispute.") We have reached that stage. The danger which is now pointed out is that in the statement recorded by a police officer there may be matters relating to other persons who are not before the court. That is to say, a witness may give information to the police about matters in connection with people other than those before the court, and the objection is taken that matters relating to such persons ought not to be shown to the accused. A simple remedy for that is that a police officer should take care not to jumble up together matters connected with different people in one statement. Mr. Haigh said how is it possible for him not to mix up things; when a man makes a statement he may refer to several people. He added that it might end in police officers dressing up their statements or something like that. What I say is that a police officer before he takes down a witness's statement in writing naturally finds out orally what that witness can testify to. A policeman does not begin to write at once as soon as a witness begins to speak. He finds out the whole story first and then decides whether it is worth recording. That, I suppose, is admitted. A policeman is not a writing machine or a recording machine. He first examines a witness, finds out from him all the matters that he can speak of and then begins to write out his statement. Well, then, accepting the clause as passed by the Assembly, what the police officer has to do is to write out under separate heads the information which he knows he is going to get from witnesses. It will not be difficult to separate the details relating to one accused from those relating to another or to a person who is not involved in his inquiry. As I have said on another occasion, this will only make the policeman more careful and systematic in taking down these statements. And after all, statements which deal with a number of people are not of frequent occurrence. The cases about which so much anxiety is displayed by the Government Benches are not of frequent occurrence. It is only in rare cases, as those relating to a dacoit gang or in which a large number of people have conspired to commit an offence, in which there may be a witness who has been acquainted with the secrets of the gang or of the conspiracy—it is only in such cases that statements of an involved and complex character will be made. And these are very rare cases. In order to give a sort of protection in these rare cases, I do not think that the law should be altered so as to put in the hands of Magistrates the power to refuse or to exercise their discretion and then

[Rao Bahadur C. S. Subrahmanayam.]

refuse inspection or a copy of statements of witnesses in ordinary cases. There is no use in the Government magnifying the dangers and difficulties. I am afraid for some reason or another, they have not taken a right perspective of this amendment. They have unnecessarily worked themselves up into a feeling that the whole administration of justice will crumple up and the State will be in grave danger if the accused are allowed inspection of these statements. What has been irregularly done, what has been done at great cost and what has been able to be done by wealthy people at the expenditure of a considerable sum of money, we ask now let it be the right of the poorest man as well to know what has been said by a witness. The importance of these previous statements has been referred to and I wish also to refer to it. A man says a certain rambling statement, almost amounting to hearsay, almost amounting to what he has heard, almost amounting to rumour, which is down in the record made by the policeman. But when he comes to Court to give evidence before a Magistrate some days afterwards, he gives a cut and dried, neat story, omitting all those things which would make it amount to hearsay or rumour and makes it straight and definite, in which case it is of great importance to the accused person to show up that witness and make the Court understand that this man has substantially improved his story and therefore he is not a reliable witness. And I am afraid any opposition to that course would simply make us believe that the Government is interested, as is the common repute, in getting persons accused of offences by hook or by crook, and, therefore, I deprecate very much the unnecessary anxiety and what has been styled to be a threat or the exposition of constitution under which we are working, that this section is the section on which the Government has pinned its faith and has staked its reputation.

Colonel Sir Henry Stanyon: Sir, we the non-official Members on this side of the House expect, and constantly receive—perhaps not as often as we should like, but still frequently—consideration from the Government of propositions which we submit for the opinion of this House, and I feel sure that I voice the sentiments on this side of the House when I say that we regard ourselves bound to give reasonable consideration and reconsideration to propositions put forward on behalf of Government against views which we may entertain. We have, on a former occasion, adopted an amendment of clause 33 which the Government claim to be unworkable. I have already said that though more than one speaker has denounced this Resolution as unworkable, we have not yet had any detailed description of how it would be unworkable. Nevertheless, speaking for myself, I accept the absolute good faith of the objection put forward to our Resolution by Government. It seems to me—and I think in this matter I voice the sentiments of those with whom I have agreed on this clause—that the object of both parties in this controversy is the same, namely, the securing of a fair trial. We do not want on this side to give undue favour and advantage over the prosecution to the accused; and I think—indeed it is my own conviction—that Government do not wish to give undue advantage over the accused to the prosecution. The object of both parties to the controversy being the same, it does seem to be anomalous that we should not be able to arrive at an agreement on this particular clause. We claim that the statements made to the Police by persons who afterwards come up as witnesses in support of a prosecution should be made known to the accused. It has been said, though not directly from the Treasury Benches, that one difficulty of the proposal which was accepted in this

House with regard to this proviso will be to give accused persons access to everything, relevant to the case or irrelevant, and matter which it may be of great interest in the administration of justice to keep unpublished. Some suggestions have been put forward as to how an accused can be prevented from obtaining information of anything except that which is relevant to the accusation against him. But these are matters of detail. They require very careful working out. I quite accept what the Honourable Mr. Haigh said, namely, that the record made by an investigating officer should be complete and not abridged, or I think he used the word "cooked". But it does seem possible, if the proviso so far accepted by the House goes too far and creates difficulties in the way, not of the prosecution but of the administration of justice generally,—the public interest,—for some modified form of that proviso, acceptable to both parties, to be devised. I am not prepared with any amendment. The subject is too difficult and I think beyond my capacity. But so long as we are given this principle (in accordance with, as Dr. Gour pointed out, the principles underlying our law of evidence) that whatever a witness states immediately after an offence is committed should be open to comparison with what he may say when he comes into Court, so long as that principle is ensured and the relevant part of his statement is made public for treatment and comparison, we on this side will be satisfied. This is urged not merely in the interests of the accused. In the present law we allow the court to aid itself with these statements. How many a prosecution has broken down because a witness is found by the Judge to have said at the investigation something different from what he said at the trial, and the Judge has not got before him any explanation from the witness, which, if he had been able to obtain it, might have entirely altered his view of the man's credibility. It is fair to the witness, it is fair to the prosecution, it is fair to the accused, it is fair to the Magistrate, that the true cause underlying the discrepancies in statements, *e.g.*, either the original falsehood of the witness due to his desire to screen the accused or avoid trouble, or the subsequent falsehood of the witness, due to his desire to aid the prosecution—should be laid open to the light of day in order that truth and justice may prevail. The suggestion that I have to make is that if any amendment of this proviso can be made which will do away with the difficulties and dangers which the Government apprehend and still leave this one principle available, namely, that conflicting and contradictory statements shall be open to comparison and explanation, then it will be possible to reach an agreement on a matter that most certainly should be settled, if possible, in this House.

Mr. Harchandrai Vishindas: Sir, at the very outset, I must say that we accept the statement from the Government Benches that the remarks of Sir Henry Moncrieff Smith were not intended to be a threat. We may also accept the statement made by Mr. Tonkinson that the old Criminal Procedure Code of 1892 in its provisions in section 162 did not go to the length stated by Dr. Gour. But what we are concerned with is, not what the old law was, or what the law of 1898 was, but whether the law as it is now going to be proposed should be acceptable and is in the interests of justice or not. Therefore we should strip the controversy of all the verbiage with which it has been surrounded and confine our attention to the merits or demerits of the provision now under discussion. It will be sheer waste of time on my part to repeat the arguments that have been from time to time advanced in favour of accused having access to the statements made before the police, and also what has been said against it. But I would

[Mr. Harchandrai Vishindas.]

remind the House to be practical men and to confine themselves to the facts and truth of the case and not to be taken off their feet or dragged by their heels by somebody conjuring up visions of horror, or declaring that Government would become impossible, justice would be impossible and so on. They might as well state there might be a revolution or an earthquake. They must show that and not merely give their *ipse dixit*. Much stress has been laid by speaker after speaker on the Government side on the statement that there is a good deal in the police records which it would be entirely unnecessary for the accused to know and dangerous for the accused to know. Now I have been wondering in my own mind as to why this should be so, and speaking personally, after having 37 years' experience as a practitioner, I certainly have never come across a case in which the police statement contained anything which was irrelevant to the inquiry, nor have I heard from any other practitioners in my own part of the country, or in any other part of the country that police statements contain so many other things. And why should they? A policeman can be credited with at least as much sense as to know whether what the witness is saying is relevant to the inquiry and to the persons who are accused of the offence. If he is not sensible enough to know that, then he does not deserve to be appointed to his post. He must be chucked out at once. If he can be credited with doing his duty properly, he should confine the record only to what is relevant to the case. As Sir Henry Stanyon said, we have great faith in the *bona fides* of the Government but we want to point out to them that their fears and apprehensions are greatly exaggerated, and that in fact they will not exist. Mr. Haigh said, Oh, Mr. Rangachariar's proposal to give instructions to police officers who are recording statements would be impracticable and would lead to the cooking up of statements by the police officers. Why? I do not see the force of that argument at all. Policemen already have instructions from higher authority as to how they are to record their statements. Is it not now the practice that the police have certain *challans* and other forms in which they receive instructions from their superior officers as to how to record evidence, statements and so on, and how to keep their diaries? Well, there is nothing wrong and improper in the policeman being instructed to confine the record entirely to statements that are relevant to the inquiry. Now, no speaker from the Government side has challenged the propriety of the argument that if the statements recorded by the police are confined to relevant matter, in justice the accused person is entitled to have a copy of those statements. The objection that has come from the side of the Government is to matters that go beyond the case coming to the notice of the accused to the prejudice of the State and to the prejudice of other persons. As I have said, that is a very small matter, and with due deference to the Honourable Mr. Tonkinson, who says these things happen very frequently, I would say that his fears are imaginary, and such contingencies will not occur frequently. They would occur perhaps in one in a thousand cases. And you are not going to take account of exceptions; you are going to see what would lead to doing justice to the accused person as well as to the prosecution. As Sir Henry Stanyon has pointed out, in some cases the production of these statements might be very beneficial to the prosecution itself because it may appear that the witness whose statement is impeached by the defence pleader in the court, has said the same thing before the police, and the prosecution would receive help from that. They would point out that this man said the same thing before the police as he is saying now. So it is not in the interests of the accused person only but of

the prosecution also to retain the clause. I said before that we should not conjure up visions of horror because of statements made by some speakers, but we should closely examine the merits and demerits and the facts of the situation. Therefore I submit, Sir, that there is not the slightest change of harm arising from the retention of this clause 33. I also said that the Government were perfectly justified in stating that they would adopt all the constitutional means in their power by going to the next Chamber. There was no threat in that; nothing improper in that, because they had to instruct their supporters that they should strongly vote on their side. But at the same time, I say that, whatever the Government may do constitutionally, so far as we Members of this Assembly are concerned, we find that the Government position in this particular matter is not sound but that our position is sound and that clause 33 should stand and should not be rejected.

Mr. B. C. Allen (Assam: Nominated Official): Sir, I am very reluctant to take up the time of the House even for two minutes in further discussing this much disputed clause. But Mr. Vishindas has asked a question to which I think an answer should be given. He has asked: Why do Government object to the clause as now amended? What objection is there to it? The answer is a very simple one. A police officer, when he goes into the interior to investigate a theft case, a dacoity case, a burglary case, records the evidence that is brought before him and frequently he finds that the statements of a witness give valuable evidence not only with regard to the case which he is investigating but also with regard to a number of cognate cases. For we all of us here know that in this country crime is frequently committed by gangs of criminals and that the detection of one crime leads to the detection of many. Now, if the clause as amended is passed into law, it would mean that the police officer, if he was compelled to prosecute the man he was originally pursuing before the detection of the other cases was completed, would be required, as soon as the accused was placed in the dock and as soon as he brought forward his witness, to make over to him a statement containing valuable information not only with regard to the case then under the consideration of the Magistrate but also the information calculated to completely wreck his prospects of success in the various other linked and cognate cases. I hope, Sir, that the House will agree that this is so grave an objection that Government is justified in protesting against its being passed into law.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, much as I should have liked that some amicable settlement should have been arrived at with regard to this clause, I find that it is not possible. I suggested in the course of the discussion at an earlier stage that the word "may" might be used for "shall" so that the matter might be left to the discretion of the Court. Sir, my experience of Judges differs from the experience of some of my friends on my right who have a different experience of mofussil Magistrates. They say that Magistrates would interpret "may" absolutely arbitrarily. But, I believe, Judges with a judicial turn of mind would interpret "may" as almost "shall." Judges who have a keen sense of justice and responsibility interpret the discretion given to them as a discretion to be exercised in the interests of justice. That is the proper judicial temperament. But, as my friends say that Magistrates in the mofussil do not exercise their discretion in that way, of course, I cannot persuade them to accept what I suggested at that time. I do not, however, share the apprehensions

[Mr. J. Chaudhuri.]

that the Government Members do in this respect. Of course, I do not practise now, but from whatever limited practice I had in the courts, of old, I found that the police papers always came up with instructions. The defence got it somehow. So, what is now provided for in the section will only deprive the police of their illicit gain. But, in other respects, I wish to point out to the Government Benches that there are two diaries kept—one a general diary; in this the police Inspector, *i.e.*, the Inspector in charge of the case, records the minutes of his visits to different places, his investigations and inquiries. Then there is another diary kept which is called the case diary or a special diary. In this he puts down the statements of persons he examines in that particular case. So I suggest that my Honourable friends in charge of the Bill need not go to the other Chamber to have this section amended and create any conflict with us—that would be very undesirable—when there is a more reasonable course open to them. What they need to do is that the executive should give instructions to the police officers to keep their diaries properly. That is, in the case diary they may enter the persons examined and in the general diary enter all miscellaneous matters with regard to their investigations, with regard to their suspicions, with regard to the persons suspected in this and other cognate cases. Thus if proper instructions are given, which it is the legitimate function of the Executive to give, to the police officers through the Inspectors General of Police in the provinces, they will avoid any failure of justice, or any prejudices so far as either the prosecution is concerned or the defence or third parties concerned. I, therefore, submit that there is no occasion for generating so much heat over this discussion, if the matter may be so easily settled by means of official and executive instructions to the police to keep their diaries properly.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, I am not a lawyer and I have not tried a case for the last ten years. I had nothing whatever to do with the framing of this Bill. And I confess that I had not taken much interest in the debates on this clause until this morning. But, Sir, I had a fairly large amount to do in the way of trying criminal cases during the first fifteen years of my service in districts which were considered fairly criminal and I have been very seriously impressed, after what I have listened to this morning, with the difficulties that Magistrates and the police in districts in the country will encounter if this clause as it has now been passed becomes law. My Honourable friend, Mr. Chaudhuri, has suggested that the difficulties will not be at all serious, that Government can give instructions to police officers to prepare their special diaries with special reference to this clause. I think, Sir, any such course would be fraught with the most serious dangers. My Honourable friend, Mr. Haigh, has already referred to these dangers. I do not know whether Honourable Members here have as much acquaintance with the ordinary sub-inspector of police as I have. As I have said, for fifteen years I was a Magistrate, either a District Magistrate or a subordinate Magistrate. For another five or six years I went about the villages in an entirely different capacity and I saw a good deal of the Magisterial and the police officers' work as an outsider. And I think, Sir, it would be most dangerous to give any instructions to the police to have these special diaries prepared in the way that the Honourable Mr. Chaudhuri and my friend, Mr. Harchandrai Vishindas, have suggested. I think it would be extremely unfair to the accused themselves if the police prepare their special diaries according to definite instructions given by the superior officers so as to

exclude all matters which are not connected in a direct manner with the case in question. I think, Sir, that the Magistrate then will be prevented from having a true perspective of the entire investigation.

1 P.M. I think the Magistrate will be placed in an extremely difficult position. He will not be able to arrive at a correct conclusion as to whether the investigation was conducted in a proper and *bonâ fide* manner. The whole investigation, the whole proceedings as they will come before the Magistrate, will really be in a cooked form. In the interests of the accused themselves, Sir, I deprecate the amendment that has already been passed. I hope, Sir, that this appeal that I am making to the Members of this House will have some effect. I am not doing so as a member of Government. I have always been interested in protecting the interests of the accused and in seeing that justice is done.

Mr. Jamnadas Dwarkadas (and some Honourable Members at the same time): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The question is that clause 33, as amended, stand part of the Bill.

The Assembly then divided as follows:

AYES—41.

Abdul Quadir, Maulvi.
Abdul Rahmau, Munshi.
Abul Kasem, Maulvi.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asad Ali, Mir.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Chaudhuri, Mr. J.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Gajjan Singh, Sardar Bahadur.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Ikramullah Khan, Raja Mohd.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Kamat, Mr. R. S.

Lakshmi Narayan Lal, Mr.
Misra, Mr. B. N.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Sarfaraz Hussain Khan, Mr.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Stanyon, Col. Sir Henry.
Subrahmanayam, Mr. C. S.
Ujagar Singh, Baba Bedi.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—32.

Abdul Rahim Khan, Mr.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Bijlikhan, Sardar G.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Dalal, Sardar B. A.
Davies, Mr. E. W.
Faridoonji, Mr. R.

Graham, Mr. L.
Haigh, Mr. P. B.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Hussanally, Mr. W. M.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Rhodes, Sir Campbell.
Tonkinson, Mr. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Mcntagu.

The motion was adopted.

Sir Henry Moncrieff Smith: Sir, I move that the clauses and sub-clauses of the Bill be re-numbered in consecutive order.

Mr. President: The question is that the clauses of the Bill be re-numbered in consecutive order.

The motion was adopted.

The Title was added to the Bill.

The Preamble was added to the Bill.

THE INDIAN OFFICIAL SECRETS BILL.

Mr. L. Graham (Legislative Department: Nominated Official): Sir, I rise to move:

"That the Report of the Select Committee on the Bill to assimilate the law in British India relating to official secrets to the law in force in the United Kingdom, be taken into consideration."

Sir, I have many reasons for craving the indulgence of this House, but I shall not trouble the House with many of those reasons. My first reason, Sir, is that I claim to be a new Member—may I say a very new Member—for I think it is unusual for a new Member to be entrusted with work of this importance in his first attendance in this House. The reason for this is, as you all know, the most regrettable illness of my Honourable Leader, Sir Malcolm Hailey.

Now, Sir, the Bill was, as you know, introduced some time ago in this House, and went, I may say, to a very representative Select Committee. That Select Committee performed its labours most conscientiously. I am in the happy position of testifying to the labours of the Select Committee because I was not a member of that Select Committee. The Report has been before the House for the last fourteen days or so, and certain amendments have been received. I do not propose to refer to those amendments in detail now. The Report I think is a full Report and there is no reason why I should make any lengthy speech now in moving that the Bill be taken into consideration.

Members probably would like to be reminded of the state of our law in this country at present. It is at present contained most inconveniently in the Indian Official Secrets Act, 1889, as subsequently amended by the Act of 1904. It is also contained in the English Official Secrets Act of 1911, and there is a provision in that Act which I think it would not be altogether superfluous if I should read it to the Members. That section runs as follows. (This was enacted in 1911, I may mention):

"If by any law made before or after the passing of this Act by the legislature, if any British possession provisions are made which appear to His Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend the operation within that British possession of this Act, or of any part thereof, so long as that law continues in force there, and no longer."

Now, Sir, possibly Members of this House may desire to have some reason why an English enactment should apply to India, an enactment relating to a matter in which we ourselves have legislated. The reason is

this. Our Act of 1889 followed very closely the English Act of the same year or a year before. That Act was found insufficient in England and it was replaced by the Official Secrets Act, 1911. The secrets with which we are concerned are not only secrets affecting India or part of India; they are imperial secrets to a very large extent, and that is the reason, Sir, why legislation on this subject should either be contained within the four corners of one Act applicable throughout the Empire, or that legislation very closely approximating to that legislation should be in force. The Act of 1911 gives the option, "You take this Act or you frame a similar Act." You may ask why we have not remained content with the English Act. With the substance of this Act of 1911 we are content, but certain practical difficulties have arisen in the interpretation—not of the substance of this Act but in applying it to the Courts of this country. Our Courts have different names, our police officers have different names, and it would be convenient if the whole of our law should be expressed in what I may call an Indian form. To be added to that is the fact that the Official Secrets Act, 1911, was amended by the Official Secrets Act of 1920 in England, but the amending Act of 1920 does not apply *proprio rigore* in this country. The need of applying those provisions has been examined very carefully. They were introduced into the law in England as the direct result of experience gained during the Great War. As I have said, the need for reproducing the provisions of that Act in this country was examined. It was found that some provisions were not necessary; on the other hand it was held that some other provisions were necessary. This Bill, then, represents a combination of the laws in force in this country and in England and it has been, as I have said, very carefully examined by the Select Committee and I now move that the Bill, as amended by the Select Committee, be taken into consideration.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): I have no doubt that the House will generally agree with me when I say that we all regret that the Honourable Sir Malcolm Hailey, the Leader of the House, is absent to-day and was therefore unable to move the motion which has fallen to the lot of the Honourable Mr. Graham to move before this House. As regards his motion, Sir, we all recognise the desirability of having an enactment of the kind contemplated in this country. But I think it was said by the Honourable Mr. Innes on another occasion with regard to one of his Bills that it was not a slavish imitation of the English statute. May I borrow those words in this connection and say, why is this enactment a slavish imitation of the English statute? I should have expected, Sir, that an enactment of this importance would be taken up by the Indian Legislature by dividing it into two parts, or indeed into two Acts. Honourable Members know that military secrets stand on a different footing from civil secrets and it would have been much more desirable if an Indian Act dealing purely with military secrets were enacted and another Act dealing with civil secrets were introduced. The admixture of military and civil offences in the same Act is apt to cause confusion. It has caused confusion in my mind and I have no doubt that that confusion will be shared by others.

Now, Sir, passing on to the specific provisions of this Act, Honourable Members will find that the real mischief which this enactment is intended to check is that no act should be done which might prove prejudicial to the safety or interests of the State. When this clause was debated in Parliament, Honourable Members there questioned Government as to what the meaning of the words 'interests of the State' is and how that

[Dr. H. S. Gour.]

question is to be decided in each case. It may be that an act is perfectly innocent and not prejudicial to the interests of the State but became afterwards so prejudicial to it and who is to be the judge, whether the act was prejudicial to the safety or interests of the State. Honourable Members will find that very loose expressions of the English statute have been reproduced in the Indian Act. It was a complaint judging from the debates in the two Houses of Parliament that these loose expressions were apt to be misunderstood. In England where all trials are held with the aid of the jury, the jurors as men of commonsense understand these sections as men in the street commonly do. They do not go into the technicalities of the question but decide from the broad standpoint of commonsense, but in this country where trials at present are held without the help of jurors, Magistrates and Judges are apt to examine too narrowly the provisions of the section and apply to them their legal mind, and say that if an offence comes within the purview of a section the accused cannot escape punishment. This is a point of view which I present to the House, especially in view of the fact that while all offences under the English statute are exclusively triable in a Court of Sessions, the offences not punishable with 14 years' imprisonment and mainly those punishable with two years' imprisonment are here made triable by a Magistrate of the first class. I understand, Sir, that in response to my amendment on the subject asking the Government that all offences under this Act should be triable by the Court of Sessions, at any rate in cases in which the accused so desires, members of the Treasury Benches are willing to accept the amendment and concede that offences under this Act might be tried by the Court of Sessions if the accused so desires. I congratulate the Government upon accepting this amendment which would effect a great improvement upon the Bill as presented to the House. There are two or three other matters upon which I invite the attention of the Honourable occupants of the Treasury Benches and ask them to examine the provisions of the Bill and see if improvements cannot be made. If Honourable Members will turn to section 3, they will find that while in clause 1 the offence of spying is generally defined, clause 2 of that section lays down a special rule of evidence at variance with the existing law. Those of my learned friends who have studied the Indian Evidence Act will bear me out that evidence about character is wholly inadmissible in a criminal case, and I therefore invite the attention of the House to the fact that section 3 provides that if on a prosecution for an offence under this section, it is proved from his known character that his purpose was prejudicial to the safety or interests of the State he will be deemed to have committed an offence under this section. I suggest, Sir, that the Government might re-classify these offences, sub-divide the Act into Part I—Military, and Part II—Civil, and re-define the offences in less vague and more popular terms so that the people may know what they are to avoid and for which they are liable to be made punishable. The very general and loose expressions of the Parliament statute which have been reproduced in this Bill are not likely to be understood by the public at large to whom this statute is addressed, and I suggest, Sir, that it would certainly be in keeping with the policy of the Indian Legislature if expressions commonly understood and popularly known are used in preference to the expressions common in Parliamentary statutes. The various improvements which Honourable Members of this House have suggested will no doubt come up for consideration *seriatim* and I therefore do not wish to anticipate the authors of the amendments. I rest content by saying that I am not

enamoured either with the draft or with the arrangement of the Bill and I can only regret that this Bill is a slavish copy of the Parliamentary Statute.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. President was in the Chair.

MESSAGES FROM THE COUNCIL OF STATE.

Mr. President: Secretary will read two Messages from the Council of State.

Secretary of the Assembly: The first Message runs as follows:

"I am directed to inform you that the Bill further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments, which was passed by the Legislative Assembly at its meeting of the 30th January, 1923, was passed by the Council of State at its meeting of the 14th February, with the following amendment:

'In sub-clause (2) of clause 21 of the Bill, after the words 'District Magistrate', the words 'on requisition in writing signed by the Chairman of the Committee' were inserted.'

'The Council of State requests the concurrence of the Legislative Assembly in the amendment.'

The second Message runs as follows:

"I am directed to inform you that the Council of State has, at its meeting of the 14th February, 1923, agreed without any amendments to the Bill to provide for the restriction and control of the transport of cotton in certain circumstances, which was passed by the Legislative Assembly at its meeting held on the 30th January, 1923."

THE INDIAN OFFICIAL SECRETS BILL.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadans). Sir, I beg to move that the Bill be re-committed to the Select Committee.

Sir, there is no one in the House who is not at one with the Government in their desire to suppress spying in this country. Spying even in its minor form is objected to even in private conversations between private individuals, and it is much more necessary that, where the interests of the State are concerned, where national defence is concerned, where spying would cause a real danger and disaster to the country, spying should be suppressed with a very strong hand; and I would have given my full support to the Bill if proper safeguards had been provided to save the innocent from being brought into the clutches of the law as laid down in this Bill. The language of the Bill is very wide and capable of much abuse in its interpretation. The phraseology is very peculiar and complex, so much so that, just as Dr. Gour observed a few minutes ago, in the House of Lords Lord Birkenhead had to say that he was not enamoured of the phraseology of the Bill. I will just give certain instances in the Bill which will show how dangerous and how capable of wide interpretation certain clauses in

[Mr. K. B. L. Agnihotri.]

this Bill are. This Bill, as drafted, has a peculiar construction in this way, that it does not define at one place all the definitions that should have been defined at the beginning of the Code. Many definitions that are embodied in the Bill involve the definitions of the particular words used therein, and it would be very difficult for a lay man and a man of ordinary intelligence not versed in law, to interpret the terms properly. Sir, if I take you through the definition of spying, through the definition of a work of defence, you will find a word 'mine' used therein. I realize that the word 'mine' used in this connection is meant for the receptacle containing the explosives, etc., to protect the coasts from intrusion of foreign ships or men-of-war. But the word is also capable of interpretation in another way. Honourable Members who have read the papers of the last few days may have realized that even editors of papers have fallen into the common error of interpreting the word "mine" to mean excavations for digging out metals or minerals. I wish that the members of the Committee had cleared the meaning of the word as it was meant in this Bill. Going further ahead, Sir, Honourable Members will find 'spying' defined in section 3 as an offence. It is:

"Any person for any purpose prejudicial to the safety or interests of the State approaches or enters—and so forth—any prohibited place;"

"Any person for any purpose prejudicial to the safety or interests of the State makes any sketch, plan, model or note. . . ."

of what? It has been stated. This clause (b) is not governed by the words "prohibited place" which appear in clause (a). Clause (b) goes on further to say:

"makes any sketch, plan, model or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy."

Now what does this come to—"any person who makes any note which might be indirectly useful to an enemy"—this does not say at what time it is likely to be useful. It may be useful 20 years later, who knows.

Mr. President: The Honourable Member is arguing a question of detail which will necessarily arise when we come to discuss clause 3. He must offer more general and substantial reasons for a motion to re-commit. He will understand that clause 3 will be open for amendment in order to satisfy the criticisms which he is now bringing forward, but it is a violation of the spirit of the Standing Orders to use the motion for re-committal merely for matters of detail. If he brings forward arguments such as those adduced by Dr. Gour they will be valid.

Mr. K. B. L. Agnihotri: I simply wanted to point out that there are certain matters in the Bill which are not capable of any improvement on the floor of the House, and with that object I am giving illustrations to show that they could not be improved on the floor of the House. I was simply showing how various expressions are capable of several interpretations in the hands of lay persons. That was my object, Sir.

As I have said, a note made by any person which might be such as to be useful to an enemy some years after might be regarded as spying. Consider the difficulties that will arise. There are census reports of places, there are Government statistics, historical records and maps of many places like Asoka's pillar, the Diwan-i-Khas, the Diwan-i-Am in Delhi and the

Fort in Agra. Any person having these things in his possession or publishing these things might at some time or other when a foreign power was evilly-minded enough to make war against our Government be utilized by that foreign power for its own purposes. And if we allow such interpretations to be put on these phrases I think many innocent persons are likely to be hauled up under this Act. Similarly, Sir, what is meant by the safety or the interests of the State? It has not been defined anywhere as to what will be the interests of the State. If you take the dictionary meaning, that will come to anything that is beneficial to the State. Supposing a thing is done and it does not agree with the opinions, or say with the political opinions, of certain parties, that may be regarded as not being beneficial to the State. The question of taking away any political powers from the Government even though in a constitutional way may also be regarded at some time or other as not beneficial to the State. I do not mean to say that this would be the exact interpretation of this expression in the Bill, but I am simply pointing out the interpretation that might be put on this clause. This would lead to much difficulty and much abuse and harassment to innocent persons. I wish the authors of the Bill had given the definition of these clauses at the very beginning of the Bill in clause 2 just as they have done with respect to some expressions. Further they have introduced a novel procedure of presumptions. Any person if he is suspected, mind you suspected, of having a communication with a foreign agent, if he happens to give an impression of his dealing with a foreign agent even unknown, it will be considered as spying. How dangerous will that be, Sir? It is quite all right in theory and in the book. But if you were to take the interpretations that have been given to "communication with foreign agent," you will find that the provisions are very wide and dangerous. What is the communication to a foreign agent? Communication to a foreign agent as defined may be when any person has visited the place of a person suspected to be a foreign agent. Suspected by whom? Not by the man who visits him. His knowledge is made quite immaterial but suspected by the Court; so far it is quite all right; but how is a man to know that the address that he is visiting, is that of a foreign agent? Not only that, Sir. If this man happens to possess any paper or any address of an agent or of any person who is suspected to be a foreign agent, this man is done for. If he has got any historical records or historical statistics or any other railway map that might be of some use at some future time, that man is liable to be hauled up. He will be deemed to have communicated with that man. Now, Sir, even if a foreign agent or a suspected foreign agent has a place of business in British India and if any other man whose known character as proved may cause a suspicion, in the minds of the judges, even innocently happens to go to the place of business of the former to deal in business only such a man will also be presumed to have communicated with a foreign agent. Such are the provisions in this Bill. Further, there is also a provision in this Bill as it has come from the Select Committee that if any person were to publish any information relating to anything used or relating to anything in a place, which is declared to be a prohibited place, that man will be deemed to have committed an offence under this Act; and forts at Agra, Delhi and other places may be deemed to have been prohibited places and the Frontier Province may also be deemed to be a prohibited place. If I were to draw the attention of the Government, speaking in this Chamber, that it is not desirable to maintain an army . . .

Mr. President: The Honourable Member's arguments would be perfectly in order in considering each clause.

[Mr. President.]

I must point out to the Assembly, however, that supposing this motion were passed, there would be no indication whatever to the Select Committee what this Assembly expected them to do. The words in Standing Order 43 are "that the Bill as reported by the Select Committee be re-committed either:

(i) without limitation, or

(ii) with respect to particular clauses," and so on.

The words "without limitation" must be held to presume that this House is dissatisfied with the manner in which the Select Committee has treated the measure which was referred to it. A proposal to re-commit without limitation must necessarily refer either to the work of the Select Committee as a whole, or to some matter of principle on which the Assembly desires an opinion from the Select Committee and on which the Committee did not pronounce. If the Honourable Member is dissatisfied with the proposals made by the Select Committee on particular points—provided they are points of real importance in the sense of raising a principle—then he ought to move a motion under Standing Order 44 (*b*) (*ii*) or (*iii*), and not move, as he has done, to re-commit without limitation. If we were to pass this motion, the Select Committee would meet again and say: "We are satisfied that we did give reasonable consideration to the proposals of the Bill and we are of opinion that no further consideration on our part would lead us to alter the report before the Assembly." We should then be no further on.

Mr. K. B. L. Agnihotri: Sir, it is exactly with this object that I am pointing out these things because I want the Select Committee to know what is the point we want them to clear up. We want them to know that the wording used in this Bill is not proper . . .

Mr. President: That is not what the Honourable Member has done. The Honourable Member simply moves that the Bill be re-committed, and invites the Select Committee to re-examine the whole Bill without reference to any particular clause or any particular amendment. The Select Committee, with a mere general instruction before them, will sit down and they will say: "We are satisfied that we carried out the original intention of the Assembly; we examined the Bill in detail; the report we have submitted is a satisfactory report and represents our opinion."

Mr. K. B. L. Agnihotri: All right, Sir, I bow to your ruling. I will simply say the wording used is very general and will cover even innocent dealings of innocent persons, and the substantive law and law of evidence have been jumbled up in the clauses and therefore it is necessary that the wordings be changed. It may be said, Sir, that the wording in this Act has been taken from the English Acts of 1911 and 1920, and been considerably improved by the Select Committee. My submission to that would be, Sir, that as they found that an improvement in certain directions on the wording of the English Acts was necessary, it may further be regarded as necessary further to improve the wording of this Bill to include certain definitions. It might be said, just as it was said in the English Houses of Parliament, that the Act will not be used in ordinary cases; that it will be used only in extraordinary circumstances of spying and when a gross breach of the law is committed. But one cannot be sure if it will be like that in this country. Act III of 1818 was enacted for a different purpose and continued up to this date, or rather to last year; it remained as a

dead Act in the Statute Book but some of its provisions were used in 1906 or 1909. We do not want, therefore, that an Act should remain 8 P.M. on the Statute Book and hang like a sword of Damocles over our heads to be utilised at any future time, and it is necessary that the Select Committee should change the wording, clear up the expressions and bring it to a line where it may be acceptable to all of us. The language should be simple and easily understood even by "the man in the street." With these words, Sir, I commend my motion to the House for the re-committal of this Bill to the Select Committee.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I oppose this motion. I shall for the present only answer very briefly the objection taken by my Honourable friend, Dr. Gour, and Mr. Agnihotri. Dr. Gour takes the objection that we have slavishly followed the English Act. We have done nothing of the kind. We have reduced the maximum sentence, which in the English Act ranges from minimum 3 to 14 years. For non-military offences we have fixed the maximum at 3, in some cases 2 years and fixed no limit to minimum and given the option of fine. We have classified offences into two classes—minor and major offences, what are called civil offences and offences of a military character. And we have introduced the nomenclature of the Criminal Procedure Code and described them as cognizable and non-cognizable and bailable and non-bailable offences. We have also introduced the nomenclature of our Evidence Act, such as relevant facts, presumption and provided for their rebuttal by evidence. So, as far as these go, I hope Dr. Gour will be satisfied that we have not slavishly followed the Parliamentary Statute but have recast that Statute on the lines of our law of Criminal Procedure and the Law of Evidence.

Now, something has been said about our using the words "safety and interest of the State." I do not wish to go into the details. We shall have every opportunity, when we discuss the clause, to go into the details, but I shall generally point out that we have classified offences into two classes—offences in the nature of spying military secrets and with regard to these we have used the words "safety or interest of the State." I suppose my friend would not contend that we should wait till the spy has done the mischief. It is when he is trying to pry into military secrets, is it not to the interests of the State to arrest him and put him on his trial before a Magistrate or a Judge? But here I shall just draw attention to where we use the word "safety" alone. We may refer to clause 5 (b) which reads: "Use the information in his possession for the benefit of any foreign power or any other manner prejudicial to the safety of the State." This in clause 5 relates to officers communicating information to foreign powers. If they so communicate it and if such communication endangers the safety of the State, then we proceed against him. The persons who are interested are the officers of the State who are in charge of these secrets. If they communicate to others and that endangers the safety of the State, no body will contend that they should not be found guilty of a breach of duty. Here the criterion we put down is rather high and that is that if this communication of the secrets is such as is likely to endanger the safety of the State, then they will be prosecuted and punished. But, with regard to military secrets and secrets palpably of a much more serious nature, we have used the words "safety or interest of the State." Supposing our military defences, mine-fields or mines are being noted or made sketches of by a spy. Before he has noted, obtained a sketch or communicated, ought not we to provide for his detection, for his arrest and for

[Mr. J. Chaudhuri.]

safeguarding the "interests of the State"? If he has taken these away, then he has completed the mischief. But it would, surely, be to the "interest of the State" that we should make provision for safeguarding its interests before it is too late. Even my friend Mr. Agnihotri used the word "interest" in his speech. He said that spies should be put down. He said that he is not in sympathy with them and that spies should be put down "in the interests of the State." So, when he was putting his own case before this House, he himself used the same expression and thus gave away his own case. I do not wish to detain the House any longer, but when we examine the amendments clause by clause, the House will be satisfied that we have made this Bill absolutely innocuous with regard to persons who may act *bona fide*. As regards the serious offences of persons who try to abstract military secrets or secrets relating to defence which are prejudicial to the "safety or interest of the State," nobody in this House will have the hardihood to say that they deserve any sympathy. For these reasons, Sir, I say that my friend Mr. Agnihotri has made out no case for re-commitment of this Bill to the Committee. We have done our best and as you have very rightly observed, Sir, if the Bill is re-committed to us without any definite directions, we shall not know what to do with it. We would prefer to wait and see if there is any substance in the amendments proposed. I therefore suggest that the discussion of the Bill be proceeded with.

Mr. L. Graham: Sir, I apologise for making what may seem a perfectly superfluous speech, but I think there are one or two points to be made yet. The first is that the Select Committee did examine all the material which was put before it. It may be in the recollection of Members that this Bill was circulated. We examined all the opinions we received. We also took the proceedings in this House. I say, Sir, that we examined very carefully all the material which was put before us. If Mr. Agnihotri wants to take a particular attitude towards the Bill, I fail to understand why he did not express himself at an earlier stage of the proceedings. It is therefore not necessary to take up the points of detail which Mr. Agnihotri has mentioned. One more point, Sir, as to what Dr. Gour has said. He has accused us of slavishly following British drafting. Well, my Honourable friend, Mr. Rangachariar, was in the Chair, and I do not think it is likely that he would slavishly follow anybody.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): I am not ashamed of slavishly following the English of Englishmen.

Mr. L. Graham: That again is a point which I should like to take. The drafting of this Bill is important. Dr. Gour—whether he intended it or not—I trust he did intend it—paid a compliment to the work of the Legislative Department in saying that he would prefer this Bill drafted on the lines generally followed by the Legislative Department. He said it would have been clearer and more intelligible. Well, Sir, we acknowledge the compliment. But there is this difficulty. We intentionally followed the English form because of the provisions of section 11 of the Act of 1911. We felt that if we broke away from the form of the English Act and put up an Act which looked entirely different—and after all, the Act which Dr. Gour sketched for us would look entirely different—we should not be at all sure that His Majesty in Council would be prepared to suspend the English Act in favour of ours. Other points mentioned by

Mr. Agnihotri, as you said, Sir, will be appropriately dealt with when he moves his amendments.

Mr. President: The original question was:

"That the Report of the Select Committee on the Bill to assimilate the law in British India relating to official secrets to the law in force in the United Kingdom be taken into consideration."

Since which an amendment has been moved:

"That the Bill as reported by the Select Committee be re-committed to the Select Committee."

The question is that the Bill be so re-committed.

The motion was negatived.

Mr. President: The question is:

"That the Report of the Select Committee on the Bill to assimilate the law in British India relating to official secrets to the law in force in the United Kingdom be taken into consideration."

The motion was adopted.

Mr. President: It is suggested that it may be advisable to leave clause 1 for later consideration.

Mr. President: Clause 2.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammad): Sir, the amendment which I move is this:

"In clause 2 (7), after the word 'plate' insert the following:

'Provided these undeveloped plates on being developed are found to be the negatives of plates of prohibited places as defined under this Act'."

Here photograph includes an undeveloped film or plate, and in (9) we have:

"sketch" includes any photograph or other mode of representing any place or thing."

Under clause 3 the making of a sketch useful to an enemy is punishable. So, a man who has got photographs which include an undeveloped film can also be held up. Undeveloped films are plates in which the impression of the thing photographed is not visible. I am not a photographer, but I can say this much that unless an undeveloped plate is put in a solution the impression of that plate is not visible. For instance, take a man who stands in front of a place and takes a photograph and goes away. Then he is arrested and found in possession of that undeveloped film. Unless that film corresponds with the negative, I do not think he should be held up at all. So, in order to make it clear I provide this safeguard. It would be very unsafe to catch hold of the man or make him responsible when he is in possession of undeveloped films. In these circumstances, I beg to move my amendment.

The motion was negatived.

Mr. K. B. L. Agnihotri: I move:

"In sub-clause (8) (a) of clause 2, the word 'mine' be omitted."

I would not have moved this amendment if the meaning of the word "mine" had been made clear in sub-clause (a). I am afraid that it is

[Mr. K. B. L. Agnihotri.]

liable to misinterpretation and may be applied to the excavations wherefrom metals or minerals are taken out, though I think that "mine" means explosives used in time of war for defending the coast. If Honourable Members will see the last sentence of the sub-clause they will find the words "for the purpose of getting any metals or minerals". (*A Voice*: "In time of war".) I do not know whether the words "in time of war" govern all these sentences above. If they do, then the law would be perfect on that point. But if they do not, then it is liable to misinterpretation; and even taking for granted that it is to be prohibited in times of war, what will happen to the records, to the statistics and to the other papers and documents in the public libraries and other places in the bookstalls, and book-seller's places relating to a mine which be declared a prohibited place some years after the publication. If we go deep into the clauses we find that any person publishing any information relating to anything used in a prohibited place is liable to be brought under the clutches of this law and that would create difficulties and therefore I propose that the word "mine" should be deleted.

Mr. L. Graham: When this Act of 1920 was in the Bill stage before the House of Commons, a certain keen Parliamentary, Commander Kenworthy, moved that the word "mine" be omitted. His reason for doing so was that he was afraid that it might be misinterpreted. The Chairman of the Committee said "I really do not believe that anybody else besides the Honourable and Gallant Member would have understood that". Commander Kenworth, has his imitators. The Learned Attorney General was sympathetic and I should also like to be sympathetic to Mr. Agnihotri. What happened was this. The Attorney General said "there was no possibility of misunderstanding but, to meet your case, after the word 'mine' I propose to insert the word 'minefield' with these words so associated there is no possibility of misunderstanding." The House accepted the Attorney General's view and inserted the word "minefield." In our Bill, we have the word "minefield" after the word "mine". I submit it is impossible that there should be any misunderstanding at all. I would object to the removal of the word "mine" because it might be argued in court that one mine does not make a minefield. I therefore oppose the amendment.

Mr. President: The question is:

"That in sub-clause (8) (a) of clause 2, the word 'mine' be omitted."

The motion was negatived.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): I beg to move:

"That for the words 'an enemy' wherever they occur in clauses 2, 3 and 4, the words 'a foreign power' be substituted."

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Is every power an enemy?

Mr. K. C. Neogy: Every power is a potential enemy, and my Honourable friend, Mr. Bray, will bear me out when I say that. If Honourable Members will look into the provisions of clause 2, sub-clauses 8 (c) and (d), they will find that by the use of this expression it is intended to indicate the importance of the information which Government are anxious to safeguard. It will be seen that in sub-clause (c) of sub-clause (8) the information must be useful to an enemy, and a place may be declared to be a

prohibited place when Government think that information with respect thereto will be useful to an enemy. So also in sub-clause (d). When we come to clause 3, we find that in sub-clause (b) likewise, any sketch, plan, model, etc., must be useful to an enemy. So also in sub-clause (c) any document, information, etc., must be useful to an enemy. The House ought to be quite clear on this point. We are not going to penalise the enemy, when we use this term in these clauses. We are merely setting a standard of importance of the secrets which Government must safeguard. That is the position. Now, it is well known that the expression 'enemy' in international law bears a particular significance; there is no room for any doubt as to what the word 'enemy' in international law would mean,—a State actually at war with the Crown. And we find that while the Act of 1911 was being considered in the House of Lords, a noble Lord raised the question as to whether when there was no war, that is to say, in times of peace, if a prosecution was sought to be launched under this Act, anybody could raise a defence saying that as there was no war, the State could have no enemy. Later on, we find that a case actually came up in 1913 in which this very point was taken. Honourable Members will find a reference to this case in Roscoe's Criminal Evidence, and there it was held that the term 'an enemy' as used in the Official Secrets Act was not confined to a State actually at war with the Crown. It does not say to what extent this term might be stretched for the purposes of this Act. So this leaves things rather in an uncertain state. Now, Sir, we find that the term 'enemy' has been variously used in certain special enactments where it has been given various meanings; for instance, take the Trading with the Enemy Act and other war enactments. Then again take the Army Act. In the Army Act this term is defined as including all armed mutineers, armed rebels, armed rioters and pirates. This matter is further complicated by reason of the use of this term 'enemy' in certain Treaties of the British Government with some Native States. I may remind the House that a reference to this particular question, namely, the terms of the treaties, was made not long ago in the Council of State in connection with the Princes' Protection Bill. I find that in at least 20 treaties which the British Government have entered into with the Native States

Mr. Denys Bray (Foreign Secretary): I rise to a point of order. Is the Honourable Member referring to *Indian States*?

Mr. K. O. Neogy: Yes, Sir, my intention was to refer to the possible difficulties that might arise. If the Honourable Members will turn to those Treaties, they will find that it is laid down, in at least twenty of them, that "the friends and enemies of one shall be the friends and enemies of both." Now, Sir, as is well known, the Indian States have no international relations at all. Therefore, it cannot be said that this expression in the Treaties can be given the same meaning as it bears in international law. Men like myself, who are uninitiated in the mysteries of diplomacy and diplomatic language, used to think that this clause of the Treaties constitute an offensive and defensive alliance between the British Government and the Native States for military purposes. But, Sir, in connection with the Princes' Protection Bill it was made clear that it was not so; and the Honourable Mr. Thompson read into this clause of the Treaties an obligation on the part of the Government of India to provide a measure for the purpose of protecting the Princes from hostile criticisms in the Press. And that interpretation has been accepted by the high legal authority of

[Mr. K. C. Neogy.]

the present Governor General. Now, Sir, that being the case, I am apprehensive as to what interpretation this term may be given in the future. Will this term "enemy" include the enemies of the Native States, because it is said the enemies of the Native States will be considered the enemies of the British Government? But in that case enemies would include private individuals, and it would not be interpreted in the sense in which it is used in international law and in the sense in which it is used in the English law from which we have taken this term. Therefore, Sir, in order to be on the safe side I have proposed the substitution of the words "a foreign power" for the words "an enemy" in this clause. The reason why I have chosen the expression "foreign power" is that, though the expression used in the Act of 1911 was "enemy," in the Act of 1920 the expression used is "a foreign power." Honourable Members will find that in two places in clause 5 of the Bill the expression used is "any foreign power" and not "enemy." Therefore, Sir, I think that in every sense the Bill will be improved if we accept this amendment. That would give us a uniform phraseology, and the term will not be liable to misinterpretation in the way I have pointed out. I beg to move my amendment.

Mr. President: Amendment moved is:

"For the words 'an enemy' wherever they occur in clause 2 the words 'a foreign power' be substituted."

Mr. L. Graham: Sir, while admiring the erudition and labour which my Honourable friend, Mr. Neogy, has expended on this subject, I regret very much that I am unable to accept his amendment. I too have searched the Law Reports and have found a ruling as to the meaning of the word "enemy" as used in the Official Secrets Act of 1911. The word, Sir, means a potential enemy. Now, Sir, I think that, that on the whole helps to clear the ground. There can be no misunderstanding. An enemy of the State, when you come to examine the matter. . . . I take it, Sir, that we are dealing with clauses 3 and 4 as well as clause 2?

Mr. President: The Honourable Member actually moved his amendment to clauses 2, 3 and 4, but I have only been able to put the amendment to clause 2, because clauses 3 and 4 have not yet been reached. I do not object to the Honourable Member arguing his case with reference to all three clauses.

Mr. K. C. Neogy: Sir, I formally moved this amendment in regard to clause 2.

Mr. President: Yes. I put it in regard to clause 2 assuming that when we reach clauses 3 and 4, the Honourable Member's amendments will be treated as formal motions.

Mr. L. Graham: The reason why I asked that question, Sir, is because it is really impossible to separate the arguments and I had no wish to be pulled up in the middle of my stride.

With regard to clause 2 (8), sub-clauses (c) and (d), the position is that actually these notifications will not issue except in time of war. Works which are to be prohibited places at all times are those which are specified in sub-clause (a). Now war, Sir, is war whether it is civil war or war with a foreign power. In time of war it is equally necessary to protect buildings from being spied upon, whether by a foreigner or by the enemy

within our gates. If you accept the amendment proposed by Mr. Neogy its effect will be that an enemy of our own nationality will be able to enter into these prohibited places because to him they will not be prohibited. The only person who will be barred will be the foreigner. The consequence, I take it, will be that the foreigner will employ a traitor—I am afraid I must say a traitor—to enter the prohibited place because he will be able to do it with immunity. Now, Sir, as I say, it is really part of my argument, and I therefore gratefully accept your offer to allow me to speak and to show how the change in the words would affect clause 3. There are, as my friend, Mr. Neogy, said, foreign powers and foreign powers. There are foreign powers which are great and there are foreign powers which are small. May I mention one very small power, namely, the Principality of Monaco and another, the republic of San Marino. Again, there are various little States in South America. Would it not be placing an impossible burden on a Court of Justice to have to come to a conclusion whether certain information, certain sketches, are calculated to be directly or indirectly or might be or are intended to be useful to a foreign power when there is no common standard of foreign power? It might be said: "This will be of no real advantage to Monaco; you have got only half a dozen soldiers there." The position, therefore, is that the Courts would be placed in an impossible position and the operation of the Act would be paralysed. The same remark, Sir, applies to clause 4. I, therefore, in this connection, ask that the amendment to clause 2 be rejected.

Mr. President: Amendment moved:

"For the words 'an enemy' wherever they occur in clause 2, the words 'a foreign power' be substituted."

The question is that that amendment be made.

The motion was negatived.

Clause 2 was added to the Bill.

Mr. President: Amendment moved:

"For the words 'an enemy' wherever they occur in clause 3, the words 'a foreign power' be substituted."

The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move:

"In sub-clause (1) of clause 3 omit the words 'or interests'."

Sir, I admit it to be my misfortune that I could not be satisfied by the very illuminating arguments adduced by my friend from Bengal relating to the definition of the words "or interests". Sir, in this country the interests of the public cannot always be identical with the interests of the State in all matters. They may be identical in certain matters but they may not be identical in many matters. It may also happen, Sir, that even the interests of the public and the interests of the State may clash. There may be certain matters that may be prejudicial to the interests of the State, while they may be beneficial to the public. The meaning of the words 'the interests of the State' are vague. Take, for instance, the last Gaya Congress. It passed a Resolution, a very undesirable Resolution and I may call it a senseless Resolution to do away with their liabilities for international debts, or public debts that the Government of India might incur in future.

[Mr. K. B. L. Agnihotri.]

Now, this Resolution on the part of those people will certainly not be for the benefit of the State or in the interests of the State. If any person were to make a report of that proceedings and publish it, he might be liable under sub-clause (c) of clause 1. He may be liable for this, because other nations that may be inimically inclined towards our Government *might infer* that the Indian subjects are not satisfied with their Government, and have repudiated the public debts, that there is a dissension between the subjects themselves and probably the Government may be a weak one; and if they enter into a war on that inference it will certainly come within the definition of the interests of the State. I do not mean to say that the interests of the State really includes such a case as I have just given and it may not have been meant to include such cases, but there is nothing to prevent interpretation in that way. Then, for instance, social disorders, religious dissensions between different parties, they are surely always prejudicial to the interests of the State. If anybody were to publish this information, and if that information might be useful to some foreign powers at some unknown time, the person who gives or publishes such information would be covered by this definition in clause 3 (1); I do not think that the Select Committee meant that this clause should cover such cases. Therefore, Sir, I think, that it would be better that "the interests" should be defined, but as that is not possible now it is better that the words should be omitted. On going further into the Bill we find that in certain clauses the words "or interests" before "the State" have been deleted. I do not know what led the Honourable Members of the Select Committee to include those words "or interests" in these clauses while at the same time they deleted them in other clauses that referred to civil affairs. If the meaning of the words "or interests" was clear in the case of civil affairs, it should equally be clear in military matters. If you drop it in one place, there does not seem to be any necessity to keep it in another. It only creates ambiguity and vagueness. Therefore I submit that these words "or interests" be omitted.

Mr. President: The amendment moved is:

"That in sub-clause (1) of clause 3 omit the words 'or interests'."

Mr. L. Graham: Sir, my learned friend, Mr. Chaudhuri, has referred to this question already. The point is this. These words were not included, as Mr. Agnihotri suggested, by the Select Committee in this clause. They were excluded in another clause, clause 6, for reasons which I will deal with later. Clause 3 deals with all the most important offences under the Act and it is not a new idea. It has been the law of this land since 1911, and you may possibly like to be told what occurred in Parliament when my Honourable friend's exemplar Commander Kenworthy moved a precisely similar amendment to omit the words "or interests." On that occasion Sir G. Hewart said:

"As to the objection raised to the words 'or interests', the answer is that they are taken from the Act of 1911, which says, 'purpose prejudicial to the safety or interests of the State'. It is obvious that certain matters cannot be said without exaggeration to imperil the safety of the State, but they go sufficiently far in that direction to be prejudicial to the interests of the State. Therefore those who were responsible for the Act of 1911 put in 'safety or interests'. We did not invent that phrase. We are simply carrying on the vocabulary of the 1911 Act, and if we were to leave out the words 'or interests' in the amending Bill, it would make it possible to found a legal argument upon the fact that the phrase was in the principal Act but not in the amending Bill, and it might be said that while the mischief that was aimed at by the principal Act included purposes prejudicial to the safety or interests of the State, yet, in order to come within the amending Bill, you would have to find something prejudicial to the actual safety of the State."

Well, Sir, as I said, we are dealing with the very gravest offences in this clause. In the other clause, clause 6, with which I will deal later, we deal, with comparatively minor offences many of which are already covered by the existing penal law. The position is this. If you restrict the words and only use the word "safety" it is a very difficult thing to say about any particular act that it imperils the safety of the State but, if you let pass a number of such acts, the aggregate of these acts, not each one of which imperils the safety of the State, will imperil the safety of the State, and I ask you, Sir, is it right that the Empire should crash before we can get a conviction under this Act?

Rao Bahadur T. Rangachariar: Sir, I may perhaps explain to my Honourable friend, Mr. Agnihotri, why we retained the words "interest of the State" here and omitted them in clause 6 and elsewhere. If Congress volunteers were uniform and went about, it might be argued that they were doing a thing against the interest of the State. That is the thing which I had in mind when I advocated the dropping of the words "interest of the State" there. Nobody can argue it is against the safety of the State that Congress volunteers should go about dressed like ordinary volunteers. It is to avoid such a case that we dropped the words "interest of the State" in this and other sections. But here, in section 3, we are concerned with spies. In the case of spies it will be very difficult to draw the line between safety of the State and interest of the State. And "interest of the State" is not such an unknown term that my Honourable friends should have any apprehension about the use of that term. Why we are familiar with that term in the Indian Evidence Act. If you turn to section 125 and other sections, you find "public interest". A man may claim that he cannot disclose a secret, it is in the public interest that he should not disclose it. Has anybody ever felt any doubt as to what is meant by "public interest"? It is no doubt easy to conjure up doubts when you are here but you must credit the Court with some common sense and having regard to the facts of the case, there really will be no difficulty in coming to a conclusion as to what will be in the interest of the State and what will not be in the interest of the State. Therefore, in cases like these, where you have to deal with the real enemies of the country, I don't see any distinction between the enemies of the country and the enemies of the State, because if he is an enemy of the State, he is also an enemy of the people. (*An Honourable Member:* "Not necessarily.") Well, that is a point of view. I did not say enemy of the Bureaucracy, I said enemy of the Government. No people can exist without a Government. Government and the people make the State. So that, in such cases, where you have to deal with spies, I don't think we should show any leniency at all, for, if we are to get on at all in this country, we must safeguard our safety in the first place against foreign aggression or internal aggression which might overthrow the Government. I think we are all anxious to preserve a Government so that we may develop in it. I think, Sir, the words are necessary there.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I do not know that I altogether followed the argument of the Honourable Mover of this amendment. He drew an illustration, or what I thought to be an illustration; then he passed a sponge over it and said it was not an illustration. So far, at all events, I am sure, that he contemplated some sort of difference between the interests of the State and the interests of the people who form that State, which he called the public

[Colonel Sir Henry Stanyon.]

interest. Apparently he read the word "State" as if it is synonymous with the word "Government". I do not think that in an enactment of this kind that would be a correct interpretation of the word "State". I think the word "State" here must be read to cover widely all the community—its Government, its institutions, its public and everybody concerned who go to make up what we call the State. It will be impossible for us to legislate upon any supposed antagonism between the State and the people constituting that State; and upon that ground alone I think that this amendment does not deserve the support of the House.

The amendment was negatived.

Khan Bahadur Sarfaraz Hussain Khan: Sir, the amendment which I move is as follows:

"In clause 3 (1) before the words 'imprisonment for' insert the word 'simple' and make consequential amendments in other clauses."

Sir, it is not that I wish to make a provision making rigorous imprisonment simple. My point is simply this. The real object of sending people to jail in these cases is to keep them out of the way and not to let them have any communication with the enemy, and in these cases simple imprisonment will be quite sufficient. There seems to be no reason why simple imprisonment should not be sufficient. The words used in the clause are "he shall be punishable with imprisonment". It does not say whether it is simple or rigorous imprisonment. My object is to make it simple imprisonment. This object is served by putting the man in jail and thereby not letting him have any communication with the outside world. With these words, Sir, I move my amendment.

The amendment was negatived.

Khan Bahadur Sarfaraz Hussain Khan: There is another amendment. Sir, I put my view of the case. My amendment runs:

"In clause 3 (1) omit all words after the words 'to any secret official code, to' in the last but one line and in their place substitute the following:

'a maximum period of 14 years according to the gravity of the offence proved in the Court'."

The clause simply says "and in other cases to three years". I wish to simplify the whole matter and put it in black and white that the matter should be left to the discretion of the Magistrate trying the case and that the punishment should be according to the gravity of the offence.

The amendment was negatived.

Dr. H. S. Gour: Sir, the amendment I desire to move deals with clause (3). Honourable Members will find that this clause lays down a special rule of evidence taken from the English Statute. When this clause was under discussion in the Lords, Lord Alverstone, the late Lord Chief Justice of England, animadverted upon it in the following terms. He said:

"I would call his attention first to the words 'known character as proved' in sub-section (2) of clause (1). It is opening the door of criminal law for which some justification will be required. It is quite true that when people are found in certain circumstances, their previous record as actually proved can, under the Prevention of Crimes Act, be given in evidence; but I have never known any Act to go so far as to say that a man's known character may be proved, and I am afraid that in the working of the Bill this will create difficulties. I think the words will be found too wide unless some indication is given."

Honourable Members will observe these are weighty words, coming as they do from the occupant of the highest judicial bench in England barring only one. Now, if you read clause 3 as it is drafted and is proposed to be enacted—I leave out the unnecessary words—I shall only coin an illustration to show how it leads to a *reductio ad absurdum*. If Honourable Members will follow the words which I have underlined, they will at once come to the illustration which I am about to give them. The section says in clause (2) "any information relating to any prohibited place communicated by any person shall be presumed to have been made or communicated for a purpose prejudicial to the safety or interests of the State. Any information relating to a prohibited place, communicated, shall be presumed to have been communicated for a purpose prejudicial to the safety or interests of the State." Let me translate this into a concrete illustration. A says to B, "Look at this. Avoid going to this place. It is a prohibited place." That is an information relating to a prohibited place. It shall be presumed under this Act to have been communicated "for a purpose prejudicial to the safety or interests of the State". (A Voice: "No, no.") My illustration arouses the hilarity of the learned occupants of the Treasury Benches. That is my best vindication for the argument that I am addressing to this House. The whole thing, the whole language of section 3 is so diffuse, loose and verbose that it might include any act, however innocent, within the purview of that section. Now, Sir, I do not wish to weary this House by dealing with the general aspect of this question. I shall rest content if the House will support my short amendment which I am perfectly certain he who runs can understand. It is this. I wish to delete from the provisions of this section these most obnoxious words "or his known character as proved."

The Honourable Mr. A. C. Chatterjee (Education Member): May I rise to a point of order? Is Dr. Gour moving the first part of his amendment or the second part?

Mr. President: I understand the Honourable Member is not moving the first part.

Dr. H. S. Gour: I think you understood me rightly and my Honourable friend, Mr. Chatterjee, understood me wrongly. What is the meaning of the words, "his known character as proved"? I pointed out that in England the words "his known character as proved" were pronounced by the late Chief Justice of England to be a loose expression and too wide. This special rule of evidence provided in England has the least justification in this country. Honourable Members will observe that in England they have no codified law of evidence. Such rules of evidence as exist are culled out of decided cases, but in this country we have a codified law of evidence and it contains the definition of such a phrase—"when a fact may be deemed to have been proved"—and it lays down that a fact may be deemed to be proved when taking all circumstances into consideration the court regards it as proved and the ensuing sections of the Evidence Act lay down certain rules of relevancy and admission and other rules for the exclusion of evidence, and one of these is that in criminal cases the character of a man is not relevant. Now, this special provision made in a highly technical but nevertheless heinous offence of including a man's character as a piece of evidence upon which he might be convicted is, I submit, opposed to the law of evidence and is otherwise opposed to the ordinary principles of natural justice. What is a man's character? After all, if Honourable Members will pause for a moment and reflect, they will find that character means nothing more

[Dr. H. S. Gour.]

and nothing less than the opinion which one man has about another. Is a man to be convicted upon the opinions of people? And as this character is to be proved by the prosecutor I presume the evidence will be the evidence of the police and of a few witnesses whom they call for the purpose of establishing a man's character. Do Honourable Members in this House sanction such a procedure? I am perfectly certain they will do nothing of the kind. Prove your case by all means. The Evidence Act provides the mode and the manner of such proof. I am prepared also to allow the proof to be completed by the special rule of evidence which you propose to enact in this clause, but I certainly think that these words "known character as proved" must be deleted from this clause. It is likely, I submit, to lead to miscarriage of justice. If there is evidence of a man's bad character, we have also to give evidence of a man's good character. There will be a conflict of opinions. A few witnesses come up and say "This man is a *badmash*". A few men come up on the other side and say "We have never known a man of a more saintly character". Apart from the proof which this section requires and for which, I submit, the provisions of the Indian Evidence Act are amply sufficient, if they are not sufficient you have enlarged those provisions in this clause to the extent which I am prepared to accept, but I submit the House will not accept if coupled with the phrase "known character as proved" and if they are not

4 P.M. sufficient, you may enlarge those provisions in this clause to an extent which I am prepared to accept, but I submit the House should not accept if they are coupled with this phrase "his known character as proved". Sir, I move that these words be deleted from the clause.

Mr. President: Amendment moved:

"In sub-clause (2) of clause 3, the words 'or his known character as proved' wherever they occur be omitted."

Mr. L. Graham: Sir, my learned friend, Dr. Gour, took for his text in the first instance certain remarks of Lord Alverstone. Now before dealing with those remarks in particular, I would like to put it to the House that we have in the Select Committee very much reduced the scope of this clause. Previously that clause could have been used in the trial of any person for any offence under clause 3. We have, as has been noted before, re-drafted clause 3 so as to give a maximum penalty of 14 years for certain offences and a maximum penalty of 3 years for other offences. We only propose to rely on this special provision in the case of those very serious offences which are punishable with imprisonment for 14 years, that is to say, Sir, we shall be dealing with spies, an elusive and slippery race about whom the police have information, know a great deal, but that information would be summed up as information about pursuits and character generally. Now, Sir, what happens is this. I do not propose to be an expert in the ways of spying, and therefore I may be allowed, I trust, to quote the words of no less a jurist than Lord Haldane. Before I do so, however, I should like to remind the House that these words first appeared in the Act of 1911, that is to say, they were passed by a Liberal Government. Lord Haldane in introducing the Bill in the House of Lords, or rather in moving the second reading, stated as follows:

"The main change which the Bill makes is a change of procedure. In order to convict any one under the Official Secrets Act, 1899, it is necessary to prove the purpose of wrongfully obtaining information. If the man is found in the middle of

fortifications, he may have strayed there by accident by night. You have to prove that he was there for the purpose of wrongfully obtaining information, and that has to be proved. This Bill adopts a method for which there is a precedent and which is much more effective."

That is, in certain cases persons are liable to conviction under that Act unless they can give a satisfactory account of themselves when they are found in certain places. Now to illustrate the difficulties with which we have to cope, let me again quote Lord Haldane:

"I will give one or two instances showing what the difficulties have been. Not many months ago we found in the middle of the fortifications of Dover an intelligent stranger who explained his presence by saying that he was there to hear the singing of birds. He gave the explanation rather hastily as it was midwinter. Then there was another case in which somebody was looking at the emplacement of guns in a battery at Lough Foye and he declared that he was there for the purpose of calling on somebody."

There was another case in which a man was found sketching a fortification. The details are not worth reporting, but they could not get a conviction. Now, Sir, as I have said, we are dealing with people who are committing most serious offences, and in order to prove their purpose it is essential that we should be able to give evidence of their character. It has got to be a sort of madness that would make the man likely to do something which was prejudicial to the safety or interest of the State. It would not be enough to prove that he was a very unpleasant fellow or that he beat his wife or anything of that sort, but it must be proved that he is the sort of person likely to do something dangerous, something prejudicial to the safety or interests of the State. He is not going to be tried or convicted unless he is found in extremely suspicious circumstances doing something which he ought not to be doing; and this Act provides that certain inferences may be drawn from the circumstances in which he was found and anything known about him before. I submit, Sir, that in these particular cases, where the necessity for the protection of the interests of the State arises and in which its safety is concerned, this is a justifiable provision. As I have said before, it was inserted by a Liberal Government and it was continued and applied to another set of offences by the Act of 1920 in England. I have quoted already no less an authority than Lord Haldane and I should like to conclude by quoting no less an authority than a late Attorney General, then Sir Rufus Isaacs, who said that it was a very difficult thing to administer the old Act and it is essential to have this provision, the whole provision.

Mr. K. C. Neogy: Sir, I will be very brief in referring to this amendment because Dr. Gour has said almost all that could possibly be said on this question. I would draw the attention of the House to the seriousness of the offence that clause 3 seeks to create. It will be seen that this offence is made punishable with imprisonment up to 14 years. What are the elements of this offence? A man does something. That is the first element, as enumerated in clauses (a), (b) and (c), and then his purpose in doing that particular thing must be prejudicial to the safety or interests of the State. Now, Sir, let us look at sub-clause (a). What is the act that he commits? He approaches, inspects, passes over or is in the vicinity of or enters any prohibited place. And what is a prohibited place? A prohibited place includes not only works of defence but any dockyard, factory or ship belonging to His Majesty. So, it is quite obvious that it is possible for a man quite innocently to either approach or to be found in the vicinity of any such factory or dockyard belonging to the State. Therefore, the essence

[Mr. K. C. Neogy.]

of the offence is his purpose, which must be found to be prejudicial to the safety or interests of the State. This being the most important element of the offence, let us see what procedure is going to be adopted to prove it. It will be enough if you adduce evidence of his known character for the purpose of establishing this important element in the offence. That is a serious danger to which I draw the attention of the House. This danger was as a matter of fact admitted by the Select Committee in so far as it made a distinction between a military and a non-military offence. I must admit that that distinction has improved the Bill; but Sir, so long as Government is unable to justify this distinction in principle I am unable to be a party to the passing of sub-clause (2). It will be said that sub-clause (2) finds a place in the Act of 1911 which already applies to India.

That does not affect my opinion in the least. We are here to pass legislation which we consider to be in the best interests of the country. If Parliament has passed an obnoxious measure of legislation which we consider to be unsuited to the conditions in India, we must, while we are considering a measure seeking to re-enact that provision, establish by our vote here that we do not approve of such a provision. Now, Sir, my principal objection is that the chances of mis-interpretation of this clause are much greater in India than in England. My Honourable friend, Mr. Graham, has said "Oh, there are circumstances in which people may be found in very suspicious surroundings and then you cannot really establish with reference to specific acts on his part that his purpose was really prejudicial to the safety or interests of the State." That is exactly the danger which I am very much afraid of. Who knows that this provision may not give temptation to the authorities at one time or other to run in political suspects, or those who are in the opinion of Government political suspects, or non-co-operators for the matter of that, who may be found in the vicinity of a prohibited place? (A Voice 'No.') . . . Who says no? Is my Honourable friend, Mr. Chandhuri in a position to assure me that it will not be so? Is the Honourable gentleman in a position to give me that assurance on behalf of Government? Now, Sir, unless there is a specific guarantee that Government are not going to abuse this provision for the purpose of harassing their political opponents, I cannot be a party to this measure at all.

Mr. President: Amendment moved:

" Clause 3. In sub-clause (2) omit the words 'or his known character as proved'."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—26.

Abdulla, Mr. S. M.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Barua, Mr. D. C.
Basu, Mr. J. N.
Das, Babu B. S.
Ginwala, Mr. P. P.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Lakshmi Narayan Lal, Mr.

Lathe, Mr. A. B.
Misra, Mr. B. N.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Ramji, Mr. Manmohandas.
Reddi, Mr. M. K.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sohan Lal, Mr. Bakshi.
Srinivasa Rao, Mr. P. V.
Tulshan, Mr. Sheoperahad.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—38.

Abul Kasem, Maulvi.
 Akram Hussain, Prince A. M. M.
 Allen, Mr. B. C.
 Asad Ali, Mr.
 Bijlikhan, Sardar G.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Davies, Mr. R. W.
 Faridounji, Mr. R.
 Graham, Mr. L.
 Haigh, Mr. P. B.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.

Hullah, Mr. J.
 Hussanally, Mr. W. M.
 Ikramullah Khan, Raja Mohd.
 Innes, the Honourable Mr. C. A.
 Joshi, Mr. N. M.
 Ley, Mr. A. H.
 Moir, Mr. T. E.
 Moncrieff Smith, Sir Henry.
 Mukherjee, Mr. J. N.
 Mukherjee, Mr. T. P.
 Percival, Mr. P. E.
 Pyari Lal, Mr.
 Ramayya Pantulu, Mr. J.
 Rhodes, Sir Campbell.
 Sarfaraz Hussain Khan, Mr.
 Singh, Mr. S. N.
 Stanyon, Col. Sir Henry.
 Tonkinson, Mr. H.
 Webb, Sir Montagu.

The motion was negatived.

Clause 3 was added to the Bill.

Mr. President: Clause 4 Amendment moved:

"For the words 'an enemy' wherever they occur, the words 'a foreign power' be substituted."

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That clause 4 be omitted."

Sir, my reason for the omission is this: We have just provided in clause 3, by throwing out the amendment of Dr. Gour that a man may be convicted notwithstanding that he may not have committed any act, if from his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State. Now, under this clause 4, you are providing that the fact of any person communicating or attempting to communicate with a foreign agent shall be a relevant evidence for conviction under clause 3. If we retain this clause, the result will be that this evidence, in addition to the evidence of a bad character as proved, will make a man liable to be convicted under the Act. Now, communication with a foreign agent certainly is a very serious thing. Communication with a foreign agent has been defined in this clause. What is it? "A person shall be deemed to have communicated with a foreign agent if he visited the address of the foreign agent or consorted or associated with the foreign agent." That is, if he visits a foreign agent, it shall be deemed that he had a communication with a foreign agent. Further, if he has been found in possession of any address of a foreign agent, whether it is in this country or outside this country, he shall be deemed to have communicated with a foreign agent. Now, it may just happen that the man visiting a place may not know that the place was the address of a foreign agent. If a man visits the address of a foreign agent he is deemed to have communicated with a foreign agent. Now, what is the meaning of address? "Address" in this clause has been defined to be "a place where he carries on business." A suspected foreign agent, if he carries on business at a particular place and any person who is a political internee or a non-co-operator, whose characters these days are believed to be prejudicial to the interests of the State, were to go to the place of business of a person suspected of being a

[Mr. K. B. L. Agnihotri.]

foreign agent, then this non-co-operator or political internee shall be liable to be convicted under clause 3, and this will be very dangerous, because that political internee or non-co-operator may himself be innocent. Unless we have any proof of any overt act on his part, it will be rather dangerous and unjustifiable to convict that man simply because he happened to be a non-co-operator or a political convict or internee, and visited a place which happens to be a place of business of any person who is suspected to be a foreign agent. He may be an innocent person and, as such, he will be put to unnecessary hardship. Therefore, Sir, I propose that the whole clause 4 which makes the evidence relevant for conviction, where it is coupled with the proof of bad character, of a man, should be deleted.

Mr. L. Graham: Sir, I am somewhat surprised at the attitude of Mr. Agnihotri. He agreed that to communicate with a foreign agent is a thoroughly bad thing to do, the sort of thing a spy would do, and yet he proposes to omit this clause altogether.

The fact, Sir, is that this clause was inserted in the Act of 1920 as a result of our experiences at Home during the war. It was found that England was, I might almost say, honeycombed with foreign agents. Possibly the position is not yet so bad in India, but it might become so, and in fact, I think there is reason to suppose that it is likely to become so from a certain quarter. Now, in a case like this, it is absolutely necessary to be fore-armed. The reasons which impelled the Home Government to put in this provision were expressed by the present Lord Chief Justice, then Attorney-General, as follows: "After first drawing attention to the fact that nobody is going to prosecute a person for going to have tea with a foreign agent or even for sending him a postcard, he says that if he is found doing any of the extremely dangerous things which constitute the offence for which he is to be tried, then these facts may be used in evidence against him." I think the House which passed the second sub-clause of clause (3) will agree with me that they should pass clause (4) which is really on the same lines and is intended to meet the same necessity. I do not wish to deal with the matter in detail, but I would only like to read what Sir Gordon Hewart said:

"I hoped that what I said when I last spoke with reference to the opening and governing words of the second Clause of this Bill would have met in advance any such criticism as that which has just fallen from my Honourable friend the Member for Cornett. I am sure he sees that it is very important that this clause begins with words which limit its effect to proceedings in which a particular kind of offence is charged."

As I said, there is no prosecution under this section. It is simply an evidence section:

"In other words, the clause provides that where, for example, a man is found in Woolwich Arsenal and there is evidence to show that he is there for the purpose of spying, the further fact, if fact it be, that he has also been in communication with a German agent will be evidence that he has, for a purpose prejudicial to this country, obtained, or sought to obtain information calculated to be useful to an enemy."

Now, Sir, a foreign agent, it may be said, is to a spy what a jemmy is to a burglar; and as we have in our own criminal law a presumption about a man who is found in possession of house-breaking implements, so in respect of spies it is reasonable to expect that writing to foreign agents or communicating with them is a fact which he ought to be called on to explain and if he cannot explain it, it ought to count against him as proving that

the act with which he has actually been charged was done with a purpose prejudicial to the safety or interests of the State.

Mr. K. C. Neogy: Sir, I have got one question to put to the Honourable Member who has just sat down; and that is, whether this provision has been incorporated in any legislation that the Colonies may have undertaken. The House will remember that this clause is taken, not from the Act of 1911 which applies to all British Possessions, but from the Act of 1920 which does not apply either to Canada, Australia, New Zealand, South Africa, Newfoundland or India. So far as I have been able to see, the Colonies have not brought in this provision by any legislation of their own. (If I am wrong, the Honourable Mr. Graham will correct me.) If that be so, what is the special urgency of this provision being incorporated in the Statute Book in India? I want to be satisfied on that point before I vote on this clause.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): May I ask another question, Sir, suppose there is a "Miladsharif" going on in the House of the Consul-General of Afghanistan or probably there is a general prayer, and as a Muhammadan, every Muhammadan must go there and say his prayers in the house of the Consul-General of Persia. Will that be a communication? Or suppose out of friendship the Consul-General pays a visit to a Member of the Legislative Assembly and he drops his visiting card and the Member of the Assembly returns the visit by dropping a visiting card of his, or probably in his diary he enters an entry that he dined with him on a certain day. Will that Member of this Assembly come under this section? If so, this would be an immoral law, it is a law which is illegal. I feel is an extraordinary thing that the people living in India will have to obey it, it is a law which is not only of a harsh nature but a law which a civilized nation should not have. Therefore, I expect my Honourable friend, Mr. Graham to satisfy the House how far its inclusion in sections 3 and 4 of this Bill is justified and how far it comes within the spirit of the law of this country.

Mr. L. Graham: May I say, Sir, that if a reply were permissible on an amendment, I would be able to satisfy Mr. Kabeer-ud-din.

Mr. K. C. Neogy: What about my question?

Mr. L. Graham: That will be dealt with in another quarter.

Rao Bahadur T. Rangachariar: There is a lot of misapprehension as regards the scope of the section. This section by itself does not create any offence. This section merely says what facts are relevant in a trial for an offence under section 3, it merely lays down the rules of evidence. Having regard to the peculiar nature of the case, the peculiar nature of the offence,—incidents which do not occur in ordinary human life do occur in such cases, insidious and underhand methods, and that is why a special legislation has to provide what special facts shall be relevant. If Honourable Members will notice, all that section 4 (1) says is, "shall be relevant" for the purpose of proving a particular fact, not that the Court is bound to draw the inference, not that it is conclusively proved, not even "shall be presumed"; it is merely relevant, it is a piece of evidence which the Court can admit in order to come to a conclusion whether the man has committed the crime or not. Honourable Members will remember that under section 3 it is essential for the prosecution to prove one or other of the three acts specified therein, that is, a person in order to be

[Rao Bahadur T. Rangachariar.]

convicted, (a) must either have approached, inspected, etc., etc., any prohibited place; (b) he must have made a sketch, plan, model, etc., etc., which will be useful to an enemy; and (c) he must have obtained, collected, recorded, etc., etc., information which would be useful to an enemy (*A Voice*: "Might be"), might be, intended to be, or calculated to be (*Mr. K. C. Neogy*: "Directly or indirectly.") You have got to catch all sorts of cases so that the language should not be too narrow. Therefore these facts must be proved in the first place. In order to prove that fact, this will be one of the relevant facts taken into consideration. In order to find out whether this man has really communicated with an enemy, has really communicated an information to a foreign enemy, it would be relevant to know whether he is on visiting terms. If he is on visiting terms, that will be one of the facts proved. All that section 4 (1) says:

"In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent whether within or without British India, shall be relevant for the purpose of proving "

the commission of the offence. Therefore, it is merely a piece of evidence to which the Court may give such weight as it thinks fit taking into consideration the other circumstances which may be proved in the case. Then the latter portion is:

"For the purpose of this section, but without prejudice to the generality of the foregoing provision,—

(a) a person shall be presumed to have been in communication with a foreign agent if—"

he has done all those things mentioned thereunder. That is, in order to prove that he has been in communication, the law lays down a presumption—a presumption which is rebuttable. That, my Honourable friend who has spoken against this section has forgotten. It is not a conclusive presumption. If you go merely and innocently for tea or if you merely go for the purpose of doing business in the business premises of a foreign agent, why it is the easiest thing to prove that you had a transaction to buy a horse or to buy some Persian carpet or do some other thing. It merely says 'shall be presumed.' In a case like this, in order to avoid difficulty, having regard to the delicate and serious nature of the offence, the law has to take care. It cannot be too careful and too cautious in such matters. Remember we are dealing with enemies of the State. When once you have that in mind, all these difficulties now help up which no doubt may appeal to unthinking people but to those of us who are here such argument is not convincing, it is very easy to catch popular or newspaper applause by holding forth and pointing out the dangers and pitfalls, but we as legislators have to be careful in dealing with legislation which deals with enemies of the State. You should not leave loopholes through which these fellows can escape. I have no mercy for them. I have no sympathy with them, however patriotic I may be and you must never be kind and leave a loophole for an enemy of the State to escape. Therefore you must catch them by all means even if you err. It does not matter if you err because prevention is better than cure in such a case. While I am at one with my Honourable friends that we should not encroach upon ordinary methods of proof, I recognize these are peculiar cases and peculiar cases have to be dealt with in a peculiar way and after all our Legislature is not committing any enormity. We are trying to follow the English people in all their political institutions and rights. If it is

good for an Englishman, why should it not be good for us. True we have not got our own Government. That is the real secret of all this opposition. I quite admit that, but this is not the way to get rid of the foreign Government and establish our Government. In order to keep the State going you must have these measures in your armoury so as to deal with enemies of the State, not enemies of forms of Government. Now, I am an enemy of the present system of Government. I want to get rid of it and substitute Government by my countrymen. But this does not apply to me. It applies to the enemies of the State. My Honourable friend says he is not quite so sure, but I daresay that if he was on the Bench and I were appearing as Counsel for an accused person I would be able to satisfy him in no time that this is the intention of the Statute. After all, you must remember what the intention of the Statute is in a case like this. The courts are not there merely to go upon the literal meaning of the words. They will construe in a liberal spirit in favour of the accused and after all this is merely laying down what facts may be relevant and will carry weight, so that it is not conclusive proof at all and I therefore think that there is really no harm in retaining this section.

Dr. H. S. Gour: Sir, my friend on the right has accused the House and the Members thereof from suffering from a lot of misapprehension. Whatever may be the case with other Members, I have not the slightest doubt that my learned friend on the right has taken a lion's share of that misapprehension. He opened his speech and wound it up by saying 'We want to deal with the enemies of the State.' But, Sir, this section is not dealing with the enemies of the State. It is dealing with a piece of evidence and we are yet to find the enemies of the State. The question my friend has assumed, that we are dealing with enemies of the State, is mere claptrap: the whole question is, who are the enemies of the State. My friend told us, and he has repeated that statement, that we are dealing here with the enemies of the State, by which I presume he means that we are here dealing with foreign subjects. Let me warn the House that this Bill, if passed into law, shall equally apply to all British subjects, Indians, Europeans or foreigners. It applies to everybody, and it is not the case, as my Honourable friend has assumed, that it is intended to lay the enemies of the State by the heels. Even if it were so, are not the enemies of the State entitled to justice? Are they not entitled to fair trial? Are they to be convicted without any judicial evidence, without any formulated plans set out and proved against them? Are special chambers of horror to be devised for the purpose of impaling and pulverising foreign people? Surely, Sir, no Member in the House will endorse the pseudo-patriotic appeal which my Honourable friend on my right addressed to us. Let us, I say, be free from this cant, and address ourselves to the main question. Is the evidence, is the special rule of evidence which this section creates, is it warranted by the natural principles of equity and justice? That is a short question which I submit should engage the attention of this House. Let us be clear of those extremely vivid but at the same time misconceived notions of protection of the State and laying by the heel its enemies. We have neither the enemies of the State nor the protection of the State in view: in this section we have nothing but pure justice in view. Is it, I submit, consonant with the natural justice that with regard to a man who is found with a visiting card containing the address of a person or the person with whom he resided, that it should be a relevant factor? Turn to the section and you will find, Sir, another *reductio ad absurdum*: a person shall be presumed to have been in

[Dr. H. S. Gour.]

communication with a foreign agent—and I now leave out other words and select the words which suit my purpose, and it will show to you the absurdity of it, such a case is conceivable, and because the section lays down a large number of circumstances, and I am going to present you with one of them. If he has visited the address of a foreign agent, namely, any address—clause (c)—used for the receipt of communications,—(a person is charged with the offence under section 3); the evidence against him is given that he is presumed to have visited a foreign agent; the evidence given is that the foreign agent has an address. But 'address' is defined in clause (c) as a place where letters intended for that agent are received. Such a place might be a popular hotel or a large bank. As a matter of fact, Honourable Members know that when they tour about the country they generally have their letters addressed to a bank or a hotel. If therefore in such a place of common resort the foreign agent has left his address, a person shall be presumed to have been in communication—the accused shall be presumed to have been in communication with him if he has an address. If you have the address of that hotel or bank you shall be presumed to be in communication with a foreign agent. It is absolutely unnecessary to labour the point. These special rules of evidence were defended in the House of Commons by our present Viceroy, then the Attorney General . . . (A Voice: "No, you are mistaken.") . . . by Sir Gordon Hewart . . . (Mr. L. Graham: "I may say that you are again mistaken.") Yes, by Lord Hewart—then the Attorney General, but not upon the grounds to which my learned friend has adverted to in this House. I say, Sir, look at the section: look at its extreme danger: address yourself to its complete artificiality and its divorce from the ordinary rules of the law of evidence to which this country is subject, and I have no hesitation that you will discard this clause as wholly unnecessary and as calculated to do injustice in the trial of offences. I wish to warn Honourable Members that this clause might be used against any one of them. It is not a clause which is reserved, as my Honourable friend from the right has pointed out, only for the enemies of the State. It may be used against the most loyal citizen; it may be used for manufacturing enemies, as my friend, Mr. Seshagiri Ayyar, aptly points out. It is therefore, I submit, open to be used as an engine of oppression, and it is on that ground that I ask the House to support this amendment.

Colonel Sir Henry Stanyon: Sir, with regard to the proposal to omit clause 4 of the Bill, in all humility I venture to support, with the strongest language at my command, the views put forward by my friend, Mr. Rangachariar; and, in the most friendly way, but again with the strongest language at my command, to refute the warning given to this House by my old friend, Dr. Gour. I would venture once more to draw the attention of the House to the fact that this is a legislation of a special kind. We are dealing in this legislation with an evil which is insidious beyond perhaps our imaginings: which works in the dark; and which can only be met with its own weapons. We are by this legislation giving powers to our judicial and executive authorities not to be misused, not to be abused, not to be applied as an engine of oppression, but to be kept in hand, just as we keep in hand all other defensive apparatus, to meet an evil which can only be met by special legislation of this kind. I do not suppose that any of us knows, or that we shall ever know, the extent to which the safety or the interests of the State were endangered and honeycombed with the evil of hostile spies and foreign agents during the last ten years. One

argument raised against this clause is that it comes not from the Statute of 1911 but from the Statute of 1920. To my mind that is one of its strongest recommendations. It has behind it the experience gained during the late war—which broke out in 1914. As the Honourable Mr. Rangachariar has pointed out, this clause contains special rules of evidence. Take it away and you deprive this enactment of a very large part of its usefulness.

(At this stage Mr. President left the Chair, which was occupied by Sir Campbell Rhodes.)

Dr. Gour is quite right in saying that it does not apply only to one set or class or race of people, but that it applies impartially to everybody; that is so. It applies to everybody; but it operates only against those who, be they English or be they Indian, guilty of the offence of spying, are enemies of the State. The whole of this clause rests upon the foundation given in sub-clause (b), namely, the definition of a foreign agent. That is the first thing you have to get. You must have a foreign agent. If he is not there, then it does not matter what is done by any gentleman, whatever his political opinions may be for the time being; but when you have got a foreign agent, then you have a snake; and if the poison of this snake is not to be disseminated, as it always is, secretly, clandestinely, with every ruse and stratagem that the brain of man can devise, you must have some provision like this to prevent it from spreading. We must trust our Courts. Later on we shall come to the question of the standard of Courts which are to try cases under this enactment, and it will be seen at once that as a Legislature we are not going to entrust these powers to irresponsible or inexperienced or weak or stupid Magistrates, but to Courts which can be trusted to use them only in those very special circumstances, to meet which this enactment is devised. I would like, speaking for myself, to see this House not divided against itself, but strong in laying down, for the information of all concerned, that spying in India,—spying that is in a way prejudicial to the interests and safety of the State,—is going to have a very poor chance of success in this country.

Mr. T. E. Moir (Madras: Nominated Official): I move that the question be now put.

The motion was adopted.

Mr. Chairman: The question is to omit clause 4.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I move part (b) of my amendment No. 12. I do not wish to move part (a):

“In clause 4, in sub-clause (2) (a) (i), after the words ‘with a foreign agent,’ insert the words ‘having reasonable grounds for believing him to be a foreign agent’.”

Sir, we have heard from the Honourable Mr. Rangachariar and the Honourable Sir Henry Stanyon that these laws are meant for offences of a special kind. Nobody ever doubted it and nobody ever questioned it. But the apprehensions and the fears we have are that the law as embodied in this Bill may be abused or misused and innocent persons may suffer, and it is with the object of safeguarding the innocent persons that this amendment is put forward. It was also said that the law to suppress spying should be as strict as possible. Nobody denies it. It was also said that the trial of such cases will not be entrusted to any weak or stupid Magistrates. Where is the guarantee for that? If the Government find that such and such a Magistrate is a weak Magistrate and such and such a Magistrate is a stupid Magistrate, they will not retain his services any longer. So long as the

[Mr. K. B. L. Agnihotri.]

Magistrates are occupying the Bench, we are to assume that they are intelligent and strong Magistrates,—though they might commit errors of judgment, which might give us cause to infer their weakness or stupidity at certain times. And, if they could be guilty of such an error of judgment at one time, they could be no guarantee that they will not indulge in similar error at some other time. Here we provide, Sir, that, if a man were to visit the address of a foreign agent and if that man happens to be a person whose character as proved is such as to lead to a presumption that the act which he committed is prejudicial to the interests of the State, then that man will be liable for conviction under this Act. What would be the case? Take the case of the political internec. What further evidence—for many of our Magistrates will there be necessary to prove that the man is not a bad character? If such a man were to visit a place which is suspected to be the address of a foreign agent and if such a person at the same time or thereafter goes or approaches any military station, or any military telegraph or telephone station that may be confined within a fort, he will surely be liable to be prosecuted under this Act. Take the case of Sitabardi Fort of Nagpur. The telephone or the wireless station in Sitabardi Fort of Nagpur may be considered to be a military station. If a political internec or convict or a non-co-operator or seditionist happens to go near that fort, which happens to be close to the railway station

Mr. L. Graham: On a point of order, Sir. Is not the Honourable Member speaking on clause 3?

Mr. K. B. L. Agnihotri: On clause 4, Sir, coupled with clause 3 and the definition of the 'prohibited place' as given in clause 2 (a), which combined, make a man liable for conviction under this Act. Now, Sir, if the place is a military station, or if it has a military telephone and telegraph, and if it happens to be near the railway station where passengers have to go and if it enters into the head of the Executive that a particularly undesirable man should be prosecuted, or should be locked up, then what is there to prevent such an executive from prosecuting that man and getting him punished under this Act? My Honourable friend said that these laws are special laws, they may not be abused, they are not capable of being abused. Have the Honourable Members of this House forgotten the instances given by my Honourable and learned friend, Mr. Rangachariar, himself, of the abuse of section 107 of the Criminal Procedure Code? Have my friends here forgotten the excesses committed by the police as given on the floor of this House? Have my friends forgotten the instances and the judicial experiences given by my Honourable friend, Sir Henry Stanyon

The Honourable Mr. A. O. Chatterjee: May I rise to a point of order, Sir? I understand that the Honourable Member is moving the amendment relating to sub-clause (b) under clause 4, and, so far, I have not heard the use of the word "foreign agent" in his speech. He is referring to the question of convictions which has already been dealt with in clause 3.

Mr. K. B. L. Agnihotri: I was just pointing out that the visit of a man to a foreign agent's address by itself may not be sufficient for conviction but that when it is coupled with certain other facts, there will be sufficient evidence for his conviction. I am pointing
5 P.M. out

Dr. H. S. Gour: What is relevant may be sufficient for conviction.

Mr. K. B. L. Agnihotri: Sir, what is relevant is often sufficient for conviction.

Dr. H. S. Gour: May be sufficient.

Mr. K. B. L. Agnihotri : But in practice we see that it is more than sufficient and we will find that it is quite sufficient. We know that in theory it may be only relevant. Sir, I was pointing out, that when the simple provisions of the criminal law have been abused in the past, there could be no guarantee that such a drastic provision as is provided in this Bill may not work harshly against innocent persons. If we were to allow this sub-clause 2 (a) (1) of clause 4 to stand as it is, we make innocent persons unnecessarily liable under this Act in certain circumstances. Therefore as it is likely that innocent persons might suffer, I beg to propose that some safeguard should be provided to protect innocent persons from being made liable under this Act. Only those persons who have knowledge or have reason to believe that the person is a foreign agent, and knowing this if they happen to go to his place, then only should they be made liable under this Act. Therefore, Sir, I move my amendment. At the same time I would also like to say, that often when an amendment is put forward,—and there be some mistake in the amendment or when it does not fit in properly, Honourable Members on the Government Benches get up and say that the amendment has not been properly drafted, and take exception to the wording of the amendment which I think is not justified . . .

Mr. L. Graham: I might allay the apprehensions of the Honourable Member by saying that I think his amendment is admirably drafted.

Mr. K. B. L. Agnihotri It may be. But supposing there was any mistake, in that case I should certainly have been happy to accept “knowingly,” or “intentionally” or any other words that the Government may like to put in, in order to safeguard the interests of innocent persons. That is my chief object. If a person were innocently to go and visit the place of a foreign agent, he should not be made liable, and that evidence should not be used as relevant evidence against him.

Mr. Chairman: Amendment moved:

“In sub-clause 2 (a) (1) after the words ‘with a foreign agent’ insert the words ‘having reasonable grounds for believing him to be a foreign agent.’”

Mr. L. Graham: Sir, it is rather difficult to reply to Mr. Agnihotri in defence of the clause as it stands now, because what he has done is not to attack the clause as it stands now but to attack clause 3 which has already been passed by this House. I do not propose to start defending clause 3 which the House has already passed, but what I wish to point out is this. If you accept this amendment you will make it practically impossible for the evidence which is contemplated by this clause to be led at all. I take the position to be as follows: The man who is accused of an offence not under this clause but under clause 3 as you will remember, has been associating with a foreign agent. If Mr. Agnihotri's amendment is accepted, you will not be able to adduce that evidence that he has been associating with a foreign agent unless you can first satisfy the Court that the accused ought to have known that the person with whom he has associated was a foreign agent. I put it, Sir, that this is an impossible burden to throw upon the prosecution. Foreign agents do not display name boards in front

[Mr. L. Graham.]

of their residences with the words "foreign agent" inscribed in golden letters on it, and there is really no possible chance of satisfying the Court, that a foreign agent, being an unobserved and somewhat obscure person working in serpentine manners, is a person whom the accused ought to have known to be a foreign agent. It might be reasonable to require the prosecution to prove that an accused should have known anything which a person of reasonable intelligence would have known, but it is not fair to put on the prosecution the burden which this amendment would put on it. Therefore, Sir, I oppose this amendment.

The amendment was negatived.

Mr. K. B. L. Agnihotri: I move:

"In sub-clause (2) omit sub-clause (a) (ii)."

I need not say anything in defence of the omission of this sub-clause. Much has been said by Dr. Gour while moving the amendment about the omission of the whole clause 4. This sub-clause (ii) makes a man liable if he were to have only the address of any person who in the words of Mr. Graham does not declare himself to be a foreign agent and who is not expected to proclaim himself as a foreign agent as Mr. Graham has been pleased to say—still you want that innocent person to be made liable for this offence. He may be equally unaware that the man is a foreign agent, but if he happens to have his address either in a foreign country or in this country you make him liable. Therefore I move this amendment for omission of that sub-clause.

Mr. L. Graham: I think this is a forlorn hope of Mr. Agnihotri's. The House without a division has accepted the whole clause, and the small portion that Mr. Agnihotri wishes to take out is really a vital portion of this clause. I submit that any one who has voted against the omission of this clause as a whole must vote for retaining this portion of it. I would therefore oppose the amendment.

The amendment was negatived.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadian Rural): May I interpose by suggesting that the House should adjourn now?

Dr. H. S. Gour: May I point out, Sir, that we have a very important Committee which is to meet immediately after the Assembly rises and of which I presume you are a Member. That Committee has been once adjourned and I do not think that it will be wise that that Committee should adjourn again. We have to transact a very important business and I would therefore request in view of the hour which is ten minutes past five, you might adjourn the House.

The Honourable Mr. A. C. Chatterjee: Sir, you and the House are aware of the congestion of public business in the House. Government are quite prepared to go on with this Bill. If we do not finish the Bill to-day or do not make satisfactory progress, our business will be put out of order. As you know, Sir, there is a lot of important work, in which the Members of the House are interested during the next few days and Government are quite prepared to go on. But if there is any strong feeling on the part, generally, of all Members of the House, we do not wish to press the question. We are prepared to leave it entirely to you. We should like to finish clause 4 if possible. We leave the decision to you.

Mr. T. V. Seshagiri Ayyar: May I point out to you, Sir, that we have been sitting during these two days until 6 o'clock and even after 6 o'clock, and it upsets a great many arrangements which we have already made. The hours fixed are between 11 and 4, and I think it is in consonance with the general practice in these matters that if it has to sit later it should be only in exceptional cases and that care should be taken to see that the Members of the House are not inconvenienced. If you say that you are going to sit till 6 o'clock, proclaim it once for all so that we may know where we are. The announcement is that we are expected to sit between 11 and 4 and if you are going to sit after 5, it necessarily upsets all arrangements which Members of this House may have entered into previously. To-day happens to be one of those occasions when we are required in some other place and I therefore suggest to you,—of course you have the right to adjourn or not and the matter is entirely in your hands,—that we do adjourn as soon as this amendment is disposed of. (*Voices:* "The amendment has been disposed of.") Then we had better adjourn now.

Mr. L. Graham: Do I understand Mr. Seshagiri Ayyar to refer to the amendments to clause 4?

Mr. T. V. Seshagiri Ayyar: No.

Dr. H. S. Gour: We will require some time to consider it.

Mr. L. Graham: I should not like to say that Dr. Gour's amendments are not important. My point is this. We have defeated an amendment to omit the whole of clause 4 and we are now dealing with clause 4 piecemeal. I think it would be more satisfactory to finish clause 4.

Mr. Chairman: The only argument that has been advanced is Dr. Gour's—that there is important business for some Members which follows this sitting. I therefore adjourn the House till 11 o'clock to-morrow.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 15th February, 1923.



LEGISLATIVE ASSEMBLY.

Thursday, 15th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

Mr. President: Members desiring to take their seats will advance to the table to take the oath or to affirm in the manner prescribed.

MEMBER SWORN:

Mr. Hubert Arthur Sams, C.I.E., M.L.A. (Director General of Posts and Telegraphs).

QUESTIONS AND ANSWERS.

DUTIES OF INCOME-TAX COMMISSIONERS.

347. ***Beohar Raghubir Sinha:** Will the Government be pleased to state the duties of Income-tax Commissioners and Assistant Commissioners?

The Honourable Sir Basil Blackett: The Honourable Member is referred to paragraph 22 of the Income-tax Manual.

REPRESENTATION re STRINGENCY IN MONEY MARKET.

348. ***Mr. W. M. Hussanally:** (a) Have the Government received any representation from the Bombay Indian Merchants' Chamber in regard to the stringency in the money market, and suggesting remedies as announced by the Associated Press in a telegram dated 27th January? If so, will the Government be pleased to place the same on the table?

(b) Will the Government be pleased to state what action they propose to take in the matter?

The Honourable Sir Basil Blackett: (a) The representation referred to appeared in the Press; a copy is however laid on the table.

(b) Government are of course closely watching the money market. They are not prepared to make any statement at present on this subject which in any case does not lend itself to treatment by way of question and answer in this House.

Telegram, dated Bombay, the 27th January, 1923.

From—The Secretary, Indian Merchants' Chamber, Bombay,

To—The Secretary to the Government of India, Finance Department, Delhi.

Committee Indian Merchants' Chamber beg to draw attention of Government to the prevailing acute stringency in the money market and to the serious and chaotic condition of the present currency arrangements of the country and urge on them the necessity of immediately repealing the hasty legislation of 1920 in order to enable natural forces to operate freely on our exchange position.

Mr. Jamnadas Dwarkadas: May I ask a supplementary question. Is Government prepared to give out whether it is their intention to make the sale of Council Bills more frequent than once in a week, or do Government think that they will keep the rate of exchange steady?

The Honourable Sir Basil Blackett: The Government will be prepared to give the matter consideration, though I am not sure that it will provide a remedy.

INDIANS IN EUROPEAN COSTUME ON RAILWAYS.

349. ***Rai Bahadur Lachmi Prasad Sinha:** (a) Will the Government be pleased to state whether Indians in European costumes can travel in Intermediate and Third class compartments reserved for Europeans or Anglo-Indians?

(b) If not, why not?

Mr. C. D. M. Hindley: The Honourable Member is referred to the answer given on the 8th February, 1923, in this Assembly to question No. 334, asked by him in a similar connection.

RAILWAY REVENUE EXPENDITURE.

350. ***Rai Bahadur G. C. Nag:** Have any orders been issued to railway administrations to curtail programme revenue expenditure? If not, what steps have Government taken to assure themselves that the full amount of renewals as represented by the amounts of money shown in the answer given on 17th January, 1923 to starred question No. 164 as having been sanctioned for the East Indian and the Great Indian Peninsula Railways, shall be worked up to?

Mr. C. D. M. Hindley: The answer to the first part of the question is in the negative. The two railway administrations have been asked to push on with the renewals as much as possible.

RE-ORGANISATION OF RAILWAY DEPARTMENT.

351. ***Rai Bahadur G. C. Nag:** With reference to item 6 of the statement at page 993 of the Legislative Assembly Debates, Volume III, do Government propose to give the Assembly an opportunity to discuss the proposed reorganisation of the Railway Department before the proposals are embodied in the Budget?

Mr. C. D. M. Hindley: The reply is in the negative.

UNSTARRED QUESTIONS AND ANSWERS.

ARRESTS IN N.-W. F. PROVINCE OF PERSONS CONNECTED WITH CONGRESS AND KHILAFAT AGITATION.

167. **Mr. Ahmed Baksh:** (1) Will the Government please state as to how many persons, if any, in the North-West Frontier Province have been arrested up to date in connection with the Congress and Khilafat agitation?

(2) How many persons have been after full trials sentenced to imprisonment and to what terms? And how many have been released?

(3) Will the Government be pleased to inform the House as to how many prisoners are serving in the jails for failure to give the security under section 40, Frontier Crimes Regulation, and how many under section 17 of the Criminal Law Amendment Act?

(4) Whether the convicts under section 40, Frontier Crimes Regulation, have invariably been sentenced to rigorous imprisonment or any of them have been sentenced to simple imprisonment also? Will the Government please also explain as to why this distinction was made, and if it was made on any particular principle, what is that principle?

(5) Are all or any of these above referred to convicts treated as political prisoners, and if not, why not?

KHILAFAT PRISONERS IN PESHAWAR JAIL.

168. **Mr. Ahmed Baksh:** (1) What was the number of Khilafat prisoners detained under section 40, Frontier Crimes Regulation, in Peshawar jail in May, 1922, and what is the number now? If there is any decrease, how has the same been caused?

(2) Whether or not it has been brought to notice of the Government that the authorities of Peshawar jail had forcibly snatched away the caps of a number of prisoners sentenced to simple imprisonment in connection with the Khilafat agitation, on account of there being crescents fixed on the same, if so, whether such action was justified under the Jail Manual or ordered by the executive Government of the North-West Frontier Province?

(3) Is it a fact that the other batch of Khilafat prisoners serving rigorous imprisonment were kept in solitary confinement for over one month at a time and fetters were put on them, if so, why?

CONVICT GHULAM RASUL KHAN OF SAFEDA.

169. **Mr. Ahmed Baksh:** Will the Government please state as to whether there is a convict of the name of Ghulam Rasul Khan, of Safeda, Mansehra tehsil in the Hazara district, now serving his term in the Peshawar jail for failure to deposit security under section 40, Frontier Crimes Regulation?

(a) If so, when and where was the security demanded from him?

(b) Where was he sentenced?

(c) What security was demanded? •

(d) Is it a fact that Rs. 5,000 cash and Rs. 5,000 personal security was demanded from him, if so, why such heavy security demanded?

(e) Is it a fact that he was already under security at the time of his arrest?

(f) If so, whether the previous security was forfeited, and if not, whether there was any justification for the demand of fresh security?

MARTIAL LAW IN MANSEHRA TEHSIL.

170. **Mr. Ahmed Baksh:** Do the Government know that Martial law was proclaimed in the Mansehra Tehsil in the year 1921? If so, whether His Excellency the Governor General accorded sanction to it, if not, under what authority was such step taken?

CONGRESS AND KHILAFAT AGITATION PRISONERS.

171. **Mr. Ahmed Baksh:** Is it intended at all to treat prisoners convicted in connection with the Congress and Khilafat agitation as political prisoners? If not, why not?

IMPRISONMENT OF ABDUL QAIYUM KHAN SWATHI AND MALIK KHUDA BAKSH.

172. **Mr. Ahmed Baksh:** Will the Government please state as to how many times since their conviction have Abdul Qaiyum Khan Swathi, B.A., of Hazara, and Malik Khuda Baksh, B.A., LL.B., late of the Bannu Bar, been sent to solitary and separate confinement and for what length of time were they respectively kept in any such confinement at a time?

The Honourable Sir Malcolm Hailey: The information is being collected and will be supplied to the Honourable Member on receipt.

THE CANTONMENTS (HOUSE-ACCOMMODATION) BILL.

Secretary of the Assembly: Sir, I beg to lay on the table the Bill further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments as passed by the Legislative Assembly and amended by the Council of State.

THE MARRIED WOMEN'S PROPERTY (AMENDMENT) BILL.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadian Rural): Sir, I beg to move:

"That the Report of the Select Committee on the Bill further to amend the Married Women's Property Act, 1874, be taken into consideration."

On a former occasion, Sir, I explained the object of my Bill. For the information of some new Members I wish to recall what I said on the previous occasion. The object of this Bill is to remove certain doubts created by certain conflicting decisions of the three High Courts—Madras, Bombay and Calcutta. The Madras High Court has held that the Married Women's Property Act applies to Hindus, Muhammadans, Jains, etc. The other two High Courts, Bombay and Calcutta, have held that this Act does not apply to Hindus, Muhammadans, etc., with reference to policies of insurance taken out by husbands for the benefit of wives. My object is to remove this conflict of decisions with a view to give the benefit of section 6 of the Married Women's Property Act to the two communities which I have mentioned. Section 6 of the Married Women's Property Act says that a policy of insurance effected by any married man on his own life and expressed on the face of it to be for the benefit of his wife or of his wife and children or any of them shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or of his creditors or form part of his estate. If this section does not apply to Hindus, the disadvantage is that even in a case where the husband insures for the benefit of his wife, either his creditors or members of a

joint Hindu family practically claim an interest in the insurance money, and the benefit of that insurance is taken away, so far as the wife is concerned. If, therefore, section 6 of the Married Women's Property Act is applied to insurance policies effected by Hindu husbands or Muhammadan husbands, I believe it would be to the benefit of the wife inasmuch as creditors or other members of a Hindu joint family will not be able to take away the benefit of the policy. That is the object I have in view. I am glad the Select Committee have reported in a way so as to support my object. The changes effected by the Select Committee are only two. As regards the first, I originally proposed to apply this section to Buddhists. The Select Committee has reported that it is not desirable in enacting this particular measure to include the Buddhists, as there are very few Buddhists in India, and, supposing the benefit of this is to be extended to Buddhists, the Government of Burma have said that they are willing in case of necessity to pass a measure of this kind in their local Council.

The second important change effected by the Select Committee is with reference to the question whether retrospective effect should be given by this Bill to policies of insurance already effected by certain people either in Madras or elsewhere. It was thought that it would not be desirable to give any retrospective effect inasmuch as people may have taken out policies on the understanding that they would be able to borrow money against the policies. Therefore the recommendation of the Select Committee now is that if at all this change in the law is to be made it should come into effect after April, 1923.

During the discussions of the Select Committee we have given careful consideration to the views and representations of Insurance Companies so far as the aspect of insurance is concerned. It was thought that the change in the law as proposed now might make certain classes of policies unpopular. After careful consideration the Select Committee came to the conclusion that if Insurance Companies properly explained the objects of this Bill to the proposers there would be no hardship and therefore there would be no disadvantage even from the insurance point of view in making the change. On the whole the Select Committee has supported this Bill; all the Local Governments are in favour of it; I believe that the Government of India are not against it, and I trust this House will support it. If it is carried I am sure it will be a great benefit and a great advantage so far as the Hindu, Muhammadan and Jain communities are concerned. I trust therefore that I shall get every support from this House for this Bill. Further, if it passes this House and if it passes also in another place, which I hope it will, I believe that this will be the first non-official Bill to go on the Statute Book under the new regime.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, under Standing Order 44, I beg to move that the Bill be re-committed to the Select Committee.

I am one, Sir, who is in agreement with the principle of the Bill, but to my mind there are certain very weighty considerations which seem to have been overlooked by the Select Committee. There is no doubt that the Married Women's Property Act, as appears from the Preamble and the opening sections of the Act itself, was intended for a certain class of persons who are not affected by the special doctrines of Hindu or Muhammadan law, or the general law, for the matter of that. The House will see that the Act now in force contemplates principally the persons in India who come under the operation of the Indian Succession Act. What the Married Women's

[Mr. J. N. Mukherjee.]

Property Act seems to secure for the benefit of a man's wife and children by way of insurance has been laid down by section 6 of the Act. It is to some extent something in lieu of a marriage settlement, a consideration as it were for the marriage, in many cases governed by the Indian Succession Act. Such cases have concern with the contractual forms of marriage, to a great extent. We are now trying by direct legislation to extend the principle of the existing Act to Hindus, Muhammadans and Jains. The intention of the Bill is no doubt a very good one, but at the same time we have to consider certain aspects of the matter which affect Hindus, Muhammadans and Jains in a special sense. Now, so far as Bengal is concerned, there may not be much difficulty; but as regards other parts of India very often the communities concerned are governed by the Mitakshara school of Hindu law. Under that school, very often the *karta* or manager of the joint family has dominion over the entire joint family property. Further, according to the Hindu law of the Mitakshara school, the sons are coparceners by birth with their fathers as well as with the other members of the joint family; they have a vested interest in the coparcenary property as soon as they are born and the property becomes the property not only of the father and the *karta* of the family, and of his sons, but of them and the other coparceners as well. So that, any special provision for the sons by way of insurance, by the father will have to be effected with joint family property. That is to say, a *karta* or the head of Hindu coparcenary property can by heavily insuring his life in favour of his wife and children very often do away with or segregate a portion of the joint family property for the special benefit of his wife and children. That is an aspect of the case, Sir, which seems to have been overlooked by the Select Committee. The Honourable Member of this Bill placed before the House the points which were really taken into consideration by the Select Committee and the report also refers to them. He did not mention, nor does the report itself mention, that these points were considered by the Select Committee. To my mind, Sir, they are questions of great importance. If a policy is effected by means of joint family property, the people affected have the right to know what the exact position should be of the benefits which are to arise out of that policy in relation to the claims of creditors and others. Then, Sir, it has been pointed out in some of the opinions elicited on the Bill that a Hindu—when insuring his life very often insures it with the idea that the policy is negotiable, so that during his life time he may have the benefit of the policy himself by being able to deposit it with the insurance office and raising money on it, and by otherwise assigning it. Whether upon the passing of the Bill the policy will still remain negotiable or it will have full effect as the Bill intends, that is to say, by imposing a sort of trust for the benefit of the wife and children is another question which requires careful consideration. At any rate, if the effect of this Bill, if passed into law, be that persons of this class will be deterred from insuring their lives for the benefit of wife and children and that they will thereby be deprived of their right of negotiating on the policy, it will perhaps have an effect opposite to what it aims at securing. That is to say, the object of the Bill being to benefit the wife and children of the person insuring his life, it will perhaps by that process have a deterrent effect, and the Bill will fail to achieve its own purpose. These are considerations, Sir, which lead me to think that more careful attention should be given to the Bill itself and these different aspects of the question should be considered in greater detail. The insurance companies have also raised certain objections and the House

may also take into consideration whether we should insist upon a trustee being always named in such cases so far as Hindus, Muhammadans and Jains are concerned. I find, Sir, that Mr. Darcy Lindsay who represents the insurance interests in the question, has not signed the Select Committee's report and I regret I do not find him present here to-day. He would have been able to throw more light on this question, if he had been present here to-day, from the insurance point of view, that is to say, he could have stated, whether the Bill will have a discouraging effect on insurance business, if passed in the form in which it is now presented to the House. If greater facilities for insurance had been offered by the Bill and more detailed consideration been accorded to the subject, it would, instead of defeating its own purpose, perhaps help to secure the end it has in view. All these points,* I submit, Sir, the House may be pleased to take into consideration, and to re-commit the Bill to the Select Committee, specially because there is no haste in the matter. The country has done without the Bill so long. It does often suffer to my mind from hasty legislation; and the House should stop and consider whether it should now pass this Bill in its present form, which is foreign to the social organization of the classes contemplated by it, without more detailed consideration of the points indicated. We should not take away the existing system simply by considerations of haste and speedy legislation. With these observations, Sir, I move that the Bill be re-committed to the Select Committee.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I cannot help saying, with all deference, that the Honourable Member who has just spoken has not understood the scope of this Bill. Sir, the object of this Bill is to place Hindu widows in the same position as widows belonging to the Christian community. Under the Married Women's Property Act, section 6, if an insurance is effected in favour of wife and children, a trust is created and the insurer is thereby debarred from dealing with the insurance as if it were his own property, and his creditors after his death cannot attach it as if there has been no trust. That is the object of section 6 of the Married Women's Property Act. That benefit has been secured to Christian women and we want to secure it for Hindu women. That is the object of this Bill. That would not affect the questions which my Honourable friend has raised in the debate just now. My friend Mr. Subrahmanayam, for example, has some doubts of an analogous character and those doubts also will not in any way be solved or made worse by the provisions of this Bill. For example, Sir, supposing an individual out of joint family property pays premia and at the same time declares that the amount of the policy should go to the wife and children. Undoubtedly, if this Bill becomes law a trust will be created in favour of the wife and children. He himself cannot deal with it; his creditors cannot deal it. It would not defeat the rights of the joint family if the members of the joint family choose to claim it, because a man cannot be creating a trust of somebody else's property, defeat the rights of the true owner. Those rights will always remain intact. They will not in the least be affected by anything that he has done. Those rights will remain and continue to remain, notwithstanding anything that he may say or do. The object of this Act is to prevent the man himself from again borrowing a loan upon the insurance, to prevent his creditors after his death from attaching the property as if there has been no trust. These benefits are given to women of other communities and these benefits are intended to be secured by this Act to Hindu women. That is the only object of this Bill and I do not see how the considerations which have been put forward so elaborately by my

[Mr. T. V. Seshagiri Ayyar.]

Honourable friend arise at all in connection with this Bill. This is a simple Bill. I had intended, Sir, to bring in a Bill which was somewhat more ambitious, and if my Honourable friend had in mind the provisions of my Bill, probably he would be justified in making the remarks; but that Bill is not before the House. The short Bill before the House is to give Hindu women the same rights which are possessed by Christian women under the Married Women's Property Act. That is all, and without understanding that object of this Bill if criticism is directed towards showing that Hindu families will suffer, I think that would prolong the discussion and would result in no good whatsoever.

There is one point which I want to put before you, Sir, and it is this. Undoubtedly the ruling would be from you, Sir, but I want to mention the point. Very often motions are made for re-committing a Bill to the Select Committee. If I may say so, it is only for acts of omission and commission by the Select Committee that you can ask that the Bill do go back to the Select Committee. If you object to the principle of the Bill, if you say that the Bill itself should be defeated, it must be on the floor of this House. All these points must be debated and you must vote against the Bill. What has the Select Committee done in this particular case? What are the acts of commission and omission which can be charged against the Select Committee and why should a motion for taking back the Bill to the Select Committee be made in the manner in which it has been made, Sir, I make these general observations, because very often we find that without adverting properly to the meaning of the motion of sending a Bill back to the Select Committee, these motions are made in this House; and my remarks, Sir, are intended generally for all motions of this kind. On this particular matter, Sir, my submission is, the remarks of the Honourable gentleman who spoke just now are beside the point altogether.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban):

Sir, I would be very unwilling to say anything that would retard the progress of what Mr. Kamat has rightly called the first non-official Bill ready for the consideration of this House. At the same time I do feel the difficulties that Mr. Mukherjee has raised. I am afraid, like him, I shall be charged with not understanding the scope of the Bill. Well, if Mr. Mukherjee and I did not sufficiently appreciate the scope of the Bill, Mr. Seshagiri Ayyar has made the position quite clear. The Bill aims at placing the Hindu widow in the same position as her Muhammadan and Christian sister with regard to certain matters. So far it is undoubtedly a liberalising measure, and we should welcome all liberalising measures if they are a part of a well-considered organic whole. Fortunately or unfortunately it is difficult for us now to understand why the Hindu law-givers, with whom Dr. Gour, Mr. Seshagiri Ayyar and many more would have no patience at this long distance of time did not choose to put the Hindu widow under same schools of Hindu law in the same position as her more fortunate sisters under other systems. Times are undoubtedly changing. Insurance policies are a thing which have come from the West, like the Law of Trust

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Not known in Mr. Manu's time.

Sir Deva Prasad Sarvadhikary: Not known in Mr. Manu's time as Mr. Chaudhuri informs me. Mr. Manu was not a longheaded man. Any

way it is there and we must reckon with it. Anyhow intricate questions arise if the insurance has been at the expense of the family, as it may well be, and often is. Mr. Seshagiri Ayyar would go so far as to say, better far, (Dr. Nand Lal will no doubt assert) better far pamper the already pampered profession of the law, augment the chance of family litigation; let the family fight out whether the trust is maintainable or not, let the creditor be kept at arm's length, but give the widow rights which according to some High Court she does not enjoy—Would this be right and desirable? Sir, in my early days, the Law of Trust used to be explained by some in a very short fashion as the Law of Distrust. It was supposed to be invented only to keep some people at arm's length. The King then was acting in a very untrustworthy fashion, and the lawyers of Great Britain evolved the Law of Trust. Supposing the creditor has to be kept at arm's length, which I understand from Mr. Seshagiri Ayyar is, not the sole, but one of the objects of the Bill, he would and could be so kept if the debt had not been incurred under terms sanctioned and contemplated by the particular school of law. If these terms were satisfied the property may be available for the satisfaction of that debt. There are complications which we cannot, however much we may desire, fail to take note of. The Hindu law of succession has its difficulties, judged by modern standards. We are not discussing that big question on its merits or demerits. And we cannot ignore these difficulties. There are sections of the community that think that what is proposed is a method of circumventing the wise or unwise provisions of the Hindu law that cannot appeal to the general body of people. It seems to me therefore that there is room for a little more careful consideration of the situation as a whole than has been bestowed on this Bill particularly when premia have been paid out of this Joint Estate. I for myself am not prepared to endorse the whole of Mr. Mukherjee's objections to the Bill because I do feel that in a proper manner and as a part of a well-considered organic whole, liberalising influences have to come into play. But whether we can take big questions piecemeal like this is what I am unable to understand. Mr. Seshagiri Ayyar has drawn your attention to the desirability or otherwise of moving for the Bill being put back to the Select Committee as a blocking measure, if I may put it shortly for him. Well that is a constitutional method open to Members and I do not see, if necessity arises and if a case is made out why the method should not be resorted to. For my purposes however there is in Mr. Mukherjee's proposal more than that. I would not consent to the Buddhist being excluded from the purview of the Bill for any of the reasons that have been put forward in the Report of the Select Committee. One reason is that there is no Buddhist Member present in this House. Well, Sir, communal representation is in the air; but it is carrying matters a great deal too far to say that because for the time being there does not happen to be a representative of a particular community present in the Assembly, is a reason why what is otherwise right and proper should not be done. The Government must have consulted Buddhist representatives, and their opinion must be before the Government. That is not all; the Burma Government, we are told, is prepared to have local laws with regard to the matter, but Burma has by no means the monopoly of Buddhist subjects of His Britannic Majesty. I come from a Province where there is a large Buddhist population who could not get the benefit, if it is a benefit, of the Burma Act. And, therefore, if the principle of the Bill is to be made applicable to Indians, I do not see why the Bengal Buddhists should be excluded. And there are Buddhists in other provinces, not to the same extent as in Bengal, that is one of the reasons

[Sir Deva Prasad Sarvadhikary.]

why this matter should be reconsidered. I shall probably be told that, as was attempted in another matter not many days ago in this House, to effect a remedy in this direction by an amendment to bring the Buddhist within the purview of the law. Possibly that course was open; but the point of view that has been put forward by the Select Committee would be better considered even from the Burmese point of view, if the Bill went back to the Select Committee. For all these reasons, Sir, I think the motion for re-committal of the Bill is not as ill-conceived as Mr. Seshagiri Ayyar would suggest, and I support Mr. Mukherjee.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, I support this Bill in its entirety. The position is simply this. There is a section of the Married Women's Property Act of 1897 which I shall read, for it is necessary to understand what it is because many a Member here may not have had the opportunity to know its contents:

"A policy of insurance effected by any married man on his own life and expressed on the face of it to be for the benefit of his wife or of his wife and children or any of them, shall endure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate."

That is the law as laid down by the Legislature. The question arises whether Hindus could take the benefit of this section. The High Courts have differed in their opinions of the Act. The High Courts differed in their opinion. The cause of difference was this. Section 2 says: "Nothing herein contained applies to any married woman who at the time of her marriage professes the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband at the time of such marriage professes any of those religions." This section has been the subject of controversy between the various and even among Judges of the same High Court. It is unnecessary for me to enter into the particulars of that controversy, but the result of this doubt has led to considerable hardship to widows and orphans, for whose benefit the husband or the father had effected an insurance. I will instance to you a case which came within my own professional experience. A schoolmaster on not a very large salary insured his life for a sum of Rs. 10,000 in one of the Indian companies. He died prematurely. His wife and children applied to the insurance company for the money. The brother of this schoolmaster, almost a scamp, if I may put it so shortly, put in a caveat and wrote a letter to the insurance company saying "Do not pay that money. My brother is a Hindu and I am a Hindu, and I have got some claim to the amount." What did the insurance company do? When two people claim the same amount, the company has to protect itself. It cannot hand over the money to one of them, even though it believes that person to be the rightful claimant. What it did was to say to the two parties "Go and settle your quarrel in Court, we will pay later on." The result was they had to go to Court and there was a delay of nearly two years before the widow and the sons, who were minors, could get that money. Now, that hardship is a hardship which, apart from being a Hindu, apart from being a member of any other community, I suppose Members of this House will recognize to be a hardship which ought to be removed. Now, Sir, it is that hardship which is sought to be removed by this Bill, namely, to make the insurance companies safe, to protect the insurance companies, and, at the same time, to protect the widows and

orphans who require protection and who cannot, under the circumstances in which they live, carry on a war against adult male relations of the deceased. Well, I had another case in regard to a foreign insurance company. The companies were already dealing with the matter very correctly, but there were difficulties when claims of this sort, Hindu joint family claims, Hindu Mitakshara family claims, Hindu Dayabhaga family claims, and all kinds of family claims are put forward. Now, the Bill seeks to do away with, or, at least, to minimise, such troubles, and it is not a new provision. It is a provision which exists in an Act of the Legislature and, owing to this clause which is in the earlier section of this Act, and the difference between two High Courts, this Bill is introduced. After all, this Bill does not affect any vested interests of people in the property of the deceased. Now, what does this section say? It says that this policy shall not form part of his estate. Hindu lawyers may rest assured that, if there is a joint family estate, it will not affect that, that claim will subsist; if there are other claims, those claims will not be defeated.

Now, there is another aspect of this insurance business. A man insures his life immediately after marriage or before marriage, and that means a provision for his wife and children. That is a well-understood method at any rate among Europeans and those who have learnt that method of provision for their families from Europeans. Now, take the case of a Hindu who is in service and earning his living. He insures his life for the benefit of his wife. The man dies suddenly. The opponents of this measure say: "No, that money should not be given to his widow." The policy, as expressed on the face of it, is for the benefit of his wife, or his wife and children. If a man pays month after month a certain share of his earnings and has said in express terms that it is for the benefit of his wife and children, what injustice is there to prevent his wife and children receiving that money. It is a pure act of justice which this Bill wants to provide for, because, owing to the interpretation of Judges, some difficulty has been felt upon this matter. Therefore, Sir, I would say that, so far as this Bill is concerned, it is a very simple measure and it only touches one part of it; it does not affect any vested interests and any persons connected with the deceased. Therefore, it ought to receive the acceptance of the House.

Mr. P. P. Ginzwa (Burma: Non-European): Sir, I had not the slightest desire to intervene in this debate, because, I frankly confess, that this is a department of law in which I am very little interested under my peculiar circumstances in Burma and I am not at all concerned with what "Mr. Manu" and other legislators in India have said about the rights of married women; but certain remarks were made by my Honourable friend from Bengal (Sir Deva Prasad Sarvadhikary) which I cannot allow to pass unchallenged. I am aware, that an all-powerful and an all-knowing Legislative Assembly is entitled to legislate for the whole of India, but there are conditions under which I think it would be perilous for this Assembly to meddle with the interests of a province about which it knows little or nothing. (Sir Deva Prasad Sarvadhikary: "Though it was well represented.") The two objections that have been taken to any legislation being passed by this Assembly are, I submit with great respect to this House, valid, first of all, that there is no Buddhist in this Assembly. There is no doubt there is no Buddhist in this Assembly though there are some Burmans—we like to call ourselves Burmans. I see an Honourable Member (Mr. H. Tonkinson) opposite me who is also a Burman. The Buddhist law is, I submit, a law about which the ablest practitioners in India are expected to have very little

[Mr. P. P. Ginwala.]

knowledge because it is entirely different from the law that is prevalent in India. I do not think that we claim too much when we say "For Heaven's sake do not legislate for us because we do not wish to trouble you: you have got to make a special study of our law and it is quite possible that you may go wrong." I do not see any justification whatsoever for my Honourable friend from Bengal wishing to impose his law upon my province. Then he said that he objected to the Local Government saying that they wanted to legislate for Burma. What objection does he see to it? Why does not he ask the Government of Bengal to legislate for his province; we will not raise any objection whatsoever. It is an admitted fact, I think, it has been recorded in constitutional documents and elsewhere, that the conditions of Burma are so different from those of India that Burma ought to be allowed to work out its own salvation in its own way as far as possible. And I see every justification to the Local Government's claim that this legislation, if it is required in the Province, must be undertaken by the Local Council. But I may point out to the House generally that there is a gentleman corresponding to "Mr. Manu" in Burma whom we call Manugye.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban):

I am sorry, Sir, to interrupt on a point of order, but I must protest against a name which is sacred and held in the utmost respect by Hindus being spoken of in this manner. I hope my Honourable friend will have some regard for the feelings of Hindus in this matter.

Mr. P. P. Ginwala: I know, Sir, that my Honourable friend from Bombay has the utmost reverence for everybody, legislators and others, in the past, and I am very glad, Sir, he has drawn my attention to this merit of his. But this did not originate on this side of the House. However, I may point out that Manugye is one of those legislators for whom we have the highest respect and his writings are considered to be of the utmost authority in the Province of Burma at the present moment. And according to him,—he has devised a very simple form of law applicable to widows and husbands too,—whatever property is jointly acquired during the lifetime of the two partners to a marriage goes over to the survivor, subject to the rights of the eldest child; and therefore whatever difficulties you may have in the rest of India, we have no such difficulties in our Province. That is an additional reason why this Assembly should not try to impose its will upon a Province which has no desire to interfere with the affairs of India. And I beg Honourable Members in this House not to misunderstand me. There is a very strong feeling in Burma that her affairs are not understood by India and that on other occasions, when the least interference is required, much interference is made by India in the affairs of Burma; I do not think that there is any occasion for allowing Burma to feel that that is the way in which her affairs are to be managed in India both by this Assembly and the Government of India. It is for these reasons that I thought it necessary to intervene in this debate. I do not wish that this Assembly should in any way be misunderstood by the people of Burma who have only recently embarked on their new and independent political career.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): Sir, I should like very briefly to refer to the criticisms of my learned friends Sir Deva Prasad Sarvadhikary and Mr. Mukherjee.

The whole trend of Sir Deva Prasad's argument, I submit, is too late at this time of the day. He objects to the principle of the Bill which was

accepted by the House when it committed it to the Select Committee. It has now come out of the Select Committee and all my friend can object to now is not the principle but the details of the Bill. Sir Deva Prasad has appealed to the authority of Manu. My learned friend is aware that in the days of Manu not only wives but children had no property. They were all classed with slaves (Some Honourable Members: "No, no.") as chattels. Those of my learned friends who shout "No" have not read Manu. They were all classed with slaves as chattels. (Some Honourable Members: "No, no.") In course of time they emerged from that servile condition. Surely my friend does not want to relegate his wife and children to the status assigned to them in the Manu Smriti which was composed 3,000 years ago. I am perfectly certain that that is not my friend's object.

My friend, the Honourable Mr. Mukherjee, while directing no direct attack on Mr. Kamat's Bill

Mr. J. N. Mukherjee: I did not object to the principle of the Bill.

Dr. H. S. Gour: He now assures me and the House that he does not object to the principle of the Bill. He nevertheless follows the Fabian policy of re-committing to the Select Committee. But surely yesterday you, Sir, indicated very clearly that if a Member desires that a Bill should be re-committed to the Select Committee he should indicate the lines upon which the Select Committee are to set to work. But my Honourable friend has not done so.

Mr. J. N. Mukherjee: I did. You were sleeping perhaps.

Dr. H. S. Gour: No, I was very much awake. What is the good of the Bill being re-committed to the Select Committee? The two grounds upon which my learned friend would like the Select Committee to re-cogitate on this Bill are that there are such husbands who are members of a joint family, and if they have used joint family funds for the purpose of insuring their lives for the benefit of their wives, it is the joint family under Hindu law that should participate in the benefit. And further my friend pointed out that if the husband happens to be the manager a further complicated question would arise under Hindu law. That, I venture to submit with due deference to the Honourable Mr. Mukherjee, again raises a question of principle and not one of detail. But I am prepared to answer his queries.

Mr. J. N. Mukherjee: In Bengal no such difficulties arise.

Dr. H. S. Gour: My friend interjects the remark that in Bengal no such difficulties arise. Now take the ordinary Mitakshara law. What is the position? Assume that the husband is a member of a joint family and assume, for the sake of argument, that he is its manager. Assume further that he has drawn upon the joint family funds for the purpose of insuring his own life for the benefit of his wife and children. So far as his sons are concerned, they are co-partners in the estate, and they present no difficulty under Hindu law. So far as his unmarried daughters are concerned, they are entitled to the daughters' portion. They present no difficulty. I am prepared for the sake of argument to assume that this manager has drawn upon joint funds for the purpose of insuring his own life for the benefit of his wife and children. Now what is the position under Hindu law? It is a well known principle that if a member of the coparcenary does an act inconsistent with its continuance, it causes a disruption. If the other members of the coparcenary feel aggrieved by the conduct of the manager in insuring his wife and children's lives at the family cost, they are entitled to call for

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a partnership. That is the first principle which the great law giver Manu has laid down. And by the way in one of his *slokas* he points out that partition is a very righteous thing to do and he strongly commends it, because the Brahmins profit by the partition. Two families are born out of one, and two independent sacred rites have to be performed and the Brahmins benefit thereby.

Consequently, partition is held commendable in law. My submission, therefore, is that my friend Mr. Mukherjee's objections do not
12 Noon. in any way touch the point. They create no practical difficulties so far as a joint orthodox Mitakshara family is concerned. Under the Bengal school subject to the Dayabhaga law, there is no difficulty. Where is this difficulty? That, I submit, is the plain question. The Madras High Court in L. L. R. 37 Mad. 483 have laid down that a husband has a right of insuring his wife and children or his own life for the benefit of his wife and children so as to create a trust in their favour. My friend the Honourable Sir Deva Prasad Sarvadhikary pointed out and referred to Mr. Seshagiri Ayyar's speech on the Bill and said "will it have the effect of keeping the creditors of the family out?" I venture to draw his attention to the proviso to section 6 of the Married Women's Property Act which lays down: "Nothing herein contained shall operate to destroy or impede the rights of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud the creditors." It is a well-known principle laid down in section 53 of the Transfer of Property Act, and apart from the Transfer of Property Act, it is part of the general law that no policy in favour of a wife and children could be used to the detriment of the claims of creditors, and section 6 which Mr. Kamat's Bill is intended to extend by a legal expression to Hindus, Muhammadans and the rest safeguards the rights of creditors against any attempt at fraud upon them. So I submit that difficulty does not confront us. What is then the Select Committee to do? Surely, Sir, neither my friend, Mr. Mukherjee, nor Sir Deva Prasad Sarvadhikary have indicated any lines upon which the Select Committee is to further examine the details of this Bill. I therefore submit that a recomittal would merely delay the further progress of this Bill and would not be conducive to its further progress.

Now, Sir, a few words on the merits of the Bill. I suggest that section 6 was intended, as has been laid down by the Madras High Court, to extend equally to Hindus and Muhammadans. The Bombay and Calcutta Courts have taken a different view. If this Bill is not passed into law, this conflict of authorities will still remain, but is it not the business of this House and of the Indian Legislature to set at rest conflicting decisions of the High Courts which would certainly lead to litigation and delay in the settlement of claims? On these grounds, Sir, I think that this Bill should now be passed by this House without its recomittal to Select Committee.

(Several Honourable Members: "I move that the question be now put.")

The motion was adopted.

The motion to recommit the Bill to Select Committee was negatived.

The motion to take the Bill into consideration was adopted.

Clauses 1 and 2 were added to the Bill.

The Title and Preamble were added to the Bill.

Mr. B. S. Kamat: Sir, I beg to move that the Bill, as amended, be passed.

The motion was adopted.

THE EXCLUSION FROM INHERITANCE BILL.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I move:

"That the Bill to amend the Hindu law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts, be referred to a Select Committee consisting of Mr. J. Chaudhuri, Rao Bahadur C. S. Subrahmanyan, Rao Bahadur T. Rangachariar, Mr. B. Venkatapathiraju, Dr. H. S. Gour, Lala Girdharilal Agarwala, Mr. Harendrai Vishandas, Sir Deva Prasad Sarvadhikary, Mr. K. B. L. Agnihotri, Rai Bahadur J. N. Mazumdar and myself."

Sir, the rumbling noise which the House heard just now is only the prelude to the thunder which is coming down upon my head in regard to this matter. They began, Sir, by referring to Hindu law and Hindu sacrament only for the purpose of showing that I am attempting something which is irreligious and which is opposed to the sacramental law of the country. At this time I do not propose to go very minutely into the details of the Bill. I have spoken about it on more than one occasion. On the first occasion when this matter came up in Simla for consideration I explained very fully the reasons which led me to bring this Bill before the House.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, may I ask whether this is not an adjourned debate? I understand that my Honourable friend has already moved his motion for referring this Bill to a Select Committee; he made a speech on the Bill on that occasion and it was followed by another speech. As far as I know, my Honourable friend *only* proposes to add two names to the Select Committee which he then proposed. Is that not so?

Mr. T. V. Seshagiri Ayyar: I am very willing, Sir, to be ruled out of order because I do not want to make a speech. As a matter of fact I was only prefacing my remarks with a view to lead up to this. It is unnecessary to make a speech now and if you agree with the objection taken I shall be very glad to be told that it is not necessary to make a speech. I do not want to repeat what I said on the last occasion, and if there are any remarks made by others I shall have time enough to consider the whole matter and give my reply later. On this particular occasion I ask, Sir, that the Bill be referred to a Select Committee consisting of the Honourable the Home Member (the name is not in the printed list), Messrs. Chaudhuri, Subrahmanyan, Rangachariar, Venkatapathiraju, Dr. Gour, Lala Girdharilal Agarwala, Mr. Harendrai Vishandas, Sir Deva Prasad Sarvadhikary, Mr. K. B. L. Agnihotri, and, instead of Rai Bahadur J. N. Mazumdar I would put in the name of Mr. Allen, and the Mover. As suggested by Mr. Tonkinson, for the reasons given in Simla I move that the Bill be referred to a Select Committee.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, it is rather with some regret, which is personal, that I rise to oppose this motion. The personal regret, Sir, is due to the fact that I have a great esteem for the author of this measure. He is one of those persons who has taken us into his confidence about the pilgrimage which he has made to Delhi at an early part of our career on this new Legislative Assembly. He told us, Sir, that he was yearning for improving the Hindu law, and that if his mission failed he thought that he was serving no useful

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purpose by being in this Assembly. Sir, we have lived two years after that statement made by my Honourable friend to my left and we have found him useful in many other directions. He took rather a modest view of his capacity. I venture to say his capacity in other directions has been more useful than his activities in this direction. Sir, as a student of law when in the eighties I began to learn Hindu law, I was struck with a famous passage in Mayne's Hindu Law,—the preface to his first edition which still rings in my ears and which I believe is still true. In the preface which he wrote to his famous book on Hindu Law this is what he said :

"A third class of opinion is that of the common-sense Englishman, whose views are very ably represented by Mr. Cunningham,—now Judge of the Bengal High Court—in the preface to his recent 'Digest of Hindu law.' He appears to look upon the entire law with a mixture of wonder and pity. He is amused at the absurdity of the rule which forbids an orphan to be adopted. He is shocked at finding that a man's great grand-son is his immediate heir, while the son of that great grand son is a very remote heir, and his own sister is hardly an heir at all. He thinks that everything would be set right by a short and simple Code which would please everybody and upon the meaning of which the Judges are not expected to differ."

Proceeding he points out :

"The age of miracles has passed, and I hardly expect to see a Code of Hindu Law which shall satisfy the trader and the agriculturist, the Punjabee and the Bengalee, the Pundits of Benares and of Ramswaram, of Amritsar and of Poona, but I can easily imagine a Code very beautiful and spacious Code which should produce much more dissatisfaction and expense than the law as at present administered."

Sir, when I read my learned friend's Bill, I was struck with the truth of that remark. Sir, it is not an easy matter to draft a Code. It is an art in itself. I was more forcibly struck with the difficulty of drawing up a Code even when the draftsman tore up to shreds small amendments to the Code of Criminal Procedure, and I truly felt that the draftsmen of the Legislative Department have developed it as an art, and it is true, Sir, it is not that every hand that can attempt successfully to draft a Code. Sir, my Honourable friend's Bill is based on wrong assumptions, hastily drawn up in his enthusiasm to modify the Hindu Law and which, if I may say so, is fraught with difficulties and traps which will benefit the lawyer. It is a simple Bill and consists of only one section. But still, Sir, when we compare it with the law as it is, I rather prefer the law as it is to his Bill. My Honourable friend's object, as he states in his Statement of Objects and Reasons, is to repeal the Hindu law or so much of the Hindu Law which excludes certain persons from inheritance. Sir, what is his title of the Bill? The title is: "This may be called the exclusion from the Inheritance Act," whereas he wants to repeal the law which excludes people from inheritance. He is enacting a law, he tells us, for the exclusion from inheritances of certain classes of heirs. Then, Sir, he wants to repeal a rule of Hindu law which he thinks or assumes exists. Where he gets that rule from I find it difficult to gather. I ransacked all the sources, but I cannot find the rule of Hindu law which he seeks to repeal. It is non-existent. What my Honourable friend says is, "Notwithstanding any rule of the Hindu law or custom to the contrary no person shall be excluded from inheritance or from a share in the joint family property by reason only of any disease." There is no such rule in the Hindu law that a person should be excluded by reason of any disease, or any physical or mental defect. It is not stated in any rule of Hindu law. The rule of Hindu law is contained in Manu and added to by Yajnavalkya which, if Honourable Members will permit me to read, will see how different it is from what

my Honourable and learned friend has assumed it to be. Sir, this is the rule as stated by Manu. "Eunuchs," I omit the outcaste, "eunuchs,"—surely nobody ever contends that to be a eunuch is a disease,—“eunuchs, persons born blind and deaf”—that is not a disease, it is incapacity,—“the deaf and the dumb,”—that is not a disease, and “Nirindriya” such as the loss of the use of a limb are excluded from heredity. Sir, I fail to see where the rule is that a person afflicted with a disease is excluded from inheritance. Persons born deaf and dumb or blind, that is congenital, such as the loss of the use of a limb are excluded from inheritance, to which Yajnavalkya adds “and persons afflicted with an incurable disease” which is quite different from disease. Sir, if you want to state a rule of law and you want to repeal that rule of law, state it correctly. And then there is no rule of law which causes inclusion by reason of any physical or mental defect. It is exposing Hindu law to ridicule in the way in which my Honourable friend has stated it. Sir, the Hindu law is not so idiotic, as my Honourable friend would suppose it to be. It is based on reason, it is based on justice, it is based on well-conceived notions, so that if you want to repeal a rule of law, state it correctly, and repeal it. But do not mis-state it and try to ridicule a thing which does not exist. Sir, let us see what is it my Honourable friend has stated in his Statement of Objects and Reasons, and which he reiterated in his speech introducing the Bill. He says, certain persons, classes of persons, have been excluded from inheritance presumably on the ground that their present condition is due to sins in the former birth and are therefore not entitled to share in the family patrimony. Without questioning the soundness of this reason I am of opinion that in the times that we live in,—are we living in godless times, is that the idea? Does he mean that in these progressive times such grounds of exclusion should not be allowed to deprive a man of temporal rights? Why is it opposed to a sense of natural justice and equity? Is that my learned friend's contention? And is he right in assuming, in presuming rather, that the cause of exclusion is that the present condition is due to sins in the former birth? I do not know if my learned friend believes in a former birth. (An Honourable Member: “Very much.”) I am glad to hear that he very much believes in it, so that, it is not intended to ridicule our faith in these matters. If it is intended to catch votes from other people who do not believe in it, I must take exception to such a thing. What is the object of making that statement? A gentleman who is I know thoroughly religious in these matters, who has strong faith in a previous birth and subsequent re-births, could use it as a reason here,—I do not understand that,—and what is the reference to present day times,—present day times, unless he means we are all living in godless times when we have no faith and no religion. I can understand that, but I do not see where the trouble comes in at all. In the first place, it is wrong to presume that it is founded on any such rule of law,—except in the case of incurable diseases which Yajnavalkya has added, the other cases are cases of exclusion from inheritance based on well known principles. One well known principle on which the Hindu law of inheritance is based is this,—the capacity to offer oblations. Does my Honourable friend believe in that or not? Will you kindly read it? Does my Honourable friend believe in the efficacy of oblations? Has he to-day performed his *Awasasya Tarpana* in honour of his ancestors, in memory of his ancestors? He says, yes. We believe in it, Sir. Our theory of the law of inheritance is based upon that. It is all very well for men like Dr. Gour who scorn at religious and orthodox persons, to indulge in such talk, but for my

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Honourable friend to my left who believes in and acts up to it, he should know that the theory of inheritance is based upon the capacity to offer oblations, upon the capacity to take part in religious worship, upon the capacity to contribute to the spiritual welfare of the family, so that it is based on that, and by this measure you want to destroy the very foundation on which the law of inheritance is based according to the Hindu law. And these people are incapable of performing it,—what can deaf and dumb people do? (*An Honourable Member*: "They can offer prayers.") It is not a question of prayers, it is a question of performing the *Shradhas*. Well, at any rate the Hindu law believes they are incapable of doing it, at any rate they are disqualified, and if they do it, it is no good; we believe in it. It is all very well for persons who have no faith in religion, that is the real secret of it, who have no faith in religion, to proceed to criticise it. Once you have faith in religion, then you feel the efficacy of it. As Mayne points out, the theory of inheritance is that it descends upon the heir—talking on this very Chapter—to enable him to rescue his ancestor from eternal misery. Consequently one who is unable or unwilling to perform the necessary sacrifices is incapable of inheritance; that is the foundation of the rule, because they are incapable of performing the ceremonies that are ordained for a householder, that they are incapable of inheriting; and look at it also not exactly from the religious point of view, but look at it from the point of view of natural justice and equity. Is it opposed to natural justice and equity to exclude persons from inheritance when they are incapable, when they would be incapable, of taking charge of and managing the property? For whose benefit are they to take charge? The Hindu law is not oppressive in that respect; it is purely a personal disability; the children of the excluded person are let in; provided they are not disqualified, they are let in, and they take the place of the excluded persons in the family. It is a pure personal disability attaching to this unfortunate individual no doubt, but as he is unable to take care of the property, it will get into the hands of scheming people if persons who are born deaf and dumb, or who are idiots, if this property is entrusted to them, it will merely get into the hands of scheming people, agents and others; and, on the other hand, the law provides that they shall be provided with maintenance. They will not be thrown into the streets,—in the shape of maintenance they get their share; their children get the property in their places; and if, by God's grace, they are cured—of course in these cases it is very difficult to expect a cure—but if really they are cured, they are put back in their position. Once they have got the property, it is not liable to forfeiture. Property vested is not taken away, and if the disability is removed, they get back the property, they get back to their position, and it is only during the continuance of the disability that they are not given a share in the property, but they are maintained out of the family fund. Now, Sir, what is the injustice in that law? For whose benefit are you giving them a share in the family property? And coming to the needs of the family, what is the object in giving him a share in the property? Is it your object to give the property to his heirs? But his heirs get it; therefore, it is not a disability which applies for ever, therefore it is only a temporary disability, a personal disability attaching to the man who is unfortunately afflicted with this incapacity. I won't call it a disease. It is a pure incapacity, a disability which attaches to the man. Therefore, Sir, I do not think that this Bill is at all necessary in so far as it attempts to remove or repeal the law as it exists.

Then, Sir, as regards this clause about "Nirindriya" persons who have lost the use of a limb, there has been some doubt. If my learned friend had attempted to remove the doubt created by a conflict of decisions in regard to whether insanity should be congenital in order to exclude a person from inheritance, he would have done some good; because on that matter there is some doubt though the consensus of opinion is that unless insanity is congenital it does not exclude from inheritance. The law has also settled it now that unless the man is from birth deprived of the use of essential limbs, that is a disability which make him a useless person, then also he is not excluded from inheritance. These points may be made certain.

Now, as regards leprosy, that is the only thing where this question of *karma* comes in, that is, the sins of a former birth, which my Honourable friend referred to and believes in. So far as this is concerned also, it has been settled that it is now limited to the worst possible form of leprosy. That is what Mayne says at page 870—the worst form of leprosy. If he has already inherited and subsequently becomes a leper, he is not deprived of the property. If at the time the inheritance opens he is suffering from the worst and incurable form of leprosy, what can be said in such a case? His children are not disinherited. If he has a son already that son takes his place. Therefore it is only the unfortunate individual himself who is excluded and he will be maintained out of the family funds. I do not see anything opposed to a sense of natural justice or equity in a case like that. What is it that these people who are thirsting to reform the Hindu law see in it? Do they know the principles on which these rules are based? It is a mere anxiety on their part to pose as codifiers of the law and to take the place of "Mr. Manu" as he was called this morning.

I really do not think, Sir, that we are doing any good by this piecemeal legislation. The Hindu law is not so inelastic. Customs have grown gradually; the enormities which at one time grew upon the Hindu law have been removed by judicial decisions and the growth of custom. We would have welcomed the removal of doubts on account of a conflict of decisions between various High Courts. And then there are only two points on which there is a conflict of decisions between Calcutta, Bombay and Madras, and the doubt on those two points my friend has not attempted to remove, although he calls his Bill a Bill to remove certain doubts. He has not said what the doubts are or how he proposes to remove those doubts. He simply wants, Sir, to remove root and branch this chapter on exclusion from inheritance. That is the object of this Bill. Are we going to endorse it? I will join hands with him if he seeks to remove any doubts on account of judicial decisions. But when he seeks to remove root and branch one portion of the law relating to inheritance, then I say he is doing a thing which is quite unnecessary, quite uncalled for and in utter disregard of the principle on which the Hindu law of inheritance is based.

One more word, Sir. My Honourable friend, Dr. Gour, has set a very vicious example to this House, and my Honourable friend, Mr. Seshagiri Ayyar, has followed that example. Directly one community takes up its cudgels against them they drop their own cudgels. Dr. Gour told the House when he was moving the Civil Marriage Bill: "the Muhammadans are opposed to it; very well, I will drop the Muhammadans. The Parsis are opposed to it; I will drop the Parsis also." What remains? There is only the one poor community whom he can go for, the disorganized,

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disintegrated and divided Hindu community which is an easy prey. Similarly my Honourable friend, Mr. Seshagiri Ayyar, quietly gives up Bengal. Why so? That rule of exclusion, Sir, is opposed to natural justice, opposed to equity and good conscience. He wishes to repeal it. What is good for Madras must be good for my friend, Sir Deva Prasad Sarvadhikary, and my friend, Mr. Mukherjee. But why does he drop Bengal? They are also governed by the same rule; but, Sir, he is afraid of their votes, of their opposition. Is that the way of dealing with root principles of Hindu law? Just as Dr. Gour was afraid of the Muhammadans and dropped them, so also my friend is afraid of Bengal opposition and he says so in his Objects and Reasons and he wants to drop Bengal. I can see through it. But I hope this House will not endorse any such view. I oppose this Bill.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadian Urban):

Sir, I do not know whether it is a happy or an unhappy position, but in this instance at any rate I am opposed to the motion made by my Honourable friend, Mr. Seshagiri Ayyar. I do not for a moment wish to be misunderstood. I do not subscribe to all the views expressed by my Honourable friend, Mr. Rangachariar, that no Hindu reformer has a right to suggest modifications in the law of Manu. Nor do I agree with him that my Honourable friend, Dr. Gour, has, as it were, done a disservice to the community by introducing his Civil Marriage Bill. I am one of the staunchest advocates of that reform introduced by Dr. Gour. But I want to say that in dealing with questions of Hindu law one has got to understand clearly the principle on which the whole of the Hindu law is based. Not being a lawyer I am not able to define in legal terms what I believe is the principle on which the whole of the Hindu law is based. But I can express it as I understand it from what I should call, if I may be pardoned for doing so, the common sense point of view. The whole of the Hindu law is based on the principle that it does not recognize an individual as the individual is recognized in the western civilization. Its definition of the individual consists not merely of an individual but along with him his family, his wife and child. And wherever questions of the holding of property or questions of a similar character are concerned, they are not looked at from the point of view of an individual as understood in the West but from the point of view of an individual as understood here, an individual consisting of himself, his wife and his child. Now, the other thing to be taken into consideration is that in certain instances this subordination of the individual has been carried too far to a point where it affects the fundamental rights of every individual. Wherever that takes place, I think you would be justified, as my Honourable friend, Dr. Gour, has always attempted to introduce, you would be justified in introducing reform which might preserve the right of the individual against being merged too much in the rights of the family. But there is a danger of carrying this theory of the individual right so far as to subordinate altogether the fundamental principle on which the Hindu Law, I believe, is based; and it is because I believe that the proposal aims at the absolute subordination of the principle on which the Hindu Law is based that I venture most respectfully to oppose his motion. Now, why is a man, under the Hindu Law, entitled to inherit the property of his ancestor? Not because he wants to enjoy through the possession of that property. He has no right—in Hinduism—he has no right to inherit property in order only to have for himself all the worldly pleasures that are at his command which he can

purchase by means of holding property. (A Voice: "Is that your view?"). My view of the Hindu Law is this, that a Hindu has a right to possess the property of his ancestor only if he has the capacity to perform the five sacrifices that he is called upon to perform because of his being a Hindu. Now, wherever you find an instance where the son of a Hindu is incapable of performing those sacrifices which is the only justification of his holding the property of his ancestor, you take away from him the right of holding that property. You withhold from him that right, but you do not take away that right from his children; and so far as that principle is concerned, it appears to me that it is a very wholesome principle. The difficulty would arise where this principle would be exploited by scheming members of a family, by hook or crook, to settle upon a person who is not insane nor otherwise has any deformity, insanity or some other incurable disease which deprives him of the right of holding property. At the same time one has to remember that there is a greater danger if this was removed from the Hindu Law of scheming persons, as was pointed out by my Honourable friend Mr. Rangachariar, of scheming persons, of lawyers, taking advantage of the deformity of a man by making him a puppet in their hands and enjoying the fruit of his possession of property. But I want again to emphasise this fact that the Hindu Law does not recognise the individual right of holding property unless the holder of such property is capable of efficiently performing the sacrifices which by the reason of his being a Hindu he is called upon to perform. And in so far as that is concerned, I am opposed to the motion of my Honourable friend, Mr. Seshagiri Ayyar. I repeat that I do not think that the Laws of Manu should not be modified in accordance with the needs of the times. I believe that if the laws of Manu can be so modified as to bring about a reconciliation between the rights of the family which they insist on, and the right of the individual as understood in the West, if they can be modified so as to bring about that reconciliation, that modification ought to be welcome to everyone who loves this country and its civilization. But wherever there is a danger of either of the ideal being carried too far so as to bring about the subordination of the other ideal absolutely, there we should stand out to oppose such a modification. It is on these grounds, Sir, that I oppose the Resolution.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I have as high regard for Hindu Law as my Honourable friend, Mr. Rangachariar, but I have no blind faith in it. The history of the Hindu Law shows that it has changed and it has progressively changed and at the present moment when Hindu Law is being administered by European Judges this growth has been arrested. Now, with regard to what my learned friend Mr. Rangachariar said about the offering of oblations and succession, that is one of the things in which I do not believe. I myself offer oblations; I do that as moral duty to my ancestors. But I believe that the theory that succession depends on the offering of oblations, is a legal fiction which was introduced into Hindu Law and which is now discredited. I have got high authorities to support my view that this theory has done more harm than otherwise. I am not arguing a case before a Law Court and I need not cite those authorities. I only mention this to show that my friend, Mr. Rangachariar, is not right in his view. I say that not only Hindu Law, but Hindu civilisation, Hindu literature, have been very progressive and they have even a scientific foundation. For instance, I do not entirely sympathise with my friend, Mr. Seshagiri Ayyar, with

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regard to his object, but I have agreed to act on this Select Committee, because I feel that in certain respects the law might be modified. For instance, these disqualifications are based on what some would call, in scientific language, rules of eugenics. It seems reasonable that a leper should not inherit and insane persons should not inherit. Modern science tells us and modern lawyers too are also trying to legislate that such persons should be excluded from inheritance in the interest of society and our Hindu Law anticipated that. But I see no reason why a man who became blind early or even late in life and was in possession of all his intellectual faculties should not inherit. He is disqualified under Manu's Code. But the judge-made-law that we have now has departed from that in many respects. Take the case of other incurable diseases, they have been held to be no bar to inheritance or succession. So, I say these matters are the subject-matters for inquiry in connection with this Bill.

Now, something has been said about excluding Bengal. But Bengal has been rightly excluded as she is not affected in any way. I maintain that we are more progressive in regard to Hindu Law than other parts of India. We can hold individual property and we can dispose of our property just like an Englishman or any other civilized and progressive people in the world. We can give it to anybody we like. That is the reason why my Honourable friend, Mr. Seshagiri Ayyar, has excluded us. If we find sons, heirs or other members of the family to be insane, we have the absolute right to settle or dispose of the property in any way we like. We would leave it to other persons, male or female, and we would not leave it to an insane person. It is not through any fear of our fighting or desperate character that the Mover has excluded us from the scope of this law. I do not wish to detain the House, but I will only say that, although I do not agree with the scope of the Bill in all its details, I have agreed to serve on the Committee because in certain cases I feel that some of these disqualifications might be inquired into, and if possible, modified, and conflicts of decision removed. So I do not think that either my friend, Mr. Rangachariar, or others who are opposing it have made out any case for not referring this Bill to a Select Committee.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars: Landholders: Sir, I feel obliged to you for permitting me to give expression to my views on this question. I am a Hindu hailing from Sind, and I have listened therefore with interest to what has been said by previous speakers from other parts of India with regard to the question under consideration. I am going to say something with regard to myself. My uncle's family will probably come to an end so far as the male issue of that family goes, and according to the Hindu law, I will be entitled to inherit some of the property that belongs to my uncle. But it is a fact that it does not even enter my mind, or the mind of any member of my family, to seek to secure the property which is really due to the daughters of my uncle's line. Just now we have been told that the essential principle on which the devolution of Hindu property depends is capacity to offer oblations. No female can offer oblations to the *manes* of her ancestors under the Mitakshara law.

Mr. Jamnadas Dwarkadas: May I rise to point of order? The point of order is this that we are at present not discussing that principle of the law which incapacitates females; it is only a question of deformed and otherwise incapacitated individuals.

Mr. President: I do not see the relevance of the Honourable Member's point of order.

Mr. Jamnadas Dwarkadas: I thought the point was not relevant to the issue before us.

Mr. S. O. Shahani: Sir, I want to point out that this doctrine that is being held out for acceptance by my friend, Mr. Rangachariar, is an exploded doctrine with some of the Hindus at least. I am a Hindu. Of course Mr. Rangachariar is a very orthodox Hindu, and I have listened with very great interests to what he had to say with regard to this question. I have nothing but admiration to offer for the imaginative manner in which he has handled his untenable point, a point which cannot be maintained, according to me, by any reasonable Hindu in the present day. He has run down the present times and he thinks that those who hold contrary views are uncivilized; but I want to point out to him that I am as great, if not as orthodox, a Hindu as he imagines himself to be . . . (An Honourable Member: "If not greater.") Yes, if not greater. I am not a slavish observer of ritual. I believe less in the credal part of religion, and more in the cultural part of it. Such a belief alone will enable me to unity myself to others who profess different world-religions here in India. It is therefore that I make bold to come forward and say that in my own family I think it would be unimaginable that anyone should on the ground of capacity to offer oblations seek to secure for himself the property which ought to devolve upon the daughters of his uncle's line. I have another instance to give, and that is this. Two brothers lived in a joint family. One brother died leaving an only daughter, who has lost her mind now. Are the surviving brother and his sons to be deemed entitled to the property that has been left by the father of this maniac girl who needs protection so badly? According to the Hindus of the class to which I belong the purposes of the property are quite different to the purposes which have been enumerated by my Honourable friend, Mr. Rangachariar. I have got to point out that it was Mr. Rangachariar who had the courage on a former occasion here on the floor of this House to get up and justify the institution of *deva dasis* in the temples that exist in Madras. Of course he is true to his own faith, but such a faith to be recommended to others who belong to communities which can think rightly and consistently with regard to men and things in life, is, I think, at least a wrong procedure. That this sensible Bill which has been proposed by my Honourable friend, Mr. Seshagiri Ayyar, should be run down on these grounds is a pity; and it will be indeed a greater pity if this Bill comes to be rejected on these grounds. One real defect in the Bill has however been referred to by my Honourable friend, Mr. Rangachariar, namely, that our Honourable friend, Mr. Seshagiri Ayyar, has omitted Bengal from the purview of his Bill. I really do not understand the reasons for this omission. I do not impute motives, and I do not think that it is the desire to capture votes that has led to this omission. The omission to my mind has yet to be accounted for. If the Bill is good for all, it must be good for the Bengalees too. Bengalees are said to be a progressive people who can help themselves in the matter of inheritance. Quite true. Precisely on that ground it would not matter if the Bengalees were deliberately included amongst those who would be affected by the new Bill.

The Bill under consideration is a wholesome Bill from every point of view. So far as I see, on grounds of truth, justice and expediency this Bill ought to find favour with all of us here in this House.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): On this Bill the Government have, after careful consideration of the opinions received from the various Provinces, decided to adopt a neutral attitude, leaving it to Honourable Members, including official Members, but excepting Members of the Executive Council who in accordance with past practice will not take part in the voting to vote on the motion as they like. (*An Honourable Member*: "Why not leave it to the Hindus?") That being the position of Government, it is hardly necessary for me to make a speech on this motion. But there is one point to which I think I might be permitted to invite the attention of the House. It has been said by more than one speaker that the real basis of the right of inheritance in Hindu law is the capacity to perform oblations. Well, until the passing

of a certain enactment, apostacy or conversion to a religion other than Hinduism was a disqualification for inheritance, because the converted person, having ceased to be a Hindu, was thereafter incapacitated from performing oblations. Nevertheless, the Indian Legislature passed an Act (*Dr. H. S. Gour*: "The Lex Loci Act of 1850." *Dr. Nand Lal*: "Act XXI of 1850.") known as the Freedom of Religion Act, XXI of 1850, whereby apostacy or conversion from Hinduism to another religion no longer deprives a person from inheriting to his Hindu relations.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadian): Sir, my friend, Mr. Rangachariar, has made a gratuitous reference to me in connection with his very orthodox views on Mr. Seshagiri Ayyar's Bill. I can only reciprocate the compliment by correcting a misstatement into which he has undoubtedly fallen in giving a historical basis for the rule enunciated by, not only by Manu, but also by the author of the Mitakshara, Vidyaneshwar, whom I shall presently cite, disqualifying from inheritance persons who are suffering from any disease. (*A Voice*: "Incurable disease.") Not incurable disease. Now, my friend's argument—and I hope the House will recall his argument—was that the whole doctrine of the Hindu law of inheritance is based upon the doctrine of spiritual efficacy. That, no doubt, is true, but it is a later doctrine. If you go far back into antiquity, you will find that the very same doctrine pervaded the archaic laws of Greece, Rome, Egypt and China, and the foundation for all these ancient laws was that in the nomadic life which our ancestors led the fighting man was the only man who was entitled to share the spoils of war and, consequently, a man who was impotent and devoid of sense or limb was incapable of fighting, and was therefore held to be incompetent to inherit. A spiritual form was in later days given to this extremely utilitarian doctrine which was the common doctrine of all ancient societies; but in later days when the disability survived the occasion which gave birth to it, it was said that, as the disabled people were incapable of performing sacrifices and of offering oblations to the deceased, they were incompetent to inherit. Unfortunately, the very narrow doctrine enunciated by the earliest law-givers was enlarged upon by the later Smritikars, Yajnavalkya, and his commentator Vidyaneshwar in his Mitakshara, expanded the doctrine beyond all reasonable limits. If Honourable Members will turn to the Mitakshara they will find two clauses. He first cites Yajnavalkya who says: "An impotent person, an outcast, and his issue, one lame, a mad man, an idiot, a blind man and a person afflicted with an incurable disease and others similarly disqualified must be maintained excluding them however from the participation," upon which the author of Mitakshara says: "those who have lost a sense." Any person who is deprived of an organ of sense or action by disease or other causes is said to have lost that sense. He

expands the doctrine much beyond the original scope of the law of inheritance. Surely, Sir, the Mitakshara will disqualify from inheritance any of our Hindu brethren who went to France and lost their limbs fighting for their King and country. (*Rao Bahadur T. Rangachariar*: "But not the law as it is.") That is the law of the Mitakshara, that is the orthodox law, that is the law to which my friend appeals. Surely my friend could never expand the doctrine to that extent. The fact is that, in spite of the rigid orthodoxy and unbending and stern conservatism of my friend, the law has been expanding from time to time, and, at the present moment, the original purpose for which the narrow restrictions placed by the doctrine of inheritance were enunciated have been practically swept away. Cases after cases have made an inroad upon this narrow doctrine and my friend himself admits that now nothing but the shell remains; the core has been eaten up by a series of decisions of their Lordships of the Privy Council and of the Indian cases. What is the good of my friend now asking this House to re-iterate an old obsolete doctrine which is not the living law? What is the good of my friend appealing to the orthodox sentiments of my Hindu friends and saying "Please do not make any inroad upon your ancient law?" What is the good of my friend standing up here and saying that our law is based upon that transcendental fact that he who is incapable of performing a sacrifice is incompetent to inherit. My friend, Mr. Jamnadas Dworkades, while apologising for not being a lawyer, pointed out that the law we are now administering is the law of Manu. Will my friend be surprised to hear that, if he wishes to bring himself under the law of Manu, he had better vacate the rich possessions which he has inherited from his father, because Manu does not recognize the right of a son or wife to inherit; they are classed as chattels and have no rights of their own. (*Rao Bahadur T. Rangachariar*: "That is not correct.") Read that flagged portion, you will find the statement there. But surely my friend must not labour that point. These are ancient doctrines. The moment you examine them you find they are like geological seams lying imbedded in ancient history, and, as you come up, you see tier after tier of fresh and new growth. Coming to modern times, you find that, while you have the deepest reverence for the ancient law, you follow not the ancient law to its letter, but you revere that ancient law to the extent which is consonant with custom. Manu himself says so. He says in the closing chapter that custom is transcendental law and he points out, and that is a maxim repeated by Gautama, that, whenever people wish to know what is the correct law, let five people, learned in the law, sit together and decide. Surely, Sir, that is an injunction to this House to decide what is right. I shall give to the Honourable Members the *ipsissima verba* of that very ancient and sacred inculcation:

"In cases for which no rule has been given that course must be followed of which at least ten Brahmins who are well instructed, skilled in reasoning and free from covetousness, approve."

Consequently, I submit, Sir, this is the ancient rendering of the modern Reforms Act and what is contained in the sacred law books themselves. There is justification for the doctrine that these matters must be all settled by the consensus of opinion of the wise. When he speaks of the Brahmins he speaks of the learned—he does not speak of people who are ignorant Brahmins. (Laughter.) I therefore submit, that this House has not only the secular authority of the Government of India Act but the sacred authority of the best law books, for going into this question and deciding it in accordance with what is right and just.

[Dr. H. S. Gour.]

The Honourable the Law Member has pointed out, Sir, that as far back as 1850, the Indian Legislature enacted a rule adopting the unanimous recommendation of the Royal Commission appointed by the Parliament Act of 1832, sweeping away the restriction which existed under Hindu law by which the conversion to another faith was held to deprive a man of all rights to inheritance of property. Now, Sir, Mr. Seshagiri Ayyar's Bill surely does not make such a sweeping change. It is a Bill which is founded on the elementary principle of reason and justice. Two brothers are born, one of them is born blind and the other is born possessed of sight. Is there any reason, I ask, why the brother who is afflicted with blindness should be excluded from inheritance? I say, Sir, that if out of the two our sympathies should go out to any one it should be to that afflicted brother. (Hear, hear.) And yet my friend would perpetuate the cruel wrong excluding those people who suffer from the loss of sight or limb from inheriting their patrimony. What justification is there for such a course? I have already pointed out that there is absolutely no justification, if you examine the question in the light of reason. Sir, I do not wish to labour this point. I can only hope that my friends, my Hindu friends in particular, will rally to the support of a measure which is intended to place Hindu law alongside the other modern laws. As my friend Mr. Chaudhuri unwittingly remarked, under the Bengal law he can dispose of his property like any civilised man. I ask, Sir, shall not our law be in line with the laws of other civilized peoples?

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, this is a very useful measure which has been introduced by my friend Mr. Seshagiri Ayyar. My learned friend, the advocate of orthodoxy, I mean the Honourable Mr. Rangachariar, has told us to look at the soundness of the Hindu law. The soundness which he has suggested is this—"that a man who is suffering from an incurable disease cannot look after himself; therefore he is deprived of the property, so that that property may not go to outsiders. There is a provision in the Hindu law that a man who is born blind, who is a leper, who is dumb, who is deaf—the other members of the family are bound to maintain him." That is the main ground which he has set forth in refuting the arguments which were advanced in favour of this Bill. While recognizing the sanctity and superiority of Hindu law in many respects, other than the aspect before us now, may I ask him, is he not aware of some cases in which maintenance to these unfortunate men was disputed by their litigious relations. Their brothers, their relations, will go to Court and they will say "Such a man is not entitled to maintenance on this ground and that." So my learned friend must admit that, though it stands, and very rightly, intact in some cases, the orthodox stands broken, to a certain extent, in some quarters. Customs have been introduced, and, at some places, even Hindus are not governed by the strict provisions of Hindu law which he has expounded on the floor of this House. Perhaps he is being guided by what happens in his own Presidency of Madras. The fact remains, however, as has been argued by a number of previous speakers, that some of these ancient principles of Hindu law are not adhered to strictly in some parts of India. We cannot deny that fact. After all we are not living 3,000 or 4,000 years back. We should not ignore the circumstances that should guide the Legislature of to-day. My learned friend wishes that these poor Hindus may not, even in some fit cases, be allowed to see the light of day. He wishes that they may be confined to all those old provisions which under the present conditions and in some cases, do not

satisfy the present time. On these grounds, Sir, I support the measure which is, if I mistake not, a very wholesome one and should have the unanimous vote of the House.

Mr. N. M. Joshi (and other Honourable Members): I move that the question be now put.

The motion was adopted.

Mr. President: The question is:

"That the Bill to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts, be referred to a Select Committee consisting of Mr. Chaudhuri, Rao Bahadur C. S. Subrahmanayam, Rao Bahadur T. Rangachariar, Mr. B. Venkatapuraju, Dr. H. S. Gour, Lala Girdhari Lal Agarwala, Mr. Harchandrai Vishandas, Sri Deva Prasad Sarvadikary, Mr. K. B. L. Agnihotri, Mr. B. C. Allen and Mr. Seshagiri Ayyar."

The motion was adopted.

THE HINDU LAW OF INHERITANCE (AMENDMENT) BILL.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I believe that the objections to this Bill were fully set forth by the previous speakers, and I also think the answers to those objections have been given by previous speakers. This bill is absolutely necessary in order to enable certain female members to inherit before agnates to the seventh degree. This place would be earlier. I find that even my friend, Rao Bahadur Rangachariar, says this is a reasonable Bill, so there is no necessity for me to say any more on the subject. I move:

"That the Bill to amend the Hindu Law of inheritance in certain particulars and to remove certain doubts, be referred to a Select Committee consisting of the Honourable the Home Member, Rao Bahadur T. Rangachariar, Rao Bahadur C. S. Subrahmanayam, Rao Bahadur P. V. Srinivasa Rao, Mr. B. Venkatapuraju, Munshi Iqbal Sarani, Rao Bahadur Nishi Kanta Sen, Mr. Harchandrai Vishandas, Mr. B. N. Misra, Mr. E. G. Bagde, Mr. K. C. Neogy, Dr. Gour, Mr. T. P. Mukherjee and myself."

The motion was adopted.

THE MUSSALMAN WAQFS REGISTRATION BILL.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): Sir, I beg to move:

"That the Bill to provide for the Registration of Waqf estates and the proper rendering of accounts by the Mutawallis of such estates in British India be referred to a Select Committee consisting of the Honourable the Home Member, Mr. P. E. Percival, Khan Bahadur Sayyid Muhammad Ismail, Mr. Zahid Ali Sulzposh, Mr. W. M. Hussainally, Mr. Asad Ali, Khan Bahadur, Rao Bahadur T. Rangachariar, Chaudhuri Shahab-ud Din, Mr. Muhammad Yamin Khan, Khan Bahadur Sarfaraz Hussain Khan, Khan Bahadur Zahiruddin Ahmed, Mr. Abdur Rahim, Haji Wajihuddin, Mr. Kabeer-ud Din Ahmed, Maulvi Miyan Asjad-ul-lah, Nawab Ibrahim Ali Khan, Lala Girdhari Lal Agarwala, Maulvi Abdul Quadir, and myself."

Sir, this Bill was introduced some time back, and I had to wait taking any further action on it because the Government of India had asked for opinions from the Local Governments and they were awaiting the replies. This is a very simple measure though it might look rather a cumbrous one on the face of it. The object of this Bill and the principle which I want to press before this House is that there should be some sort of control over the

[Maulvi Abul Kasem.]

administration of waqf estates. It is well known not only to my co-religionists in this country but to all my fellow-countrymen and also to members of the Government that trust properties in this country are very much mismanaged, and the mismanagement and misconduct in the administration of these trust properties has become an outstanding scandal in this country. Several attempts were made from time to time by various individuals and public bodies to get a remedy, but unfortunately they have always failed for one reason or another. I have purposely confined myself to Muhammadan trust properties because I wanted to proceed on the line of least resistance. I know for myself and I have been told that the case of the trustees of Hindu charitable endowments are not better than that of the Muhammadan institutions. But, Sir, I thought it better to confine it to the endowments affecting Mussalmans only. It is not intended in any way by this Bill to interfere with the rights, the privileges or the powers of the mutawallis or trustees of these waqf estates, nor is it intended to give anybody a right of interference with their work. The only thing which is wanted essentially is that every mutawalli of a waqf estate should get his waqf properties duly registered in a public office and that the mutawallis should be liable to render accounts of his receipts and expenditure. Unfortunately, Sir, we have found it the case that mutawallis of waqf estates generally and the majority of cases treat trust property as their own personal property. Cases are numerous where these mutawallis have not only used the usufruct of these properties as their own, but have borrowed money by mortgaging those properties and have sometimes even effected a sale of waqf properties. As long as they have some of these properties left they never admit that it is waqf property, but when every inch of land appertaining to that trust is sold and goes into the hands of non-Muhammadans the mutawalli appears before the members of the community in a plaintive mood and says "This is Muhammadan property which has gone into the hands of Hindus." But primarily the mutawalli himself is responsible. In fact a large portion of waqf trust properties in my province has gone into the hands of either non-Muhammadans or to Muhammadans as their personal property. In any case where litigation was started to recover these waqf properties, it was found that the interests of third parties and of *bonâ fide* purchasers were affected, and in equity and justice our claims could not be pressed further. Therefore, Sir, I want, and I have been asked by my constituents to demand it, that all these waqf properties should be duly registered in public offices so that if anybody advances money on these properties or if anybody wants to purchase those properties he has an opportunity of ascertaining whether it was the personal property of the mutawalli or whether it was trust property in his charge. He will do so with his eyes open and without any misapprehension.

The second point is that there should be some sort of control. This control is to be exercised by a committee consisting of Muhammadans only over the accounts and the work of the mutawallis. I am not a lawyer myself and I do not claim to be at all a good draftsman. I have drafted the Bill to the best of my ability; in fact I have copied the sections from various Bills presented either in the Viceroy's Legislative Council or elsewhere by distinguished lawyers and other people; and I admit that there is much to be improved. The best course to do that would be to refer the Bill to a Select Committee and therefore I have taken particular care to include in the Select Committee distinguished lawyers so that we may have good legal opinion and draftmanship and a large number of my

Muhammadian friends so that all shades of opinion may be expressed and the matter thoroughly discussed in the Select Committee. I have been told, Sir, that the Local Governments in their opinions are unanimous in saying that this a measure which ought to be left to the provincial Legislatures and that this Assembly should not legislate for the whole country, this being one of the transferred subjects or subjects which should be dealt with provincially. I beg to submit, Sir, as I did when introducing this Bill, and as the then Leader of the House, Sir William Vincent, remarked, that although it may or may not be a question from a technical point of view to be decided by the provincial Governments and by the provincial Legislatures, I think that in such an important question as the administration of waqf estates there should be a uniform law for the whole country and not conflicting Acts, one for Bengal, a second for the Punjab, a third for Madras and a fourth for Bombay. Therefore, Sir, I hope this House will agree with me that the time is ripe now when we should do something about the proper management of trust estates and trust properties.

It does not, fortunately for me, interfere with any personal law, that is to say, Muhammadan law or with any religious institution, and therefore I have no apprehensions of treading on delicate corns. Certainly it will affect the vested interests of the Mutawallis, but here we have to consider not the interests of Mutawallis who are in charge of trust properties but of the beneficiaries who are to be benefited or who have to enjoy the trust properties. Waqf properties were created by pious men for the benefit of humanity and their co-religionists and it will be a great misfortune to the country if the money which was ear-marked for the benefit of humanity and certain classes of people, were to be misappropriated by other people which was never the intention of those who created these Waqf Estates. The Mutawalli of the biggest waqf properties in my province is the Government of Bengal, and even under their management carried by a subordinate I am afraid the waqf is not properly managed and controlled. Therefore, Sir, the necessity was felt, and felt keenly for a long time for such a Bill as this. Mr. Bangachariar said that when my friend Mr. Seshagiri Ayyar came to this Council he did it with the object of introducing certain reforms in the Hindu law. Sir, I came to this House not with that purpose, but with a distinct mandate to press this Bill before this House, because attempts were made previously by myself and my friends in the local Legislature to introduce a legislation of this kind, in fact this very draft was sent to the Bengal Government and they sent it to the Government of India. The Government of India then refused sanction for its introduction in the local Legislature, because at that time they said it was not a matter for the Provincial Council but for the Viceroy's Imperial Legislative Council. But now that my people in Bengal have sent me here with a distinct mandate to press this Bill, I have been told that I have brought it after the reforms and this is a subject which devolves upon the Provincial Governments and it is not for the Members of this House to consider. I submit, Sir, again, that in an important measure like this there should be uniformity of law for the whole country, and the law that prevails in the Punjab should prevail in Bengal and other parts of India as well. Therefore, Sir, I hope that the Government and the House as a whole will support this measure. Of course the Bill will have to be redrafted and reconsidered and minor defects will have to be removed in the Select Committee or when the Bill comes before this House at a later stage. I hope, Sir, that the House will accede to my request and commit this Bill to the Select Committee for its proper consideration.

Mr. President: The motion moved is:

"That the Bill to provide for the Registration of Waqf Estates and the proper rendering of accounts by the Mutawallis of such Estates in British India, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. P. E. Percival, Khan Bahadur Saiyid Muhammad Ismail, Mr. Zahid Ali Subzposh, Mr. W. M. Hussanally, Mir Asad Ali, Khan Bahadur, Rao Bahadur T. Rangachariar, Chaudhri Shahab-ud-Din, Mr. Muhammad Yamin Khan, Khan Bahadur, Sarfaraz Hussain Khan, Khan Bahadur Zahiruddin Ahmed, Mr. Abdur Rahim Khan, Haji Wajihuddin, Mr. Kabeer-ud-Din Ahmed, Maulvi Mian Asjad-ul-lah, Nawab Ibrahim Ali Khan, Lala Girdharilal Agarwala, Maulvi Abdul Quadir and the Mover."

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, there are certain difficulties which

Mr. President: Is the Honourable Member raising a point of order?

Mr. K. Ahmed: Yes, Sir. You will see, that my friend, Maulvi Abul Kasem, has no justification at this stage to refer this Bill to a Select Committee, because it was first introduced in September, 1921. After that, we have had three Sessions of this Assembly, and my friend's Bill is suffering from that disease which is incurable. I would refer Honourable Members in this connection to page 29 of the Manual of Business and Procedure of this House. Paragraph 80A, page 29, of this Manual reads as follows: "On the termination of a Session, Bills which have been introduced shall be carried over to the pending list of business of the next Session: Provided that, if the Member in charge of a Bill makes no motion in regard to the same during two complete Sessions, the Bill shall lapse,"—as it has lapsed, Sir, "unless the Assembly, on a motion by that Member in the next Session, makes a special order for the continuance of the Bill." Sir, my Honourable friend in his opening speech to-day said that he was not quite sure of his drafting. At the same time he said that we shall try again to sit together to re-draft the Bill. Sir, it is not a question of re-drafting only nor is it a question of putting additional Members on the Select Committee, but he is afraid, Sir, because I am sure he has been sleeping over this Bill not only at the last Session but at the Session previous to it also

Mr. President: I would like the Honourable Member to state his point of order.

Mr. K. Ahmed: Sir, then I take the objection that my friend cannot refer his Bill to a Committee at this stage after the expiry of two Sessions, because it infringes the rules laid down in our Manual of Procedure and Business, and, I submit, Sir, that this Bill should be thrown out

Mr. President: I do not quite appreciate the Honourable Member's point.

Mr. K. Ahmed: Sir, if you will kindly read section 80A, at page 29, of the Manual of Business, you will see

Mr. President: Quite so, I have referred to the section. Will the Honourable Member show me how that applies to the motion made by Maulvi Abul Kasem?

Mr. K. Ahmed: Maulvi Abul Kasem introduced the Bill on the 26th of September, 1921. That is clear, I suppose, Sir. If that is so, then after the September Session, 1921, at which he introduced this Bill, we had two Sessions last year and then again this year

Mr. President: Does the Honourable Member suggest that Maulvi Abul Kasem has not made the necessary motion within these two Sessions?

Mr. K. Ahmed: Yes, Sir, he has not.

Mr. President: Then the Honourable Member is wrong, because he has made the motion

Mr. K. Ahmed: I do not find it, Sir. If he has, I shall be very thankful if that will be pointed out to me, Sir.

Mr. President: I would recommend the Honourable Member to exercise his intelligence in finding out why Maulvi Abul Kasem is in order.

Haji Wajihuddin (Cities of the United Provinces: Muhammadan Urban): Sir, I heartily support the motion brought forward by my Honourable friend, Mr. Abul Kasem. I only wish to say that the name of Sayad Rajan Baksh should be added to the Select Committee.

Mr. President: The amendment moved:

"That the name of Sayad Rajan Baksh be added to the Select Committee."

The motion was adopted.

Mr. K. Ahmed: Sir, I oppose the Bill, because it cannot be moved at such a late stage. I have shown you the rule. I do not understand how in the last three Sessions

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, the Chair has given a ruling, and Mr. Kabeer-ud-Din Ahmed is not right in again speaking on this question

Mr. President: The Honourable Member can leave the Chair to take care of itself. I recommended the Honourable Member (Mr. Ahmed) to exercise his intelligence in understanding the Standing Order, but apparently he does not propose to do so.

Mr. W. M. Hussanally: Is it right for Mr. Kabeer-ud-Din Ahmed to speak again when the Chair has given a ruling once?

Mr. President: It was not a ruling—merely a recommendation to the Honourable Member from Bengal.

Mr. K. Ahmed: Sir, now I shall have to oppose the Bill. The principle of this Bill stated by him in the Statement of Objects and Reasons is already contained in our existing law. We have got section 92 of the Civil Procedure Code, 1908, and under this section we can file a suit for rendering a proper account or for a declaration invalidating candidature of certain Mutawallis if they have misappropriated anything out of the waqf property. Besides this, Sir, my friend admitted that this Bill was pressed in the Bengal Council, and they said that it was the look-out of the Imperial Council and hence it was referred to this Assembly to move this Bill. Thereafter, Sir, in 1920, there was an enactment in regard to this; it is Act XIV of 1920, called the Charitable and Religious Trust Act, framed with the same object, Sir, with which probably my friend has been induced to bring in this Bill before this Assembly. Therefore, Sir, we have got sufficient protection under the present law, as it is,—it is Act XIV of 1920, which has simplified the whole matter with regard to charitable and religious trusts in this country, and section 8 of this Act applies also equally to waqf property and Mutawallis in this country.

[Mr. K. Ahmed.]

Therefore, Sir, it is not only unnecessary but it is really contrary to the principle and object for which Government has already provided enough law, sufficient safeguard, for the people of this country.

Mr. W. M. Hussanally: Is that a Provincial or a Government of India Act?

Mr. K. Ahmed: I cannot follow my friend.

Mr. W. M. Hussanally: Is the Act you are quoting a Provincial or a Government of India Act?

Mr. K. Ahmed: It is an Act called Act XIV of 1920, passed here only two years ago, Sir. I suppose my friend now will find that it is a Government of India Act. If that is so, he will find also that it was only a few months before this Bill was introduced into this Assembly that Government brought out safeguards for meeting my friend's difficulties and, therefore, this part of the Bill is unnecessary. Further, Sir, my friend has been saying in this Assembly this morning that the Government of Bengal now is afraid because the Bill has been introduced here and they do not like that this portion of the law should be passed everywhere, but every provincial Government has got a right to pass its own law. The Government of Bengal has given its opinion and it says this: "The proposed Bill, however, appears to be badly designed and proposes a scheme which will interfere with the legal rights of the Mutawallis and bring itself into conflict with the Muhammadan law. Having regard to the general trend of Muhammadan opinion which is opposed to the Bill, the Governor in Council is unable to lend its support to it. The times, too, are not propitious for this legislation." That being so, my friend's questions with regard to it probably will be swept away from the opinion that has been read. Then, Sir, we find other difficulties because in the Charitable Endowment Act, in respect of the Muhammadan religion the Government has always followed the policy of non-interference. The Mutawallis have to do certain acts, as far as their Mutwalliship is concerned, and then they will have to follow certain guidance or direction of the donor that has been set out in the trust deed: in the Waqfnama the Mutawallis are empowered to perform some functions set out there, as for instance to say their prayer, ask persons engaged or appoint persons to offer certain things in the prayer house, and so forth. And the proposed Committee under sections 2 and 3 of this Bill, I think, will have the power of appointing even agents or naib Mutawallis; which will be interference with the Mutawalli's power at least, and that sort of interference is not allowed by the Muhammadan Law. And since, the Muhammadan Law interferes with the principle of my friend's Bill the Muhammadans of India would not approve of it. There is something which has been mentioned in regard to legislation of these Waqf properties. My friend proposes to simplify matters, so that the money-lender may not be misled. Well, Sir, he may be the benefactor of the money-lenders who are very much fond of lending money to the Mutawallis and taking mortgage of their property. But for this purpose if they go to the Registrar in the Registration Office, they will find who the Mutawallis are and where the properties are situated; so the names of the Mutawallis and the description of the property are available there. In every district there is also a Collectorate where there is a Record Office which will furnish the required particulars.

Mr. W. M. Hussanally: I rise to a point of order. I believe my Honourable friend, Mr. K. Ahmed, is now criticising the details of the Bill, which I believe at the present moment he has no right to do. The question before us is whether the Bill should be committed to a Select Committee or not, and I think he ought to confine his speech to that.

Mr. K. Ahmed: If my Honourable friend will kindly confine his attention to follow the principle which is exactly against the points that I am describing, I suppose the whole matter will be simplified. We see, Sir, the principal object of my friend who introduces the Bill is that there must be a Registrar, and if there are already registers kept by the Government officers which will be of great benefit to the people who want to lend money, what is the necessity, Sir, for this Bill? What is the principle and object set out in the Statement of Objects and Reasons of the Bill? Their position is not in any way better off, but as it is stated therein that it is difficult under the present law to find out the names of Mutwallis and the description of the properties. If they are, Sir, already safeguarded by the present law, and since 1920 at least when Act XIV was passed in this House there is enough provision of law, what is the necessity for introducing this Bill? I say there is no necessity for bringing this Bill at all. Then, Sir, since the principal objects of this Bill is contrary to our tenets of the Muhammedan religion, because it interferes with the functions of the Mutwalli, and because it will interfere with the donors' intentions in settling a property and saying that the income should be spent for certain purposes and it should be managed by certain persons—as a matter of fact we find from generation to generation, from son to grandson, people of the family manage the property,—why should there be this law, Sir, to interfere with that poor Mutwalli and to establish a District Committee? Sir, the District Committee or the District Magistrate or the Collector has not got any money, he has not got the money to defray the expenditure that is necessary. Then section 3 of the Bill contemplates a Central Committee, that is to say, in every province there will be a Central Committee, whose duty will be to go to the district and supervise the activity of the branches of the District Committee over which the District Magistrate will sit, and preside. The District Magistrate will preside over it as ex-officio member. Therefore my friend in the way he has put it is not accurate. Here he has certain rules of law of the waqf estate, but how is that to be put in practice without sufficient money in hand. Government is not going to help in the matter unless they can show sufficient funds in hand. Where is that money coming from? Is there anything in the Bill to provide for the maintenance of those branch district committees and the central committee? The Chief Justice of the Bengal High Court and of the majority of the other Judges of the same Court have in fact opposed this Bill on this particular ground. The Calcutta High Court says:

"The Chief Justice and Judges do not think that a case has been made out for amending the procedure under section 92 of the Code of Civil Procedure, 1908. The provision as to damages would, in their Lordships' opinion, probably encourage fraudulent claims."

So there will be multifarious cases instituted against the Mutwallis and the object for which the endowment has been made will be defeated. Any person having a grudge against a Mutwalli or his rival relatives will bring a suit against him and that will interfere greatly with the discharge of his duties and the donor's object will be frustrated. That being so, Sir, I

[Mr. K. Ahmed.]

vehemently object to the Bill. There is behind this Bill Sir, a sinister motive: A person bringing a false suit against a Mutwalli may have that suit dismissed with costs, but there is nothing in the whole Bill which provides for the recovery of that money from the person bringing the suit. With regard to the balance which may be outstanding in the hands of the Mutwalli, there is no provision as to how it is to be spent, and that point the central committee or the branch district committee will have to determine. I understand that Dr. Gour has the intention of supporting this Bill. I shall be glad if he will enlighten us as to the principle of the Bill and I shall wait to hear him with great pleasure.

But since, Sir, there are so many difficulties and my friend, who has introduced the Bill, has kindly selected me and others to sit together and to redraft the Bill, we will have to recast the whole thing. That duty must be undertaken by the Honourable Member who introduces the Bill. He must know what the Bill is. If there are mistakes and additional alterations are necessary here and there, it can be carried out, but I do not think there is any practice in this House for the Honourable Members to redraft the whole thing and recast it altogether. In that case matters will be simplified if my friend will withdraw his Bill to-day, and take our help and introduce another Bill probably before the expiry of the Session. With these few words I oppose the Bill.

The Assembly then adjourned for Lunch till Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Five Minutes to Three of the Clock. Rao Bahadur T. Rangachariar was in the Chair.

Mr. W. M. Hussanally: I rise, Sir, to support my friend Mr. Abul Kasem in his proposal to refer this Bill to a Select Committee.

Mr. C. A. H. Townsend (Punjab: Nominated Official): On a point of order, may I ask if there is a quorum present?

Mr. Chairman: Yes.

Mr. W. M. Hussanally: Sir, this Bill has now been before the public for a considerable length of time and opinions in almost every part of the country have been expressed in regard to it. The state of Muhammadan Waqfs all over the country, from one end to the other, has been such as to call for remedial measures urgently to protect them in almost every province, and the misappropriations that have been committed by Mutwallis have run into almost a proverb. In my own part of the country there have been several cases of that kind in which mutwallis have actually sold mosques or lands attached to mosques or graveyards. (Mr. K. Ahmed: "Please speak up.") I thought my friend Mr. Kabeer-ud-din Ahmed had better ears. At the present moment there is a case of the kind pending in the Judicial Commissioner's Court in Sind in which some Saiyids, who are mutwallis of a very important graveyard in Karachi, have sold large plots of land for a large amount of money. So far as enlightened Muhammadan opinion is concerned, Mr. Abul Kasem cannot

be too much thanked for having brought this measure forward before this House. I am sorry, Sir, that I could not follow my friend Mr. Kabeer-ud-din Ahmed. (*Mr. K. Ahmed: "Nor can I follow you."*) I am sorry, Sir, I could not follow my friend Mr. Kabeer-ud-din Ahmed in his attack upon this Bill. No doubt he made a very coherent speech, but to me, unfortunately, it was almost Greek. So far as I remember, Sir, he quoted the opinion of the Bengal Government as being against this measure, but, if he had turned over the pages of the Blue-Book, which is now before me, he would have found that almost all intelligent and enlightened Muhammadan opinion in all provinces is in favour of this Bill, and several Local Governments have also pronounced their opinion in favour of the principle of the Bill, though some do not agree with the details.

I will begin, Sir, by quoting the Madras Government. Here is what *3 P.M.* they say:

"The Honourable the Minister in charge of the Religious and Charitable Endowments has had the advantage of discussing the main principles of the Bill with the leading Muhammadan representatives in the Legislative Council, and the views expressed and the observations made in the following paragraphs have their full support.

Enlightened Muhammadan opinion in this, as in other Presidencies, is practically unanimous that a very large number of endowments made by pious Muhammadans in the past have been wasted or converted to the private benefit of individuals contrary to the wishes of the original founder, that their administration in many cases has come to rest in the hands of inefficient and unscrupulous mutwallis and that effective measures should be adopted at an early date for preventing waste and mismanagement of Muhammadan public trusts and to ensure that the endowments are appropriated to the purposes for which they were founded. The need for suitable legislation is therefore obvious.

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The law governing Muhammadan religious endowments in this province is Act XX of 1865 and a few Muhammadan committees exist in certain districts. They have not been successful in preventing misappropriation and mismanagement."

Sir, I shall proceed further. Let us come to Bombay and see what the Bombay Government say. It is this:

"It will be observed that the Anjuman-i-Islam, Bombay, while approving the proposal for the registration of waqfs, is opposed to the complicated and detailed interference in their management which the provisions of the Bill would entail. * * *

There is, however, a very considerable body of opinion in favour of some measure for compulsory registration of waqf estates and for the maintenance and publication of accounts. If a practical measure of this nature can be devised, the Government of Bombay would favour it. It would be necessary to prescribe that all expenditure should be met from fees prescribed for the purpose or otherwise and that no part should fall on Provincial Revenues."

The Honourable Mr. Justice Aston says:

"I approve of the provisions of the Bill."

In Bengal, again, I find Maulvi Shams-ul-Rahman, Secretary, District Muhammadan Association, Khulna, says:

"I have the honour to inform you that the Registration of Waqf Estate Bill was discussed at a meeting of my Association and am of opinion that the Bill is a necessity in order to prevent misuse of waqf estates by their mutwallis, but with these following modifications in the Bill itself."

Then he goes on to suggest certain modifications with which for the time being we are not concerned.

[Mr. W. M. Hussanally.]

I could go on quoting, Sir, from several opinions, both of European and Muhammadan officers, as well as public men; but I do not wish to waste the time of the House. The United Provinces Government say :

"It will be observed that the majority of those consulted are emphatically of opinion that some machinery for improving the administration of waqfs is eminently desirable, since there are undoubtedly many cases of mal-administration, though possibly the case is stated somewhat too strongly in the preamble to the Bill."

The Punjab Government say :

"I am to point out that the opinions of none of the large holders of shrines, who in the Punjab are fairly numerous and very influential, have been received, but it is anticipated that these men's influence would be thrown against the Bill, as undermining their prestige and requiring a stricter system of accounts than most of them have been in the habit of keeping.....His Excellency in Council suggests that the Bill should confine itself to the compulsory registration of waqfs and the publication of accounts and these processes should be carried out not by the Collector, but (as with companies) by the Inspector-General of Registration."

Then, Sir, I would quote the opinion of the Honourable Khan Bahadur Mian Fazl-i-Husain, Minister for Education, Punjab :

"The Muhammadan public opinion is in favour of a Bill providing for registration of waqf estates and the proper rendering of accounts by the mutwallis of such estates."

The Burma Government say :

"So far as the Bill simplifies the procedure by which dishonest mutwallis may be brought to book, it seems to meet with general approval."

Bihar and Orissa say :

"Muhammadan opinion in Bihar and Orissa generally welcomes the Bill in principle, and the Governor in Council accepts the need for some better regulation of the administration of waqfs than the existing law provides."

Sir, it will thus be observed that perhaps with the exception of the Bengal Government almost all the other Governments are in favour of the principle of the Bill. My friend, Mr. Kabeer-ud-Din Ahmed referred us to Act XIV of 1920; in his opinion that Act is quite sufficient for the purpose for which this Bill is intended. But if he had read that Act a little more carefully he would have found that that Act does not affect the question that is in issue at the present moment. The Bill as brought forward by my friend, Mr. Abul Kasem, is a sort of preventive measure and has for its object the compelling of mutwallis to register their estates and keep regular accounts; whereas Act XIV of 1920 applies only when a breach has been committed by these mutwallis. Until a breach has been committed I do not think that that Act can apply. Moreover so far as that Act is concerned, only a man having an interest in the property can move the Court, and I am not sure whether any Muhammadan can move the Court, because the word 'interest' is a very wide one, and I do not know if Courts would hold that any Muhammadan has got sufficient interest to move them.

Then again, Sir, what is the eventual remedy under this Act XIV of 1920? We must go once more to section 92 of the Civil Procedure Code, that is to say, we must go again and file a suit for the mismanagement of the estate. The only difference, if one proceeds under this Act XIV of 1920, would be that whereas under section 92 of the Civil Procedure Code, the sanction of the Advocate General is required, under this Act no such sanction would be necessary when a District Judge has decided that a

breach has been committed. Therefore, I believe, that this Act XIV of 1920 has absolutely no application to cases which would be covered by this Bill if it passes into law. I wish, Sir, my friend Maulvi Abul Kasam had made his Bill more general so as to apply to all kinds of trusts, whether Hindu or Muhammadan. In that case, perhaps all my friends here would have helped him all the more readily. But all the same, I would beg of my Hindu friends to support this Bill, because if they do so and if this Bill is passed into law, their turn will come next, and so far as the Hindu endowments are concerned, I have not the slightest doubt that in every part of the country there are very large endowments, perhaps larger than even Muhammadan endowments, which require protection as much or perhaps more than what Muhammadan endowments require. So far as the Government in this matter are concerned, I am sorry to say that it is my impression that they are going to oppose the Bill, not because that they do not like the principle of the Bill, but because they consider that times are not propitious. That would be, I believe, their principal objection that they will take to the Bill. I am not sure, Sir, that times are not propitious for a Bill of this kind. On the contrary, I am strongly of opinion that times are more propitious now than what they would be any time hence. The feeling of the Muhammadans all over the country, more especially of enlightened Muhammadans, barring those who have got vested interests in these endowments, is generally in favour of a measure of this kind, and the feeling of the Muhammadan public generally is changing from day to day with regard to the management of these estates. I am not sure, Sir, if this Bill is thrown out, that we will not be having another Akali movement in India so far as the Muhammadans are concerned, because the Muhammadan public feel keenly that their endowments should be managed well and regular accounts should be kept and should not be misappropriated. I therefore warn the Government that if they do not allow this Bill to pass into law, they will have very considerable difficulty with the Muhammadans of the country in a very short time. Sir, I support the Bill and also the motion that it be referred to a Select Committee.

Maulvi Miyan Asjad-ul-iah (Bhagalpore Division: Muhammadan): (The Honourable Member spoke in the Vernacular*.)

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I rise to a point of order. The Honourable Member is commenting on the details of the Bill. Will the Honourable Chairman decide whether it is relevant?

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): The Honourable Member has long since dealt with the principle of the Bill. Now he is going on clause by clause analysing its purpose and commenting upon it and what it should contain. At this stage I submit this discussion is a little out of order.

Mr. Chairman: The Honourable Member is bringing his remarks to a close.

(Maulvi Mian Asjad-ul-iah intimated that he had finished.)

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I wish in the first place to express the sincere sympathy of Government with

* The original speech together with an English translation will be printed in a later issue of these Debates.

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the object of the mover of the present motion. He desires to ensure that the religious endowments which have been made by pious Muhammadans in the past shall not be wasted. That, Sir, is an object which I think must commend itself to all Members of this House. The Bill, Sir, was introduced on the 26th September, 1921 and was circulated by order of Government. My Honourable friend Mr. Hussanally has referred to some of the opinions of Local Governments. I think that it is of the utmost importance in connection with this Bill that we should carefully consider those opinions, and accordingly I do not propose to apologize for again reading out some of the opinions. We will take the Government of Madras. My Honourable friend read paragraph 4 of their letter; he omitted paragraph 5. Paragraph 5 says:

"I am however to point out that such legislation is more appropriately left to the local Legislatures, and though the latter may not, without the previous sanction of the Governor General, modify or repeal any of the provisions of the Charitable and Religious Trusts Act of 1920, they have still ample scope for legislation in this direction. The case for all India legislation on a matter of this kind is therefore in the opinion of this Government extremely weak.

A deeper analysis of existing conditions, however, indicates that for many years to come it will be the part of wisdom to continue this policy. Muhammadan feeling is very sensitive to outside interference with their religion and particularly so under the present political conditions. This Government are therefore emphatically of opinion that it is from a political and administrative point of view unsafe to cast on the Collector of a District, as Mr. Abul Kasem's Bill proposes to do, duties which are bound to bring him into frequent and serious conflict with Muhammadan religious feelings of the orthodox type."

I submit, Sir, that the whole principle of this Bill is involved in the control given to the Collector. We will turn to the Government of Bombay. The Government of Bombay commence their remarks as follows:

"The Government of Bombay are of the opinion that the adoption of the Bill would involve a decided reversal of the long-established policy of non-interference in religious matters. The opinions elicited indicate a wide divergence of opinion both as to the principles of and as to the practical expedients proposed in the Bill. Though endeavours were made to ascertain the views of the Muhammadan community, very little interest has been evinced, and many of the local officers report that they have not succeeded in eliciting any reply, from the Muhammadan Anjuman and Associations consulted."

Then follows the passage that was read by my Honourable friend:

"In addition to this,"

the Local Government go on to say:

"the burden of labour and responsibility which would be entailed on the executive officers of Government would be excessive. On these grounds, the Government of Bombay consider that the Bill should be opposed."

My Honourable friend read the next paragraph, which I submit is a paragraph not applying to the present Bill. He then referred to the remarks of Mr. Aston, the Additional Judicial Commissioner in Sind. He read the first six words or so which were to the effect "I approve of the provisions in the Bill", he omitted the following words "*except those in Chapter III (which should in my opinion be omitted)*"—those, Sir, are all the provisions in the Bill relating to Committees—"and the subsequent provisions relating to central and district committees". If all the machinery goes, Sir, then there is nothing left in this Bill.

I do not think my Honourable friend referred to the opinion of the Government of Bengal. They say:

"In reply, I am to say that there is a general consensus of opinion that something should be done in order to prevent the misappropriation of charitable and religious

endowments by dishonest mutwallis, and to recover charitable funds which have fallen into the hands of private parties as there can be little doubt that there are many and valuable *waqf* estates throughout India, including Bengal which are grievously mismanaged and misapplied by their mutwallis or trustees. . . .

The Governor in Council would therefore welcome a well designed Bill to deal with such endowments."

"3. The proposed Bill however appears to be badly designed and proposes a scheme which will interfere with the legal rights of the mutwallis and bring itself into conflict with the Muhammadan Law. Having regard to the general trend of Muhammadan opinion which is opposed to this Bill, the Governor in Council is unable to lend his support to it. The times too are not propitious for such legislation."

We then go on to the United Provinces. The first sentence was read by my Honourable friend; the next sentence was not. It runs:

"On the other hand, those who have been consulted are almost unanimous in condemning the provision of the Bill which proposes to throw upon Collectors the onerous and invidious duty of improving the administration of *waqfs*."

and so on, Sir. We can go through all the opinions of the Local Governments who have really summarised the opinions of the different authorities—official and Muhammadan—consulted by them. While it might be said that there is very general opinion that endowments made by pious Muhammadans in the past are being wasted, there is practically an unanimous opinion, Sir, from all the authorities consulted against the Bill. One of the great objections taken is to the work to be thrown upon the Collectors. My Honourable friend, Mr. Hussanally, objects to references to detail, but, Sir, under the Standing Orders of this House I think details must be referred to in so far as they are necessary to explain the principle of the Bill. Under section 4 of the Act the Mutwalli is bound to submit information to the Collector within whose jurisdiction the *waqf* property is. Under section 5 the Collector has to call for further information, and so on. Accounts have to be submitted to the Collector. Then the Collector is *ex-officio* President of the District Committee. This District Committee, presided over by the Collector, under clause 18, has to obtain full information from the public records or by inquiries respecting all *waqfs*, and so on. Sir, this Bill does not distinguish at all between *waqfs* of large value and *waqfs* of small value, and the labours which will be thrown upon the Collector by its provisions would be intolerable. Sir, I ask the Assembly to recognise that this Bill deals with a transferred subject, the subject of charitable and religious endowments. How, Sir, can we properly and rightly in this Central Legislature throw upon the Ministers who are responsible for the administration of that subject, the burden which it is proposed by this Bill to throw upon them notwithstanding their opinions, as expressed in these letters from the Local Governments. I do not wish, Sir, to refer to the long discussion which took place in the sixties of the last century which led to the Act of 1863 by which Government executive officers were dissociated from the exercise of authority over religious trusts. Nor do I wish to refer at length to the very lengthy discussion which eventually resulted in the Act of 1920, which in my opinion was very relevantly referred to by my Honourable friend, Mr. Kabeer-ud-Din Ahmed. The main principle of that Act I may say was that any general all-India enactment should not authorise or sanction any system of control over these endowments by the executive authority, but should recognise the agency of the civil court only and through them afford further facilities for obtaining information regarding the working of these endowments and controlling the action of dishonest trustees. The scope of this provision may in time be extended by local or general enactment, but this Bill is fundamentally opposed to the principle adopted in the Act of 1920. The Indian Legislature may pass this

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Bill, but if the Bill is passed, I think there is little doubt that the Muhammadan public will not accept this as evidence that the Bill was really needed. I think there is no doubt that the conservative section of Muhammadans will undoubtedly be hostile to the operation of this Act. I believe I am merely stating a fact, and I do so with no intention to cast any discredit upon them, but is it not true that the Muhammadan masses are singularly ignorant, gullible and fanatical? Would not the persons entrusted now with religious endowments organise opposition to this Bill if it ever becomes law, and would they not quite easily be able to excite fanatical feeling in connection with this subject? The Executive Government of India is responsible for law and order, but we do not wish to have to meet all the odium which will arise from the administration of such an Act as this. That odium, Sir, will fall on the Executive Government and not on the Legislature. And is the Legislature prepared to accept responsibility for the manner in which this Bill will be administered? Government frankly admit the needs for effective control, but the present measure is, in our opinion, unsuitable. We are not opposed to the principle of better supervision over these religious endowments, but we think, that any legislation going widely beyond the lines of the Act of 1920 should generally be local legislation. Machinery for control must be machinery designed or accepted by the responsible Ministers. It must also not associate the executive authorities of Government with the detailed control. You, Sir, are well aware of the Bill now before the Madras Council. I believe that that Bill has met with a good deal of opposition. It possibly goes too far, but, so does the present Bill. I may add, Sir, that, if any Local Government desires to pass legislation dealing with the subject, and does pass such legislation in their local Councils, then the Government of India are prepared to take all steps required to supplement such legislation as may be necessary. We, Sir, cannot, however, accept the principle of this Bill, and, therefore, I must regretfully oppose it.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, after hearing my friend, Mr. Hussanally, I thought that the Bill was supported generally by Government, but I fear that his not having read lower down would mislead the House. I wish to be fair, and, after listening to these two gentlemen, Mr. Tonkinson and Mr. Hussanally, I thought that, unless I dealt with these two paragraphs, I would be misleading the House. The Madras Government says:

"I am, however, to point out that such legislation is more appropriately left to local Legislatures; and, though the latter may not, without the previous sanction of the Governor General, modify or repeal any of the provisions of the Charitable and Religious Trusts Act, 1920, they have still ample scope for legislation in this direction. I am to add that this should not be understood as a mere technical argument based on the letter of the Devolution Rules. The conditions of the different provinces vary considerably. Muhammadan public opinion in religious matters in this province, for instance, is far less advanced than in certain other provinces of India, and is not prepared to accept legislative inroads into custom and usage with the same readiness that those other provinces appear to be. The case for all-India legislation on a matter of this kind, is, therefore, in the opinion of this Government, extremely weak."

I have also seen the opinions of other Local Governments and, in my opinion, they are generally opposed to the Bill. Now, with regard to the opinion of Muhammadans, I have been trying to read these opinions. Baluchistan is a Muhammadan country and with regard to that province it is stated:

"The matter has been referred to the Anjuman-i-Islam at Quetta which represents the organised Muhammadan opinion of Baluchistan. That body has presented a

unanimous opinion against the introduction of the measure in this province. Its members view with suspicion any official interference with the management of what is purely private religious property and would strongly resent any attempt to hamper the unfettered administration of these pious trusts by members of the community for whose use they were ordained. The ordinary law should in their opinion be able adequately to provide for differentiation between fraudulent dispensations and genuine charitable provisions."

After reading these opinions one cannot help saying that the Government generally are opposed to the Bill, not to speak of the people also. The organised opinion of the Muhammadans in Baluchistan is opposed to the Bill.

Mr. J. Chaudhuri: Are the Indian Muhammadans opposed?

Khan Bahadur Sarfaraz Hussain Khan: Yes.

Now you have to look to the condition of the country also. In paragraph 7 the Madras Government say:

"Proceeding to the principles of Mr. Abul Kasem's Bill, I am to refer first to the main point raised in your reference, viz., whether a departure should now be made from the principle which Government have followed since 1863 that the executive officers of Government should be entirely free from any connection with religious trusts. It is quite possible to argue that, with the introduction in the provinces of an executive responsible, though partially, to a representative Legislature based upon a wide electorate, this policy of non-interference need not continue to be sacrosanct. A deeper analysis of existing conditions, however, indicates that for many years to come it will be the part of wisdom to continue this policy. Muhammadan feeling is very sensitive to outside interference with religion and particularly so under the present political conditions."

Then I wish to place one more point before the House and it is this—We have got Ministers now and these Trusts are under those Ministers. Is this all-India Legislature entitled to pass this legislation and force it upon them unless they want it? That is a point for the whole House to consider. If they consider that this all-India Legislature is entitled to force legislation upon them without their consent and without having consulted them, then I have nothing more to say and will not oppose the measure. But I want to place these different points before the House: Firstly, that the Government, almost all the Governments are opposed to it; secondly, that Muhammadan opinion, though divided as I have said, yet reasonable and sound Muhammadan opinion is also opposed to it. This is a very important piece of legislation. It affects not merely the interests of one of two men, but the whole of India. Looking at the Khilafat movement, if you go deeply enough into the matter you will see there is something very deep in it. Please look at every side of the question. Do not merely think of the mismanagement of certain Waqfs, pass over such things, brush them aside. You must go more deeply into the matter and see what the effect of this legislation on Indian Muhammadan public opinion and especially on the religious minded section of it will be. I have placed all these facts before you and I do not think that an all-India legislation would be very desirable. It should be left to the Provincial Governments. But if the House considers that the Bill should be referred to a Select Committee, I shall do what I can for it there; only I must take exception with regard to this point, whether it is not a matter which should be left to the local Councils.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, I must first apologise to my friend, Mr. Abul Kasem. To tell you the truth, up to the last moment I agreed with him and promised to support the Bill; but after listening to the different speeches, I

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do not think I can keep my promise. It is in the interests of Muhammadans that I wish to appeal to him. I have got some observations to lay before him in particular and before this Honourable Assembly in general. The first thing is that we know that unfortunately the Muhammadans are not so much educated as other communities. I am coming to that point. That would mean open war with our religious heads and it will also be a great discouragement to our political propaganda, because the educated people who are few in number will go against the religious heads who are worshipped by the masses, and the masses will go against the educated classes. That would mean that there will be no co-operation between the educated and the uneducated masses, and so I think it is in the interests of the Muhammadans in particular that this Bill should be dropped at once.

I will now come to the other point; an Honourable Member said that this will lead to an Akali movement. If we were all educated it would not have mattered—I think in fact it would have been the best thing for us that could happen. But unfortunately we are not all educated. In the case of the Akalis they were all of one mind and one voice. But unfortunately there is a difference of voice and a difference of mind here. Moreover there is another point which I wish to make out. The Assembly will excuse me if I say it, but I do wish to say, what is the opinion of local Governments? I speak as a Muhammadan and I think that should have more weight than the opinion of the Government. Government has to look at it from its own point of view and we have to look at it from our point of view. I am certainly one with the Government in thinking that it will have a lot of troubles if it will interfere in this matter. I think that Government will be ungrateful to a good many religious heads who have been helping it in many ways. At such a time as this if the Government interferes I think it will create a lot of troubles of no end for itself. I think Government should not interfere on this point and I would appeal to my Honourable friend, Mr. Abul Kasem, that he should drop the Bill because he has gained his point; the Akali movement has awakened every religious head and they know how they stand; I do not think they will misuse the trust properties in their hands; if they do misuse I think they have had enough warning and in future we can take care against such misuse. At present I think they will be careful and will not give us an opportunity to move this Bill again. So I appeal to my friend to drop the Bill and I appeal to my Muhammadan friends to look at it from a broad point of view. I think we are few in number and the masses outnumber us and they are not educated; these religious heads, these *Pirs* have got great influence over them and I think we will be ruining our political propaganda if we go against them at such a time.

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Sir, I make no apology either to the Mover of the Bill or to any other Member of this House for the remarks which I propose to make. The Honourable the Government Member began by an expression of sympathy with the principle of the Bill and ended in certain fears which he entertained about the actual operation of the Bill if it was passed into law. I have heard diverse opinions of Members from the farthest town in British India on the North-West Frontier and from the most southern town where Muhammadan voice appears yet to exist and I regret to find that they hold diametrically opposite views. I belong to a province which claims the

largest percentage of Mussalman population. (*Cries of 'No, no', Bengal.*) Please listen. In the Punjab the Mussalmans are 55 per cent. and in the five districts of the Frontier they are 93 per cent. In Bengal the Mussalman population is not 55 per cent. I say this without any fear of contradiction. (*A Voice: "You mean percentage."*) Yes, that is what I said and meant. Therefore, I think, Sir, that so far as my own province is concerned, and so far as my capacity as a representative of the Muslim community allows, I am in a position to voice its views better than those gentlemen who come from provinces where the Mussalman population is only 2, 3 or 4 per cent. Sir, this is a very important question and has been exercising the minds of the Muslim public, at least in my province, for the last 25 years. One of our recognised leaders, the late lamented Mr. Justice Shahdin, took considerable interest in this question. He collected information and he even corresponded with all the leading Mussalmans of India, and he was determined to see the Muslim Waqfs managed properly, but circumstances did not permit him to do so. Sir, whatever may be the views of the Honourable Mian Sir Muhammad Shafi as a Member of this Government, I hope he will stand up as a member of his community to say whether I am right in saying that that is the feeling of the Mussalmans of the Punjab. Years ago they formed an association in the Punjab called the Anjuman Auqaf-al-Muslimin. They have been trying to protect certain Waqfs from being wasted or misused, but as there is no legal sanction to back them up they have not succeeded in their efforts. I think, Sir, it is the duty of the Government to put a stop to misappropriation of Waqf income or Mutwallis committing criminal breach of trust. That is what is needed. We do not want more. Can the Government say that it is not its duty to stop criminal breach of trust in the country? I think it is the first duty of a State to protect the Waqf property from being criminally misappropriated or criminal breach of trust being committed with regard to it. We do not want the Government to interfere with our religion, and by putting a stop to the criminal breach of trust by Mutwallis they will not be interfering with our religion in any way. If our religion allows the managers of endowments to commit criminal breach of trust, then, of course, the Government may refuse to interfere because they will not interfere with our religion. But I fail to see how interference with religion can come in. Our religion expressly enjoins that every Muslim should discharge his trust most faithfully and honestly. Therefore if the managers of religious endowments act dishonestly, they deviate from the path of rectitude, righteousness and honesty, and it is the duty of the Government to protect the public money from being wasted. If Government is afraid of doing that, I think they are afraid of performing a duty which is the first function of every Government to perform.

With regard to some of the dangers to which reference was made by the Honourable Mr. Tonkinson, I must say that I realise them. There are difficulties indeed and our path is not so smooth as some may imagine it to be. There are rocks and shoals, and we must take care that we steer clear of all difficulties. But that is not a reason for throwing out the Bill. Let us accept its principle; let it be committed to the Select Committee; let the Select Committee modify it, let its language be improved and embellished and let all objectionable clauses be omitted or modified. And then, if necessary, we can again send the Bill in its improved form to Local Governments for opinion. Section 74, clause (c) of our Business Bye-Laws says: "After the presentation of the final

[Chaudhri Shahab-ud-Din.]

Report of the Select Committee of a Bill, the Member in charge may move that the Bill as reported by the Select Committee be re-circulated for the purpose of framing further opinion thereon". So if necessary, when the Bill comes up again before this House, it may be re-circulated. But there is reason to throw out the Bill at this stage while expressing sympathy with it. In the words of Sir Walter Scott "Should the path be a dangerous one"—"The danger's self is lure alone"—I think a strong Government, as the Government of India is, should not be afraid of doing its duty. It must do it and do it manfully. I must point out that unless the Government is prepared to catch the bull by its horns, it is possible, I can't say it is probable, that the Akali movement to which reference has been made by certain speakers, might be repeated in certain provinces; at any rate in certain districts of my province. I think in saying this I am doing my duty towards the Government as well as towards the community which I represent. We should gauge public opinion now and try to satisfy its legitimate demand so far as we can. As regards the opinions of Local Governments, we can very easily meet them by inserting in the Bill a little clause to the effect that a Local Government may when it deems expedient or necessary introduce the Act in the whole or part of its Province. That is to say, it may be provided in the Bill itself, that it may be introduced by a Local Government with the sanction of the Governor General in Council, when the Local Government deems it expedient or necessary to do so. But we should not shirk our duty and responsibility, we must do it, and do it well. No one can deny that the income of religious endowments is being wasted, misappropriated, and mis-spent, and yet no one can raise his voice. We must see that every trustee performs his duty as a trustee. Government is perhaps the biggest and strongest trustee, and I expect it to perform its own duty as a trustee. With these remarks, I support the principle of the Bill, and not, of course, its provisions, nor its language. The principle must be kept in view, and the whole Bill may be re-drafted by the Select Committee; and if necessary opinions will be re-invited by re-circulation of the improved Bill. I have to make one remark about the personnel of the Select Committee. I do not know what reasons actuated the Honourable the Mover in recommending the personnel of the Committee, but I think that the personnel is not what it ought to be: I would suggest, if the President will allow me to do so that the names of the Honourable Mr. Tonkinson and the Honourable Dr. Gour should be added on so that they might help us with their experience and knowledge.

Maulvi Abul Kasem: Sir, in offering a few words of reply, I have in the first place to congratulate the opponents of the Bill for having secured the services of my distinguished friend, Mr. Kabeer-ud-Din Ahmed, to lead the opposition. He made an excellent speech, but from what I did understand of that speech, I could only gather that he said that the present law was quite sufficient to meet the occasion and to control the trustees of these religious endowments. I may remind him that in the province from which he and I come, there are various endowments, big and small, but in the course of the last fifty years of which I have got information, there were only two cases instituted in the Civil Courts under the provisions of the law as it stands, and one was by the Maharaja of Giddhaur against the Mahant of Deoghar, and the other by the Government of Bengal against the Mutwalli of a Waqf estate. But, Sir, where can we get wealthy territorial

magnates to come forward to take upon themselves the responsibility, the expense and burden of carrying on litigation on behalf of poor people who are deprived of their rights in religious institutions? And where can we get a strong Muhammadan Member of Government to agitate and to convince the Government of the necessity in these hard days of spending Rs. 65,000 simply to remove a mutwalli? The provision lays down that any two Muhammadans or any two persons interested can go to a Court. But why should anybody go and take upon himself all the worries, the troubles of litigation in a Civil Court and bear the expense and risk chances of paying the expenses of the other side as well? We in this country have enough of litigation for our own private reasons: and we want to avoid litigation as far as possible. And sometimes peace is purchased at a sacrifice. Will anybody venture to come up and at least invite litigation, and invite it without any personal gain? I do not believe it.

Now, Sir, Mr. Tonkinson on behalf of the Government began by saying
 4 P.M. and the same thing was said by other members of the Government, that he was full of sympathy with the principle of the Bill. What I ask to-day, Sir . . .

Mr. H. Tonkinson: Sir, I never said that I was full of sympathy with the principle of the Bill. I said that I wished to express the sincere sympathy of Government with the object of the Mover of the Bill, not with the principle of the Bill at all, Sir.

Mr. Abul Kasem: That was a technical mistake on my part. The sympathy was for the object I had in view. I am grateful for that. But they admit that Muhammadan waqf estates are mismanaged. They admit that the situation is such as to call for some remedy, for some action. What do they propose to do? We in this country, Sir, have been accused times out of number of being destructive critics; we are known only as hostile critics; we have no constructive programme to offer. I find, Sir, that in this instance the Government comes forward with sympathy with the object of a motion, recognizes the necessity for some action, but at the same time only offers the destructive motion that it should be thrown out; they have brought forward no constructive suggestion in this connection. This is not the first time that this question of Muhammadan endowments and all endowments has engaged the attention of the Government. Greater men than myself, distinguished men, have brought it to the notice of Government. Committees have been formed: meetings have been held: conferences have been held: but all have ended in smoke. Sir, my Honourable and gallant friend from the North-West Frontier Province and the Members of the Government have both made much of the masses who, they say, will rise in arms if a measure like this is brought forward. Unfortunately, Sir, the illiterate masses of India are made use of by everybody in this country for his own purposes. Whenever the Government has to defend or stick to a reactionary measure, or to oppose a liberal movement, they come forward on behalf of the masses of this country and they say that the illiterate masses do not want it, it is the infinitesimal minority of the educated classes who do. Whenever any public man, if you like to call him a public agitator, wants to throw his programme on the Government, he just gets up on the platform and says that the masses are behind him. But the masses never speak. Unfortunately they do not. I think if they could and did speak out, they would be emphatic in their support of the measure which is now engaging the attention of this House.

[Mr. Abul Kasem.]

Sir, a good deal of the opposition of the Local Governments is based upon the fact that the Collector of the District has been made responsible in many cases and because a good deal of the burden and responsibility will fall on his shoulders. And my Muhammadan friends Mian Asjad-ul-lah and Khan Bahadur Sarfaraz Hussain Khan have also expressed apprehensions on that head. Sir, I have repeatedly said when introducing this Bill and when making this motion this morning that I am myself not enamoured of the provisions of this Bill, and I have admitted that, not being a lawyer and not being a qualified draftsman, I have only copied out the provisions from various Bills and proposals submitted before the public from time to time, and that the question whether the District Collector should be the Chairman of the Committee, or whether it should be elected by an electorate or appointed by Government is a matter purely of detail with which we are at the present moment certainly not concerned. Sir, the principle lays down that endowed properties are to be duly registered in a public office, naturally the revenue office. And the second point is that there should be committees supervising and controlling, at any rate supervising and exercising a sort of control over the trustees of these waqf estates both in the districts and at headquarters of the province. These are the two main principles. If you are opposed to these two principles, you are welcome to throw it out. As I said at the outset, so I say again that I have a mandate from my constituents, who unfortunately happen to be Muhammadans, to press this Bill before this House and my duty is finished. I will have to press it to the last and if it is thrown out, the responsibility for it will lie on the Members of the Government and the Members of this House and not on my shoulders.

Then, Sir, it has been said that it is a matter entirely for provincial legislation, because it is a transferred subject and that Government does not want to interfere with religious usages and religious institutions. Whoever asked the Government to interfere with these institutions or to control them? The only thing is that we want authority from the Legislature to constitute a body which could exercise some sort of control over these trustees, who are, as my distinguished friend Chaudhri Sahab-ud-Din said, criminally misappropriating public funds. What would have been the state of these trust properties if we had a Muhammadan Government in this country? There would have been a Department of Waqf in the Cabinet itself, a portfolio dealing with Waqf estates, such as there are in all Muhammadan countries. Do those Governments interfere with the religious institutions of those countries? Somebody has said, Sir, I believe Mr. K. Ahmed, that the intention of the *waqif* will be destroyed. He ought not to forget (Mr. K. Ahmed: 'I said intention of the donor.')—donor, well, you will find that *waqif* merely means donor. He ought to remember that the object of this Bill is that the *waqfnama* in which the intentions of the donor (if he understands it better) are detailed should be registered, so that people may find out what the intentions and instructions of the donor were. I have been told, Sir, that my sympathies are with the money-lender. However much I may admire the business capacity of these money-lenders, I am not one of them. My interest is for the protection of trust properties, and why I referred to these money-lenders was that Mutwallis have their names registered as owners in the Collector's register, with the result that they mortgage the property and sell them to money-lenders and others and after they are sold the Muhammadan community cannot regain

them, because the Courts will not allow a third party and a *bonâ fide* purchaser to be cheated out of his money. To protect that I intended the registration of these properties. It will protect the estates and if any money-lender hereafter went and gave money to a Mutwalli on his *waqf* property, he will do so with his eyes open and will have no defence when he is called upon to give back that property. That was my object, and, Sir, I happen to be Mutwalli of a small *waqf* estate. I would challenge anybody to go to the Collector of Burdwan and find out anywhere that I am the Mutwalli, that I am not the real owner of the property. My name is registered as the owner of the property in the register. My father's name was similarly registered, and if I choose to call myself the owner, there is nobody who can prevent it. To give you one instance about the seriousness of the situation, a big *waqf* property was left by a pious Mussalman to another gentleman, not a member of his family, who became the Mutwalli. After his death, there was a dispute in the city of Burdwan among the various relatives of the dead Mutwalli as to who should be the Mutwalli and the members, and the leading members of the Muhammadan community, if I may so call them, by which I mean the Muhammadan pleaders, Muhammadan Mukhtears and one or two merchants, sat there to settle up this dispute among the family members of the Mutwalli and to make the award. And what decision did they come to?

They said the best course would be to divide the property according to the Mussalman law of inheritance and have their names registered separately, and it has been done, and it has been done after the introduction of this Bill. It is not a question of private trust for *waqf* is a charitable endowment unless it is *waqf al il ulad*. Therefore, Sir, I do not want to detain the House, but I extremely regret, and reciprocate the regret of my friend, Mr. Abdur Rahim Khan, that I cannot accede to his request and withdraw the motion, because I have a duty to discharge to the people who have sent me here, and I will feel I have done it if I press the motion, and if the House rejects it, the responsibility will rest with the House.

(An Honourable Member: "I move that the question be now put.")

Mr. H. Tonkinson: I wish to offer just a few remarks on the course which this debate has taken. I would like, first of all, to invite the attention of the House to the fact that this Bill is not in principle simply a Bill providing for the registration of *waqfs* and the *waqf* accounts. It goes far beyond that. The whole principle of the Bill is in the control, control in clause after clause, which is given to the Collector.

Maulvi Abul Kasem: Those clauses may be deleted.

Mr. H. Tonkinson: Sir, we are asked to approve the principle of a Bill which gives this control in one clause after another to executive authorities, control over religious endowments, a thing, Sir, which the Government of India, so long ago as 1863, definitely decided that their executive officers should be disassociated from

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): How did Government assent to its introduction?

Chaudhri Shahab-ud-Din: Cannot those clauses be omitted if the Bill is put to the House?

Mr. Chairman: The Honourable Mr. Tonkinson will proceed.

Mr. H. Tonkinson: Sir, much play has been made of the fact that we on the Government side have merely given destructive criticism to this Bill, but, Sir, under the present constitution the whole of this subject is a Provincial matter. What responsibility have we, I would like to ask my Honourable friend, Chaudhri Shahab-ud-Din, over the control of charitable and religious endowments here? I have said, Sir, that Government are quite prepared to supplement, so far as may be necessary, any legislation which any Minister may introduce in any local Council. That, Sir, is, as I said, absolutely as much as we can undertake to do. To judge from the letters received from Local Governments, we have practically all the Ministers who will be responsible for the administration of this Bill opposed to it. I therefore, Sir, oppose the motion.

Chaudhri Shahab-ud-Din: Sir, with your permission, may I just say a word?

Mr. Chairman: No. I cannot permit the Honourable Member to speak now.

The motion before the House is:

"That the Bill to provide for the registration of Waqf Estates and the proper rendering of accounts by the Mutwallis of such Estates in British India, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. P. E. Percival, Khan Bahadur Sayid Muhammad Ismail, Mr. Zahid Ali Subzposh, Mr. W. M. Hussanally, Mir Asad Ali, Khan Bahadur, Rao Bahadur T. Rangachariar, Chaudhri Shahab-ud-Din, Mr. Muhammad Yamin, Khan, Haji Wajid-ud Din, Khan Bahadur Sarfaraz Hussain Khan, Mr. Abdur Rahim Khan, Khan Bahadur Zahiruddin Ahmed, Maulvi Mian Asjadullah, Mr. K. Ahmed, Nawab Ibrahim Ali Khan, Lala Girdharilal Agarwala, Maulvi Abdul Quadir, Mukhdum Sayyid Rajar Buksh and the Mover."

Chaudhri Shahab-ud-Din: May I suggest, Sir, the addition of two names for the Select Committee, and, if the House commits the Bill to the Committee, those two names may be included. They are the names of Mr. H. Tonkinson and Dr. H. S. Gour.

Mr. Chairman: The Honourable Member can move that with the leave of the House. Has the Honourable Member the leave of the House? (Cries of "Yes, yes.")

The names were added.

The Assembly then divided as follows:

AYES—41.

Abdul Majid, Sheikh.
Abdul Quadir, Maulvi.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed Baksh, Mr.
Akram Hussain, Prince A. M. M.
Asad Ali, Mir.
Asjad-ul-lah, Maulvi Miyan.
Ayyar, Mr. T. V. Eeshagiri.
Barua, Mr. D. C.
Basu, Mr. J. N.
Bijlikhan, Sardar G.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Gajjan Singh, Sardar Bahadur.
Gour, Dr. H. S.
Gulab Singh, Sardar.

Hussanally, Mr. W. M.
Jamnadas Dwarkadas, Mr.
Joshu, Mr. N. M.
Kamat, Mr. B. S.
Latthe, Mr. A. B.
Misra, Mr. B. N.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Shahab-ud-Din, Chaudhri.
Shahani, Mr. S. C.
Singh, Babu B. P.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.
Wajiduddin, Haji.

NOES—30.

Abdul Rahim Khan, Mr.
 Allen, Mr. B. C.
 Blackett, Sir Basil.
 Bradley-Birt, Mr. F. B.
 Bray, Mr. Denys.
 Burdon, Mr. E.
 Cabell, Mr. W. H. L.
 Chatterjee, Mr. A. C.
 Crookshank, Sir Sydney.
 Faridoonji, Mr. R.
 Ginwala, Mr. P. P.
 Haigh, Mr. P. B.
 Hindley, Mr. C. D. M.
 Holme, Mr. H. E.
 Hullah, Mr. J.

Ibrahim Ali Khan, Col. Nawab Mohd.
 Innes, the Honourable Mr. C. A.
 Ley, Mr. A. H.
 Mitter, Mr. K. N.
 Moir, Mr. T. E.
 Moncrieff Smith, Sir Henry.
 Percival, Mr. P. E.
 Rajan Baksh Shah, Mukhdum S.
 Reddi, Mr. M. K.
 Sams, Mr. H. A.
 Singh, Mr. S. N.
 Stanyon, Col. Sir Henry.
 Tonkinson, Mr. H.
 Townsend, Mr. C. A. H.
 Tulshan, Mr. Sheopershad.

The motion was adopted.

 THE LAND ACQUISITION (AMENDMENT) BILL.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I move:

"That the Bill farther to amend the Land Acquisition Act, 1894, be referred to a Select Committee consisting of Mr. N. M. Samarth, Mr. J. N. Mukherjee, Sardar Bahadur Gagan Singh, Mr. Hussainly, Mr. B. Venkatapattiraju, Mr. Jamnadas Dwarkadas, Rao Bahadur T. Rangachariar, Rai T. P. Mukherjee, Bahadur, and myself."

I find some difficulty in providing for the representation of the official Members on the Committee, since neither the Law Member nor the Revenue Member to whose department the subject matter of this Bill relates is a Member of this House. If the Government proposes to add any official Members to the Committee, Sir, I shall be quite agreeable to that. Now, Sir, the House will remember that I introduced this Bill in the Delhi Session last year. It was subsequently circulated for opinion and a large body of opinion, both official and non-official, has been collected. I proposed to move this Resolution last September, but the Government then said that they were contemplating the introduction of a larger and more comprehensive measure to amend the Land Acquisition Act and suggested that I might await the result of that. I find, Sir, that the Government has put forth no measure of their own so far, and I do not know whether they have got materials ready for framing a Bill even now. This House is coming very near to its close and I do not wish, therefore, to put off this matter any further and I therefore make this motion for referring this Bill to Select Committee.

Sir, the object of the Bill is threefold. One is to provide a statutory remedy against unlawful or vexatious acquisition of land. Another is to prevent the officer responsible for selecting the site and making the preliminary inquiry in regard to it, being appointed Collector for the purpose of making the award; and the third object is to prohibit the Collector from enforcing his own order. Of these three, the first is the most important and I shall devote the greater part of my remarks to that object.

In all civilised countries, Sir, the right of private property is recognised. Every individual has a right to hold and keep his property not only as against every other individual but also against the Government. But Government is in all civilised countries given power to compulsorily acquire

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private property when that course is necessary in the public interest, and therefore we see the Government in India also is empowered to compulsorily acquire land for public purposes. That power is conferred by Act I of 1894 on the Government. The power to acquire land compulsorily is given by an Act of the Legislature and therefore it follows, Sir, that the provisions of the Act should be strictly followed and it also follows that there must be some safeguard provided against excessive or improper use of the power given by the Legislature. There is no such safeguard provided now under Act I of 1894. Section 4 of the Act provides that "When it appears to a Local Government that land in any locality is needed for a public purpose a notification to that effect shall be published in the official Gazette, and the substance of that notification made known at convenient places in the said locality." Thereupon it shall be lawful for an officer authorised by Government to enter upon the land and take measurements, fix boundaries and do all necessary acts preliminary to the acquisition of the land. This is called the preliminary investigation. When this is over, and it is decided to acquire the land, section 6 of the Act provides that a declaration to the effect that the land is needed for a public purpose or for a company be published in the official Gazette, and "the said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be, and after making such a declaration the Local Government may acquire the land in the manner hereinafter appearing." Section 11 which deals with inquiry and award by the Collector gives power to the landholder to raise objections only in regard to three matters, namely, in regard to the measurements of the land, the value thereof and the respective interests of the several persons claiming compensation. If the landholder does not accept the award of the Collector, he can, under section 18, ask the Collector to refer the matter to the Civil Court. It will thus be seen, Sir, that the landholder has no opportunity to object to the acquisition itself on the ground that the purpose for which it is proposed to acquire the land is not a public purpose or that the acquisition is improper. As soon as a notification stating that the land is required for a public purpose is published, the notification by its very publication becomes conclusive evidence that the land is required for a public purpose and the question cannot be re-opened. Thus you will see, Sir, that under the law as it is, the owner of the land which is proposed to be acquired has no opportunity to raise any objection to the acquisition itself. I do not mean to deny that in certain provinces there are some departmental rules requiring some sort of notice to be given to the landholder before the notification is published in the Gazette, but that is not a statutory remedy, and it can be changed at any time by the Local Government. Moreover, Sir, from my experience of the working of that rule in the Madras Presidency, it affords very little protection to the landholder against improper acquisition. He puts in a petition objecting to the acquisition, and does not know what has become of it. No inquiry is held. He is given no opportunity of showing how the acquisition would be improper. He knows in fact nothing about his petition, and the only thing he knows of the whole matter is when he gets a notice from the Collector informing him that he proposes to make an award. The Collector says to him in his notice "I am holding an inquiry as to the amount of compensation that is payable to you on such and such a day, so you can come and make your representation." That is the only notice the landholder gets about the matter. Till then he knows nothing, because

no inquiry is held, and he is not given an opportunity to adduce any evidence to show how the acquisition will be improper. Therefore, I say, Sir, that although there are departmental rules in some provinces, they do not afford the protection to which the landholders are entitled. I shall now show, Sir, that there is ample ground for supposing that the existing law does not contain any effective remedy against improper acquisition of land. I shall first quote, Sir, some of the official opinions that have been received on the Bill itself. I shall take the Government of Bombay first. The Bombay Government admit, "That the present procedure for the acquisition of land causes occasional hardship and gives rise to complaints which are not always without foundation." I am quoting their opinion. "And it is in view of the compulsory nature of the action taken that it is desirable that opportunities should be given to the owner of the land which is sought to be acquired to state his objections to the acquisition." Here is the opinion of the Consulting Surveyor to the Government of Bombay. "I am thoroughly in sympathy with the proposal to allow persons interested in the land which it is proposed to acquire, the fullest opportunity of registering their objections before acquisition. Dealing with the acquisition of property all over the Presidency including Sind, as I have to, I have been impressed over and over again with the real grievances of the owners of properties who have never had the slightest opportunity of objecting to the acquisition of their properties. It must be definitely recognized that Government is to be the final arbiter to decide as to whether the land should be acquired or not, and if this statement is accepted, I strongly urge the desirability of the abandonment of the policy which has been in vogue hitherto of exercising over the owners of landed property such vast powers as are possessed by Government. It is of the utmost importance that the public should feel that they will be given every opportunity of a full and unbiassed hearing of the other side of the case. I am fully convinced that if the public were given such opportunity, many of the objections which come to my notice of compulsory acquisition of properties would be reduced to almost vanishing point." Sir, what can be more convincing than such an opinion coming from such a source? Then, Sir, this is what the Chairman of the Bombay Trust says on the subject: "The present procedure for the acquisition of land causes occasional hardship and gives rise to complaints for which there is considerable foundation. It is, in view of the compulsory nature of the action taken, desirable that an opportunity should be given to the owner of the land which is sought to be acquired to state his objections to the acquisition, but these objections should be limited to the grounds that the acquisition is not for *bond fide* public purposes, or that the land has been selected for some private reason." The Judges of the High Court of Bombay have "no doubt that considerable dissatisfaction has been caused in recent years by Government acquiring land under the Act for private Companies." The Government of the United Provinces says that, after consulting certain officers who have much experience of land acquisition work, it "is of opinion that there is some justification for allowing the owner of the land sought to be acquired the right of objecting on the ground that the land is not required for a public purpose, or that more is being acquired than is really necessary." The District Judge of Ahmedabad, in the Bombay Presidency, says that "there have been cases in which it has been argued with considerable force that the proposed acquisition was being made not because it was absolutely necessary for the purposes of the Company but because it was a cheaper alternative to another course which the Company was bound to take," and then he proceeds to give a concrete case which came before

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him, which illustrates the present method in a very striking manner. This is, Sir, what he says about a matter which came before him in Compensation case No. 10 of 1919:

"Four *gunthas* out of a plot of land belonging to one Manicklal Motilal by which stood a Bungalow, a well and several outhouses and abutting on the Kaira Trunk Road, which provided the most convenient passage to the bungalow and its surroundings were acquired for the Nadiad Kapadvanaj Railway; compensation was allowed for the same, the owner being assured at the same time that another passage would be provided. This passage was not promptly provided, and a long correspondence ensued between the owner on one side and the Collector of Kaira and the Railway authorities on the other. Subsequently a plan of the proposed road was sent to the owner and he was informed that arrangements were being made for providing him with an outlet. The Collector, however, refused to recommend the acquisition of a plot of land for the purpose of providing the outlet, and informed the claimant that since the Railway Company were arranging to acquire the bungalow and its compound there would be no necessity for constructing a road. He wrote again to the claimant informing him that the Railway Company had preferred acquiring his bungalow and outhouses to providing him with a metalled approach road. After this, a Government notification was published declaring that the claimant's plot, with the superstructure thereon was required for a public purpose, namely for the Railway Company. It was eventually acquired and on the case coming up before me, the claimant's pleader argued that this notification was illegal and *ultra vires* and that any acquisition of the claimant's bungalow and compound on the ground that it was more costly in the eye of the company to provide an access thereto in place of one removed by their own act was neither an honest nor a legal exercise of the powers conferred by the Land Acquisition Act. I had, with great regret, to disallow this argument, in view of the clear provisions of section 6 of the Act, though I felt no doubt after reading the correspondence between the claimant and the Railway Company that the acquisition of the bungalow was decided upon because it was considered preferable and cheaper to providing an access to which the Railway were bound under the terms of the first award."

This is what the officials themselves have to say upon the subject. Now I propose, Sir, to take you to the Madras Presidency and show you what is being done in certain parts of that Presidency in the matter of assigning house-sites. The power of acquiring land to be assigned as house-sites was introduced for the first time in the Act of 1894 after a good deal of opposition and discussion, and it was only by a narrow majority that that point was carried. Recently the Madras Government issued orders that land should, whenever necessary, be compulsorily acquired to be granted as house-sites to the members of the depressed classes who generally possess no houses of their own. The cost of the acquisition is to be borne by the Government in the first instance and to be recovered from the assignees in easy annual instalments—15 or 20 I suppose. This is done in pursuance of the policy of Government of ameliorating the condition of these unfortunate people. So far no objection can be properly taken to this policy. But see how it is worked in practice. I have got with me printed copies of memorials presented to the Government and the Legislative Council of Madras by Mr. T. Somasundaram Mudaliar—a landlord in the Tanjore district and a Member of the Madras Legislative Council, concerning the doings of the Labour Department in that district. The memorial states that the Assistant Labour Commissioner is overzealous and, contrary to the orders of Government, acquires land for assignment as house-sites to persons other than those of the labouring classes—i.e., to money-lenders, Government employees, mirasidars, merchants, persons who already own houses and even to persons who are not residents of the village in which the land is acquired. This allegation is supported by several annexures giving particulars of individual cases. One of these annexures states that one Maruthamuthu Naickar to whom a house-site is given in a certain

village was not a resident of that village at all and that he owns a tiled house and wet and dry land in another village. The memorial further states that the principles laid down by Government that where Government land is available it should be utilized, and that the cheapest land available should be taken, are ignored. "Kandaswami Pillai of Ammanadapuram offered to give land at Re. 1 and this was not accepted and more costly lands the acquisition of which caused great hardship has been taken and the reason for such action is not apparent and the motive does not seem to be praiseworthy." I am quoting from the memorial. I know that some of the statements were controverted by the Labour Commissioner in the course of a debate in the Legislative Council, but the very fact that such a memorial is presented not by an irresponsible private person, but by a Member of the Legislative Council itself is very significant. Sir, the doings of the Labour Department in the Tanjore District have a family likeness to what they are doing in my own district of Godavari. Here also the Labour Department started with the idea of acquiring house-sites for the depressed classes only, but subsequently they extended it to other classes, chiefly to the community of toddy drawers locally known as *Idigas*. This class is by no means a depressed class. There are some very rich men among them in my own taluq of Amalapuram. My Honourable friend can support me in that respect.

Mr. T. E. Moir: (Madras: Nominated Official): I demur to being asked to support any of the Honourable Member's statements.

Mr. J. Ramayya Pantulu: Several of them own lands of their own and very many of them cultivate others' lands as tenants. As a rule these people live in their own houses and are certainly able to buy more land if required. Nevertheless, the Labour Department (for which my Honourable friend was responsible for some time) compulsorily acquire lands to be given to these people on the same terms as to the Panchamas. I have got with me a list of not less than 65 cases in which lands were assigned to people who already own houses, in my own village and the bulk of these lands are covered with valuable cocoanut topes and are worth a thousand rupees or more per acre. I am sure that few or none of these people to whom houses are granted would have applied for those lands if they had to pay the value of the lands in lump sum. They applied for the sites because they thought or they knew that they would get them almost for the asking. It would occur to most people to inquire why these people who are able to buy their own house-sites should be given sites acquired by Government compulsorily. Well, it is difficult, Sir, to answer that question by anything that I can adduce to the satisfaction of the House.

There is another aspect of this question, which I must bring to the notice of this House, and that is one of the principles on which the Labour Department seems to be acting in my district. In that part of the country we have got field servants, and generally every landholder gets one or more of his field servants to live on his own land in huts erected by the landholders at their cost. It is for the purpose of watching those lands. It is especially so in the case of cocoanut topes which require to be watched and guarded. It is usual to build huts in those topes and get one or more servants to live in them. They live in the huts for a number of years. Now, under the system of acquiring house-sites for the depressed classes, the Labour Department has, it appears, made it a rule to acquire the very sites on which these people are living. See how much hardship this must

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cause to the landlords. This must be a source of friction between the landholder and the man. I do not object if all these people are given sites in one locality, if you are forming a new village where all the people could live. But you employ a man on your own land as your servant and the Government says "We will acquire that piece of land and give it to him." See how inconvenient that is to the landholder.

Mr. Chairman: Does the Honourable Member not think he is travelling too far into details and unless they bear upon the principle he may omit them?

Mr. J. Ramayya Pantulu: I want to say that the present law affords no safeguards, no relief to the landholder in the matter of acquiring land. That is my point. I believe I have said enough on the subject that the law as it stands does not afford a satisfactory remedy against the improper acquisition of land. I shall then proceed with what I propose should be done to remedy that evil. Before that I propose to refer to the law of England on the matter of land acquisition. According to Halsbury's Laws of England there are three ways of acquiring compulsory powers over land:

- (1) by the passing of a public general Act;
- (2) by promoting a private Bill which, when passed, becomes a local and personal Act; and
- (3) by proceeding under existing Acts to obtain an order which is commonly referred to as a Provisional Order.

The last method approximates most to our law and it has been described thus:

"In order to save the expense and trouble of proceeding by private Bill to obtain compulsory powers to acquire land, Parliament has, in a number of public general Acts, provided simple methods of procedure. This procedure varies somewhat in the different Acts, but its principal characteristic is that an order conferring the powers is made by some person or body mentioned in the particular statute, which order however, is not operative until it has been confirmed in a manner provided in the general Act. Until that has taken place it is said to be provisional only; hence this method of obtaining compulsory powers is known as procedure by Provisional Order. The main features are alike in the different statutes. The first requisite is that the person or the body seeking the power should give ample notice of their intentions. This is done by advertisement in the local newspapers, in which full particulars are given, and by the service of notices on every owner, lessee or occupier, or reputed owner, lessee or occupier of the lands proposed to be taken. The next step is to petition the authorities who have the power to make the orders. This authority is usually one of the Government departments. The petition must give full particulars and be supported with evidence to show compliance with the provisions of the Act. If the authority are satisfied with that evidence, they will consider the petition, and if, in their view the matter should proceed, they direct that a local inquiry shall be held, at which all persons affected have an opportunity of being heard. The making of the Provisional Order empowering the petitioner to acquire the land follows if the authority are satisfied on the report of the person making the inquiry. It has next to be confirmed, and in the majority of cases, confirmation is obtained by the passing by Parliament of a Confirming Act, the Bill for which is usually submitted by the department making the order. In its passage through Parliament it is treated as a private Bill and owners of the land proposed to be taken or injuriously affected may oppose its passage before the Select Committee of both Houses."

Thus, you will see, Sir, that, under the English law, the owners of land which is proposed to be compulsorily acquired, have got ample opportunities of making their objections and having their objections inquired into and disposed of, whereas under our law there is no opportunity given to

them at all for making any objection. What we have to consider, Sir, is how this defect can be removed. The procedure that I have proposed is that the owner of the land should be allowed to raise this point along with any other objection before the Collector during the inquiry that he makes prior to the making of the award, and that, failing to get satisfaction there, he must, as in the case of other objections, be allowed to ask the Collector to refer the matter to the Civil Court. I am aware that there is a great difference of opinion on this point, but non-official opinion is, as a rule . . .

Mr. Chairman: The Honourable Member must bring his remarks to a close.

Mr. J. Ramayya Pantulu: I find that non-official opinion is, as a rule, in favour of that procedure. I admit that official opinion is rather against it, and the opinion of the Judges, which I have carefully examined, is divided on that point; some of the Judges of the High Courts, who were consulted, are in favour of it and some are against it, but I admit, Sir, that the official opinion is against the making of any reference to the Civil Courts. This objection is based on three reasons. One is that the Government cannot possibly do anything wrong.

Mr. Chairman: I have allowed the Honourable Member sufficient latitude. I do not think he need go into so many details.

Mr. J. Ramayya Pantulu: Very well. I will not go into details. I recognise, Sir, that there is a good deal of official opposition to the matter going before a Civil Court, but the chief ground on which that objection is based is that it causes delay. Well, on reading all these opinions and also by virtue of my experience as an executive officer. I do admit that there is some force, Sir, in the argument that, if every case in which an objection is made should go before a Civil Court, there might be much delay. So, I, personally, Sir, am inclined to reconsider that point. I will remove that, subject to some other method of inquiry, but this is a matter which could be considered by the Select Committee. I, for one, would not raise any objection to that provision being taken away and some more speedy procedure being adopted. That, however, is a matter of detail. The principle underlying my Bill is that the owner of the land must be given an opportunity to raise an objection. That is the principle underlying my Bill. If the Government admit that principle, as they ought to admit, because there is such a strong official opinion in support of it, they ought not to oppose my motion which is only to refer the Bill to the Select Committee where the agency by which the objection should be heard can be determined. I therefore move my motion.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): Sir, it is clear from the speech of the Honourable Mover of this Bill that, having gone carefully through all the opinions which have been received, he sees that the main principle for which he has been fighting, namely, that there should be a remedy to a Civil Court open to the aggrieved party, is one that cannot be accepted, and he is therefore prepared to drop it for himself.

Mr. J. Ramayya Pantulu: Oh, no.

The Honourable Mr. B. N. Sarma: To drop that portion of the Bill. Honourable Members have had these opinions circulated and it is clear that all the Local Governments who have been consulted are clearly of

[Mr. B. N. Sarma.]

opinion that the Bill is neither necessary nor desirable. The Government, it is true, have stated, and do state even now, that they have under consideration the question of amending the Land Acquisition Act, especially with regard to the recommendations made by the Industrial Commission. As to whether the Land Acquisition Act has to be amended or not is a subject on which the Government of India has been in correspondence with the Local Governments, whose replies have been received and the whole matter is being considered by the Government. We recognise that it may be, as has been pointed out by some of the Local Governments, that an opportunity may by means of a Statutory provision be given to the landholders or other persons whose lands may be acquired, to state their objections which at present they can state under various departmental rules. Such rules have been formulated by Bengal, Madras and other Provinces so that the Local Governments may have them always before them and consider them before they come to any decision in the matter. But that is entirely different from accepting the various principles for which my Honourable friend has been contending. It is clear from his statement that he has been largely influenced by the unhappy controversy which has been raging in some parts of the Madras Presidency during the last 2 years. It may be that some landholders feel aggrieved by the proceedings which have been taken for the acquisition of land to better the condition of the depressed classes. It may be that in individual cases the procedure has not been correct. I am not for a moment saying that it has not been correct; but to argue from a position due to temporary causes, where the Government, according to the Honourable Member himself, have been striving their level best to improve the depressed classes, and to say that the whole Act has to be revised in view of the experience which has been his unhappy lot to notice during the last few years, I think, is going too far. The Local Governments emphatically say that it would be absolutely unsafe to prolong these inquiries in the manner suggested in this Bill. Honourable Members who are lawyers will also remember that the Privy Council, in their latest judgment on the subject, have approved quite clearly and emphatically of the procedure under which the Government decide as to whether land acquisition is desirable in any particular instance or not. It is absolutely impossible to lay down categorically what is a public purpose. Nor does this Bill lay down what is a public purpose. If it is impossible to define what is a public purpose, what is the criterion which the Civil Court would have before it in coming to a decision as to whether the proceedings which have been taken are legal or illegal? The problem bristles with difficulties. The Act has been working fairly smoothly for the last 30 or 40 years (*Honourable Members*: "No, no.") excepting in one or two recent cases which have come into prominence in Bombay.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Most glaring instances.

The Honourable Mr. B. N. Sarma: It may be, and it is in respect of those acquisitions for public companies and for industrial concerns as I have said already that the Government has legislation in contemplation; and Honourable Members may rest assured that it is the desire of Government to set this matter at rest so that a satisfactory solution may be

reached from the public as well as the governmental point of view. The Government have no desire to acquire land for public companies and industrial concerns which would act as a hardship to the public at all. Therefore they do mean to provide a remedy and the necessary procedure is being evolved. But the Honourable Mr. Ramayya Pantulu asks us to agree to a measure under which all acquisition for a railway company, for a local board, for a municipality or for a proper Government purpose has to be brought before a civil court or any other tribunal and that the whole matter should be adjudicated upon before the proceedings are concluded. It would be impossible, I think, and it would be extremely costly to undertake any such inquiry whatsoever or to refer these matters to a civil court, and I think the Local Governments are perfectly right in stating that the procedure is one which cannot be acceptable to any Member of this Legislature. I venture to suggest that the remedy that is sought to be provided by this Bill is one which would lead to infinite difficulties, delays and excess cost, and is one which has not been accepted even in the United Kingdom. Even in the United Kingdom it is not the civil courts that adjudicate as regards the purpose. Here as I have already said the Industrial Commission has made certain recommendations as to whether acquisition for private companies and for industrial concerns could not be placed on a more satisfactory footing and that is a matter which is being considered; but this Bill does not confine its operation to merely industrial companies, but extends its purview to every act of acquisition for any public purpose, whether it be governmental, municipal, local or otherwise. Take the case of a railway company. Land has to be acquired in several districts; thousands of pieces of land have to be acquired. Well, are we to be told that a detailed inquiry of the sort adumbrated in this Bill would be possible or that any railway project would be feasible if all persons who object to particular patches of land being acquired are going to be given the liberty of going before a tribunal and questioning the legality and the equity of land acquisition? If A says that the railway need not run through his land and points out to B's land as the more appropriate one, notice will have to be given to B; the whole alignment will have to be changed. It would be impossible to do anything whatsoever if questions of that description are to be left to the determination of any court whatsoever or any tribunal which may be constituted for the purpose. So far as I am aware the only objections that have been raised in the past are with regard to the acquisitions for these industrial companies. I am not aware that the Government have been abusing their power in arbitrarily acquiring land for railway companies or for legitimate public purposes or local and municipal purposes. The whole of the machinery would come to a standstill, no project would be possible of completion if the elaborate machinery that is sought to be provided by this Bill is going to be accepted by this House. It would be extremely difficult, and we shall not know where we shall be. I therefore would suggest, Sir, that it would be impossible for Government to agree to the principle of this measure in so far as it asks that every question of this description should be arbitrated by a tribunal before the acquisition proceedings are concluded. But that does not mean that the Government do not realise the difficulties that have been pointed out. As has been observed by the Honourable Mover, some of the Local Governments themselves have suggested a slight modification whereby opportunities ought to be given to the public who may be affected by the proceedings under the Land Acquisition Act to state their case before the Government determines as to what has to be done. I think it is but fair that the persons

[Mr. B. N. Sarma.]

who are affected should be allowed to have their say and that the Government should have all the proceedings before them before they come to any final decision: but once the Government come to a decision, I submit to the House that that decision should be final. It is not likely that they would tolerate any vexatious or malicious proceedings or that they would acquire land unnecessarily especially in these days when every grievance can be ventilated in a Council. I may further point out, Sir, that every project has to be brought before the Councils for financial sanction, and therefore there is a definite amount of control now exercised both by the Central Government as well as by the Provincial Governments in the matter of acquisition. It is not that there is no remedy whatsoever. I have already said that the Government, when they bring in a Bill to modify the provisions of the Land Acquisition Act for the purpose of acquiring land for industrial concerns or for private companies, and not merely for governmental purposes, would certainly sympathetically view the position that has been placed before the House to provide a machinery whereby individuals who may feel aggrieved should be able to state their case fully and inquiries made before the Government comes to a decision. I would therefore suggest to the Honourable Mover that he has achieved his purpose in bringing this grievance to the notice of Government and that he might withdraw his motion. It is impossible to proceed with the Bill as it is. The wording is imperfect; it is impossible to define what "public purpose" is. If it is impossible to define what "public purpose" is, it is impossible also for a civil or judicial tribunal which cannot exercise its discretion arbitrarily but must proceed upon well defined lines, to come to a proper decision. I therefore think, Sir, that this Bill has been misconceived and that the motion should be withdrawn by the Honourable Mover. If he does not, I must oppose it.

Mr. Jamnadas Dwarkadas: I believe, Sir, that I shall not be doing justice to the wishes of my constituency if I do not speak on this question of the Land Acquisition Act while it is being discussed by this House. My Honourable friend, Mr. Sarma, has just pointed out that the Government themselves are considering the matter and probably in course of time they will themselves introduce a measure to amend the present Land Acquisition Act. I am very glad that the Government are going to do that, but I only hope that this desire on their part will soon materialise into action. If I am not mistaken, I think on one occasion, about a year ago it was perhaps, when a similar measure was introduced, the Government stated that they themselves desired to introduce legislation to amend this Act . . .

The Honourable Mr. B. N. Sarma: May I make a personal explanation, Sir? I have already said that on a distinct reference, apart from this Bill, which has been made by Government, all the Local Governments have now replied, that the matter is being examined by the various departments and would be ripe for an early decision. We hope to be able, therefore, to proceed with such measures as may be ultimately decided upon by the Government at an early date.

Mr. Jamnadas Dwarkadas: Sir, I wish to emphasise the urgency of taking measures to amend the Land Acquisition Act at a very early date. I emphasise this fact particularly because this House I think is soon going to launch upon a policy of rapid industrialization so far as this country is

concerned, and however anxious I am—and there can hardly be anyone who is more anxious than myself—that this country should adopt a policy that will encourage rapid industrialization, no one is more anxious than myself to avoid the dangers that will come into existence with the adoption of that policy. One of the dangers will be that the necessity of acquiring land will come into the forefront. We have had an instance in Bombay where a good deal of agitation has been created, and a righteous indignation was caused at the acquisition of land under the present Land Acquisition Act. I want to point out to the Government that if they are going to introduce a Bill to amend the Land Acquisition Act, they must see to it that as far as possible the Land Acquisition Act that will be introduced now will be in conformity with the Act such as obtains in England. My Honourable friend, Mr. Sarma, pointed out the difficulty of determining as to what. . . .

Mr. Chairman: I can only allow the Honourable Member an opportunity, if he desires, to discuss the principle of the present Bill, not the details of an intended Bill about which he has already made ample reference.

Mr. Jamnadas Dwarkadas: I bow to your ruling, Sir. I am now discussing the principle. I only wish to say that there are safeguards in the English Act which do not exist under the present Land Acquisition Act here, and it is necessary that those safeguards should also be introduced into the Land Acquisition Act here, specially to determine the public purpose; the Legislatures of the country in the various provinces must be given a voice, a predominant voice in determining what is a public purpose and what is not a public purpose and the matter should not be left to the discretion of the executive. With regard to the other question as to who should determine the compensation and what should be the compensation, there, too, there are safeguards provided in the English Act which do not obtain here. Here, the man who notifies that a particular portion of land will be acquired, and the man who determines the amount of compensation, happens to be the same man. (Voices: "No, the Court.") Well, the Court comes in only when the matter is taken to the Court, but otherwise I think the Collector himself determines both. Well, my only point is this, that Government should try their best to bring the Act here in conformity with the English Act. That alone will be acceptable, I believe, to this country.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, as I have given some thought to this matter, I should like to detain the House with one or two observations with the object of removing certain impressions from the mind of the Government Benches. The first thing is that the Government is under the impression that it is only the industrial undertakings which necessitate some change in the view point of Government as regards acquisition. The case of the public is,—“No, when land is acquired by Government itself even for big undertakings, such as those for railway purposes, or canal purposes, as well as for other purposes, Government does so without taking into consideration the difficulties caused by its procedure as to compulsory acquisition, and often makes up its mind to acquire land even when it is not prepared with the money and means necessary for carrying out its project.” I would detain the House for a longer time than I thought it necessary to do, at this late hour, if I were to cite instances of large acquisitions which have been lying uncompleted for 10, 12 or

[Mr. J. N. Mukherjee.]

even 15 years, without Government being able to put them to any use whatever. On top of that what Government does is this; if plots are acquired on which there are some machinery and structures, costing say about five lakhs of rupees, the Deputy Collector of his own accord goes into some sort of arrangement and says to the owner of the plot, "I will acquire some other land and give this land to you, so that Government will not have to pay compensation." That is what is in my mind. So that if the Government wishes to improve the Act the improvement cannot be effected within these narrow limits indicated by the Honourable Member for Revenue and Agriculture.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): I rise to a point of order. Is the promise of the Government under discussion by this House or the Bill moved by the Honourable Mr. Pantulu?

Mr. J. N. Mukherjee: The Bill is, Sir. It is proposed that the whole Bill should be rejected because there are two principles involved: one is the determination of the necessity for the acquisition and the reality of the purpose, and the other is the mode in which that purpose of the acquisition is to be achieved. As regards the last point I think Honourable Members of the House will agree that the civil court is not the proper place for these questions to be discussed and determined, and some other speedy method is required. What the public think is that it should not be left in the hands of one individual. There should be a Board in which the public have confidence for determining these questions as speedily as possible. The executive members of the Board may be officials and non-officials. (A Voice: "Educationists?") No, not educationists. They can be selected and various other questions which are incidental may be considered when the Bill is being considered. There is therefore not one point but several, but I will not detain the House by saying anything more. With these observations, Sir, I will resume my seat.

Mr. T. E. Moir: Sir, I greatly regret that I should have been drawn into the discussion on this Bill at all; and, strictly speaking, I suppose that the remarks I am going to make are irrelevant and if it is the ruling of the Chair that they are irrelevant, I am quite ready to submit to that ruling. But whatever view the House may take of this Bill, of the principles it contains, I do wish to protest against the manner in which Mr. Ramayya has brought in the Labour Department of Madras. I wish to protest against that being taken as relevant to his Bill or supporting it. His speech was presumably directed, or should have been directed to the principle of the Bill, not to making an attack on the Labour Department of the Madras Presidency. I should perhaps not have felt it necessary to intervene even on that score, but he further proceeded to point me out to the House as having been personally responsible for those enormities of which he stated that the Labour Department had been guilty. He not only did that, but he asked me to support him in bringing these charges against that Department of which after all the administration is the concern of the provincial Government; he asked me to support him in the allegations which he made against that Department. Now, the contributions of my Honourable friend to the debates in this House are generally marked by experience and knowledge and a freedom from prejudice. But I am afraid I cannot say that they have been marked by those attributes in this case, and I at any rate must refuse, in order to support his Bill, to blacken my own face and to sit on a stool of repentance.

I would turn now to what he has placed before the House as evidence in support of his Bill. He referred to the action which has been taken in respect of the depressed classes in Madras, and he said that that action had led to all sorts of irregularities, oppression and so on, which presumably his Bill, if it had been in existence, would have prevented. But he did not say why that policy to which he referred had been adopted by the Madras Government. Most Members of this House are aware that one of the greatest problems with which we are faced in the Madras Presidency is the position of the depressed classes, and may I say that it is not merely, as possibly members who come from the North of India may suppose, a social question. It is not a social stigma or social or religious disabilities. It is very largely an economic question—a question of economic disabilities. And the position in reference to the depressed classes in the districts to which my Honourable friend referred is that they are mainly agricultural labourers. Further, that for generations untold they have been practically bound to the soil

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Sir, I must rise to a point of order. This speech justifies the action of the Labour Commissioner of Madras, with which we have nothing to do. I am afraid my Honourable friend is not speaking on the Bill. Whatever the arguments of Mr. Pantulu may have been, the question before us is whether the Bill is to be referred to a Select Committee or not. We have nothing to do with the actions of the Madras Government or the Labour Commissioner.

Dr. H. S. Gour: Sir, I also think that a side remark made by the Honourable Mover of this Bill cannot be made the pivot for a long discourse on that subject.

Mr. Chairman: I allowed the Honourable Mr. Moir to make a short reference to it, and I think, having done it, he will confine his remarks to the Bill. Now, I think he has sufficiently refuted the charge against the Labour Department.

Mr. T. E. Moir: Sir, I would merely say that my remarks are strictly relevant possibly not to the principles of the Bill but to remarks which were allowed and to arguments which were allowed to be adduced by the Honourable Mover of the Bill. But I of course bow to your decision, Sir, and I say nothing more. I should have liked, if I had been permitted, to explain how entirely wrong an idea the Honourable Member

Dr. H. S. Gour: I rise to a point of order. If one Honourable Member makes some irrelevant remarks, does it justify another member making an irrelevant reply?

Mr. T. E. Moir: If I might rise to a point of order, Sir; if a Member of this House, who happens to be an official Member, is attacked in respect of his administration of a department in this House, is he to be attacked without a right to defend himself?

Mr. Chairman: Mr. Moir will resume his seat. I have already permitted Mr. Moir, having reference to the remarks made by Mr. Pantulu, to travel outside the régime of strict relevancy in order to give him an opportunity to refute the remarks. Having done that, I must call upon him to speak on the Bill.

Mr. T. E. Moir: Sir, I only rose in order to point out to the House that the so-called evidence adduced by the Honourable Member was not relevant

Mr. Chairman: The Honourable Member is still repeating the same remarks. If he is not going to speak on the Bill, he must close his speech.

Mr. T. E. Moir: And I have no desire, under the circumstances, to say anything further.

Mr. J. Ramayya Pantulu: In the first place, Sir, I must say that I never meant to attack my Honourable friend, Mr. Moir. I never meant to ask him, Sir, to support all that I said. All that I wanted his support for was

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Is that relevant, Sir?

Mr. Chairman: The Honourable Member will proceed to reply to any remarks made on the Bill.

Mr. J. Ramayya Pantulu: The Honourable the Revenue Member said there was no necessity for this Bill, as the present Act was working smoothly. Well, Sir, it is not working at all smoothly. Several instances of hardship under the Act have recently come to the notice of the public, but the fact that more instances have not come to our notice is because of section 6 of the Act, which acts as a guillotine and does not allow these objections to be raised before the Court. If that was not the case there would be hundreds of cases of hardship brought before the Courts and reported in the newspapers and in the law reports. It is because this section acts as a closure that the world does not hear much more of these cases.

The Honourable the Revenue Member also said that the Government proposes to do something in regard to the acquisition of land for companies. But is it only in the case of the acquisition of land on behalf of companies that hardship is caused? You will find it is caused not only in connection with acquisition on behalf of companies, but also by Government. I have quoted the remarks of the Consulting Surveyor to the Government of Bombay, who says that wherever he travels he hears objections on all sides to the acquisition of land made by Government. If the remedy that Government is going to provide is to be confined to cases of acquisitions on behalf of companies, it will be a most inadequate provision. There ought to be provision made in regard to the acquisitions of land on behalf of the Government, the Local Board or the Municipality or companies.

The Honourable Mr. B. N. Sarma: I have said that the question whether the public ought to be given an opportunity, when they are aggrieved, to state their case so that the Local Government may have all the materials before them, will not be confined to industrial companies but will include all acquisitions. With that assurance, I ask the Honourable Member to withdraw.

Mr. J. Ramayya Pantulu: The Honourable the Revenue Member said that the Legislative Councils have even now control in the matter of acquisition. What control have they? They may have control in regard to sanctioning a certain sum of money for a certain object, that is all they have. They have absolutely no control in regard to the acquisition of land.

That does not come before the Councils, it is all done by the officers of Government.

The bulk of the Honourable the Revenue Member's speech was devoted to showing that, if every one of the cases where there was an objection were referred to a civil court, there would be an enormous delay. I quite understand that references to court are likely to cause delay, but that is a point which can be remedied. It is quite open to the Select Committee to remove that portion of the Bill and substitute a less costly and more expeditious method of hearing and disposing of petitions. That is a matter which I think can be gone into by the Select Committee. Therefore there is no merit in dwelling too much upon a point of detail which could be remedied in the Select Committee. I, therefore, think that the Bill ought to go to the Select Committee where it can be altered into a form which will be suitable for all purposes.

Mr. Chairman: The question is:

"That the Bill further to amend the Land Acquisition Act, 1894, be referred to a Select Committee consisting of Mr. N. M. Samarth, Mr. J. N. Mukherjee, Mr. W. M. Hussanally, Sardar Bahadur Gajjan Singh, Mr. B. Venkatapathiraju, Mr. Jannadas Dwarkadas, Rao Bahadur T. Rangachariar, Rai T. P. Mukherjee Bahadur, Mr. J. Hullah and the Mover."

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Friday, the 16th February, 1923.

LEGISLATIVE ASSEMBLY.

Friday, 16th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

MEMBER SWORN :

Mr. A. V. V. Aiyar, C.I.E., M.L.A. (Finance Department : Nominated Official).

QUESTIONS AND ANSWERS.

PETROL CHARGES.

352. ***Mr. R. A. Spence:** Are Government aware that there is widespread discontent at the high charge for petrol levied by the Companies controlling the oil fields of India and Burma and that India is not receiving any benefit as she ought to do from what may be termed a local industry of her own products?

The Honourable Mr. C. A. Innes: The attention of Government has been drawn to statements to this effect in the public press.

BURMA OIL COMPANIES' CHARGES FOR PETROL.

353. ***Mr. R. A. Spence:** Are Government aware that the retail sale price of Burma petrol in England is only two shillings per gallon, equal to 24 annas currency, whereas in Bombay the price is 32 annas and in Calcutta 30 annas per gallon and that, even allowing for the special War tax of six annas, the Oil Companies in Burma obtain more for their petrol from the India public than from foreign export in spite of heavy freight charges to Europe?

The Honourable Mr. C. A. Innes: The prices are believed to be as stated.

Sir Montagu Webb: Arising out of that answer, Sir, may I ask if Government contemplate taking any steps to secure to consumers in India the full benefits which may be expected reasonably to arise from the existence of local oil-fields?

The Honourable Mr. C. A. Innes: May I ask what steps the Honourable Member contemplates?

RETAIL PRICE OF PETROL.

354. ***Mr. R. A. Spence:** Will Government state the approximate retail price of petrol to the public in India and Burma for each year from 1916

to 1922, and what reduction, if any, has been allowed on Government purchases?

The Honourable Mr. C. A. Innes: The present retail price of petrol is 1-14 per gallon in Calcutta and from 1-10 to 1-12 in Rangoon. Information as to prices in preceding years is not available. Petrol supplied direct to the military authorities is exempt from the usual excise duty, but no reduction in price is allowed by oil companies on such purchases.

Dr. H. S. Gour: May I ask the Honourable Member what is the cost price of petrol in India?

The Honourable Mr. C. A. Innes: I have no information on that point.

Mr. K. B. L. Agnihotri: What is the price of petrol per gallon in Delhi?

The Honourable Mr. C. A. Innes: I do not know, Sir.

IMPORT OF BURMA PETROL INTO INDIA.

355. ***Mr. R. A. Spence:** What has been the import in gallons of Burma petrol into India during the first 9 months of the fiscal year 1922-23, and the export to other countries over a like period?

The Honourable Mr. C. A. Innes: Returns of coastal trade are not published monthly and therefore figures showing the quantity of petrol imported from Burma into India during the first 9 months of the current fiscal year are not readily available. The export from Burma to other countries during the same period amounted to 12,872 thousand gallons.

PETROL IMPORTATION.

356. ***Mr. R. A. Spence:** Is any petrol other than from Burma imported into British India and if so, what was the quantity in gallons for the year 1921-22?

The Honourable Mr. C. A. Innes: Small quantities of petrol are imported into British India from foreign countries such as the United Kingdom, Ceylon, Straits Settlements and the United States of America. Such imports amounted to 1,348 gallons in 1921-22.

Sir Montagu Webb: Does Government recognise, in view of this reply, that there obviously exists a combination to maintain prices in India at an artificially high level?

The Honourable Mr. C. A. Innes: No, Sir.

WAR TAX ON PETROL.

357. ***Mr. R. A. Spence:** (1) What was the amount of revenue realized from the War tax of six annas per gallon on petrol during the fiscal year 1921-22 and the quantity in gallons exported to other countries?

(2) Now that the War has been officially declared to have ended, has Government considered the expediency of removing this special War tax and in place thereof levying a reduced excise duty on all petrol produced in India and Burma both for export and local consumption which, while

not necessarily reducing the revenue, should have the effect of reducing the sale price in India and Burma and thereby assisting the expansion of motor transport?

The Honourable Mr. C. A. Innes: (1) The excise duty levied on petrol during the fiscal year 1921-22, amounted to Rs. 69½ lakhs. The quantity of petrol exported to other countries during the same period amounted to a little over 20 million gallons.

(2) The Government of India thank the Honourable Member for his suggestion but he will realise that it is quite impossible for me to anticipate in any way the Budget speech of my Honourable colleague, the Finance Member.

Sir Montagu Webb: May I take it from the Honourable Member's replies that Government feel that there are no means at their disposal by which these artificially high prices can be controlled?

The Honourable Mr. C. A. Innes: The Honourable Member must give me notice of questions of that kind.

UNSTARRED QUESTIONS AND ANSWERS.

SALARIES PAID ON RAILWAYS.

173. Mukhdum Sayad Rajan Baksh Shah: Will the Government be pleased to state the total amount paid as salaries to the staff (superior and inferior) of the Indian Railways as below:

- (1) Amount paid to Europeans and Anglo-Indians and Indian Christians.
- (2) Amount paid to Mohammadans, Hindus, Sikhs and others respectively?

Mr. C. D. M. Hindley: The information in the detail asked for is not available. It can be collected only by special compilations by the different railways and the Government are reluctant to put Railway Administrations to this trouble.

EXPENDITURE ON PERSONS UNABLE TO EARN THEIR LIVELIHOOD.

174. Mukhdum Sayad Rajan Baksh Shah: (a) According to the last census of India what is the total number of persons in each province who on account of being blind, lame, dumb and crippled are unable to earn their livelihood?

(b) Whether such persons are given any aid from Imperial Revenues and if so, what is the total amount spent on this account. The information may please be given separately for Christians and non-Christians and under non-Christians, figures for Hindus and Mohammadans and Sikhs should be given separately?

The Honourable Mr. A. C. Chatterjee: (a) The number of persons returned at the last census of India as blind or deaf-mute is given in the attached statement. No statistics regarding lame or crippled persons are available.

(b) No special contribution is made by the Government of India to Local Governments but the latter no doubt make provision themselves.

In the case of areas directly under the administrative control of the Government of India allotments are made annually, but it is left entirely to the discretion of the heads of minor administrations to spend the money in the most suitable and useful manner. The budget provision on this account for the current financial year amounts to Rs. 28,380 in all. It is impossible to give information separately for Christians and non-Christians or for Hindus, Muhamminadans and Sikhs.

Province, State or Agency.	Deaf mutes.	Blind.
	Persons.	Persons.
India	189,644	479,637
Provinces	155,426	367,165
1. Ajmer-Merwara	138	1,308
2. Andamans and Nicobars	2	5
3. Assam	5,370	7,208
4. Baluchistan (Districts and Administered Territories)	219	819
5. Bengal	31,264	83,468
6. Bihar and Orissa	18,647	28,466
Bihar	14,912	20,542
Orissa	1,705	3,312
Chota Nagpur	2,030	4,312
7. Bombay (Presidency)	10,732	35,058
Bombay	8,850	27,036
Sind	1,852	7,311
Aden	30	51
8. Burma	11,877	24,523
9. Central Provinces and Berar	12,807	37,496
Central Provinces	9,226	28,329
Berar	3,581	9,167
10. Coorg	20	93
11. Delhi	156	659
12. Madras	31,284	86,617
13. North-West Frontier Province (Districts and Administered Territories).	1,897	2,980
14. Punjab	18,305	53,915
15. United Provinces of Agra and Oudh	22,678	105,072
Agra	15,565	72,063
Oudh	7,113	33,009
States and Agencies	34,218	112,472
16. Assam State (Manipur)	187	522
17. Baluchistan States	433	1,274
18. Baroda State	598	6,794
19. Bengal States	764	747
20. Bihar and Orissa States	1,349	2,226
21. Bombay States	3,960	14,099
22. Central India (Agency)	1,749	10,637
23. Central Provinces States	1,275	3,340
24. Gwalior State	1,415	6,134
25. Hyderabad State	3,410	19,138
26. Kashmir State	4,518	4,649
27. Madras States	3,076	8,395
Cochin State	504	1,250
Travancore State	2,169	1,680
Other Madras States	408	485
28. Mysore State	3,609	5,188
29. Punjab States	4,453	11,436
30. Rajputana (Agency)	2,577	19,709
31. Sikkim State	144	37
32. United Provinces States	666	1,857

EXPENDITURE ON RELIGIOUS BUILDINGS.

175. **Mukhdum Sayad Rajan Baksh Shah:** Will the Government please state whether:

- (i) Government grants are given for building of churches of all Christian sects (Roman Catholic, Protestant and others) and their Bishops are paid anything as a stipend from Government, if so, please state what is the total amount spent on this account;
- (ii) Whether any similar building grants are paid for erection of mosques, temples and Gurdwaras and whether the Imams of mosques and Pandits and Mahants of Gurdwaras are paid some stipends from Government, if so, what is the total amount spent on this account?

The Honourable Mr. C. A. Innes: (i) Under certain conditions Government provides for or makes contributions towards the construction of Protestant and Roman Catholic Churches. The Anglican Bishops of Calcutta, Madras and Bombay alone receive full stipends from Government while the Anglican Bishops of Lucknow, Lahore, Rangoon and Nagpur receive from Government revenues the pay of senior chaplains. The total amount spent on Ecclesiastical buildings including churches, cemeteries and parsonages during 1920-21 (the latest year for which figures are available) was Rs. 2,50,769. About Rs. 1,22,371 are at present expended by Government on the salaries of the Bishops of Calcutta, Madras, Bombay, Lucknow, Lahore, Rangoon and Nagpur.

(ii) The Honourable Member is referred to the reply given to his question on the same subject No. 330 on the 5th September 1921. As then stated non-Christian places of worship have been and are financially assisted by the State through grants of land and alienations of land revenue made for religious purposes and to some extent through expenditure for archaeological purposes. The amount so spent cannot be stated but is undoubtedly very large.

EXPENDITURE ON FAMILIES OF SOLDIERS KILLED DURING THE WAR.

176. **Mukhdum Sayad Rajan Baksh Shah:** What was the total number of Indian soldiers and others who were killed during the last great war? The information may please be given separately for Hindus, Mohammadans, Sikhs and Christians and it may be stated how much is spent annually from Imperial Revenues towards the maintenance of the bereaved families of deceased persons of each class?

Mr. E. Burdon: The total number of Indian soldiers and other military ranks who lost their lives during the Great War, from all causes, is 58,946. The Government of India regret it is not possible to state how many of this number were Hindus, Mohammadans, etc.

To collect the information desired by the Honourable Member in the second half of his question, it would be necessary to require all Controllers of Military Accounts to undertake a special and most laborious compilation which, in the opinion of Government, would not be justified by the result. The information cannot for this reason be furnished.

DEATHS OF BRITISH AND INDIAN SOLDIERS IN GERMAN EAST AFRICA.

177. **Mukhdum Sayad Rajan Baksh Shah:** Will the Government be pleased to state what was the total number in British forces who conquered

German East Africa from Germans during the Great War, and how many of them were Indians; what was the total number of men who were killed in the German East Africa war and how many of them were Indians?

Mr. E. Burdon: The total strength of the British forces which were engaged in German East Africa during the Great War is not known to Government. A statement giving the number of Indian personnel, combatant and non-combatant, despatched to East Africa during the years 1914-1918 is laid on the table.

To the second part of the question, the answer is that the total number of men killed amongst the troops sent from India was 1,654, of whom 1,497 were Indians. The Government of India have no information as to the total number killed amongst all the troops that were engaged in East Africa.

Statement showing the number of Indian personnel, combatant and non-combatant despatched to East Africa during the years 1914-1918.

Combatants—

Indian officers and warrant officers	825
Indian other ranks	33,633
Non-combatants	12,447
TOTAL	46,905

LEGAL RIGHTS OF INDIANS IN KENYA

178. **Mukhdum Sayad Rajan Baksh Shah:** Will the Government please say whether in connection with the present disputes in Kenya (East Africa), the Government has had some correspondence with Nairobi and the Imperial Government, about the legal rights of the Indians? If so, will the Government kindly lay that correspondence on the table?

Mr. J. Hullah: The reply to the first part of the question is in the affirmative. Government do not think it advisable to lay the correspondence on the table.

The Honourable Member is, however, referred to the answers given by me on the 15th and 20th January 1923 to questions asked by Messrs. Jamnadas Dwarkadas and Seshagiri Ayyar, and also to the announcement made by me on the 30th January 1923 relating to the postponement of the general election in Kenya.

HAJ PILGRIMAGE.

179. **Mukhdum Sayad Rajan Baksh Shah:** Will the Government be pleased to lay on the table the following information:

- (a) Number of Haj pilgrims who left India for Haj during the years 1910 to 1913 and 1919 to 1922.
- (b) In case of fall in the number of such pilgrims during the years 1919 to 1922, the reasons for the decrease may please be stated?

The Honourable Mr. A. C. Chatterjee: (a) The numbers were 73,878 and 57,614, respectively.

(b) The number of pilgrims has always been liable to marked fluctuations. Government have no special information as to the reasons for the decrease.

INDIANS IN MARINE AND AIR FORCES.

180. Mukhdum Sayad Rajan Baksh Shah: Will the Government please say whether efforts are being made to recruit Indians in the commissioned ranks of the Marine and Air forces, so that the Indians should have opportunity to qualify themselves for the marine and air militia similarly as fixed number of commissioned posts have been reserved in the inland military forces?

Mr. E. Burdon: The question of rendering Indians eligible for commissions in the Royal Air Force is under consideration. Indians are not eligible for such commissions at present.

Indians are already eligible for commissions in the Royal Indian Marine. A committee to examine, amongst other things, the question of recruiting Indians as officers in the Royal Indian Marine has been appointed under the Resolution moved on the 12th January 1922 by Sir P. S. Sivaswamy Aiyer in the Legislative Assembly and accepted by Government, and the Committee is about to commence its inquiries.

INDIAN MILITARY COLLEGES.

181. Mukhdum Sayad Rajan Baksh Shah: Will the Government please quote the number and localities of colleges for military training in British India worked on the lines of such colleges in England, and state how many Indian students are reading in these colleges?

Mr. E. Burdon: The only college of the kind at present in existence in India is the Prince of Wales's Royal Indian Military College, Delhra Dun. The number of students now at this College is 50.

MOSQUES IN DELHI.

182. Mukhdum Sayad Rajan Baksh Shah: (a) Has the letter published on page 7 of the *Muslim Outlook*, Lahore, dated 28th January 1923, describing the pitiable condition of the mosques at Delhi, been brought to the notice of the Government?

(b) If so, whether any action has been taken to redress the Muslim grievances; if not,

(c) Will the Government kindly take necessary steps to secure that the mosques mentioned in the letter receive the same attention as the places of worship of other communities referred to therein?

The Honourable Sir Malcolm Hailey: (a) Yes.

(b) and (c) The Honourable Member's attention is invited to the statement I made in the House on 6th instant in reply to Mr. Seshagiri Ayyar.

ARMS RULE COMMITTEE'S REPORT.

183. Mr. Ahmad Baksh: (a) When is the Government going to give effect to the report of the Arms Rule Committee?

(b) Has the Government agreed on any point of the minute of dissent to the Report? If so, on what points?

The Honourable Sir Malcolm Hailey: I hope very shortly to be in a position to make a statement on the subject.

SALARY AND PENSION OF HIGH COMMISSIONER FOR INDIA.

The Honourable Mr. O. A. Innes: May I take this opportunity, Sir, of correcting a misstatement which I inadvertently made in replying to a question by Mr. Seshagiri Ayyar the other day. Mr. Ayyar asked me whether Sir William Meyer, the late High Commissioner, drew his pension in addition to his salary as High Commissioner. Acting on the information supplied to me, I replied in the negative; but being not quite satisfied I cabled Home to the High Commissioner for information and I find Sir William Meyer did draw his pension in addition to his pay as High Commissioner.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly: Sir, a Message has been received from the Secretary of the Council of State, which runs as follows:

"I am directed to inform you that the Council of State has, at its meeting held on the 15th February, agreed without any amendment to the following Bills which have been passed by the Legislative Assembly:

- 1. A Bill to supplement the Malabar Completion of Trials Act, 1922.*
 - 2. A Bill to amend and consolidate the law relating to the regulation and inspection of Mines.*
 - 3. A Bill to consolidate and amend the law relating to steam boilers."*
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RESOLUTION RE ADOPTION OF A POLICY OF PROTECTION.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, I rise to move the Resolution that stands in my name on the agenda paper. It runs thus:

"This Assembly recommends to the Governor General in Council that a policy of Protection be adopted as the one best suited to the interests of India, its application being regulated from time to time by such discrimination as may be considered necessary by the Government of India with the consent and approval of the Indian Legislature."

I need scarcely say, Sir, that this is one of the most momentous questions that have come before this House for obtaining the decision of the House upon. The decision that the House will give on this most vital question will, I need scarcely say, affect the future of India. This question has been before the Indian public ever since the advent of British rule in India and the House is also aware that respected Indian publicists, most of whom have now passed away and some of whom are still with us, have spoken in clear and unmistakeable terms as to the policy that India should adopt on this question. Unfortunately, situated as we were in those days, neither the opinion of Indian leaders or the Indian public, nor the opinion of the Government of India, even as it was then constituted, were paid attention to by those who were in authority in England. The fiscal policy for this country was dictated not by the Government of India in this country nor by the people of this country as represented in the Legislatures of this country but by the Secretary of State, and that, not even in the interests of this country but in other

interests. Ever since the inception of British rule in this country leader after leader has spoken unmistakably on the question of India having the right to decide its own fiscal policy and most of the Indian leaders have condemned the policy of free trade forced on this country, a policy which was dictated by interests other than our own. You find, for instance, Mr. Gokhale calling the fiscal policy that was forced on this country "the darkest spot in the administration of India." You find men like Romesh Chunder Dutt condemning the policy which was largely in the interests of other countries than India. You find men like Ranade condemning the policy of forcing free trade on this country which brought about the economic poverty and the misery of the masses of this country. Time after time, not only outside the Legislatures, but even in the Legislatures the question was brought forward by Indian Members of the Councils asking for a voice on the part of the Government of India and the Indian Legislature in the determination of the policy that was best suited to this country. Unfortunately for this country the cry of the Indian leaders—and if I may add also, of the Government of India—was a cry in the wilderness. You will remember, Sir, and I am sure this House will remember that even in the earlier periods when the struggle between this country and Lancashire was going on in the Legislature itself, Members of the Government of India openly declared that the policy which was being forced on this country was not at all in the interests of this country and we were unfortunate enough to be compelled to continue a policy which was not of our seeking, which was not in our interest, but which was forced on us by other interests. Finally the cry of the Indian Legislatures and of the people of India culminated in the appointment of the Industrial Commission to find out whether or not there were possibilities in the country for industrial development. Even then, as the power to dictate the policy was in the hands of the Secretary of State and not with the Government of India, the question of the fiscal policy best suited to this country was precluded from the deliberations of the Industrial Commission. Mr. Montagu and Lord Chelmsford then instituted an inquiry into the political problem in India and we find in their Report that it is clearly stated that they believed that one of the greatest grievances of India was that they had no voice in determining their fiscal policy and that they were forced to adopt a policy which was not in their interests. As a result of the inquiry instituted by the late Secretary of State and Lord Chelmsford and as a result of their deliberations the Joint Parliamentary Committee made a recommendation in which it clearly stated that in future, after the introduction of the Reform Act of 1919, all questions of fiscal policy should be determined by the Government of India in consultation with the Indian Legislature; and in cases where the Government of India and the Indian Legislature were in agreement the Secretary should cease to interfere. It was in accordance with this recommendation that the demand for an inquiry into the best policy suitable for this country was renewed here and ultimately a Commission was appointed to conduct that inquiry. We are here to-day to discuss the recommendations made by that Commission and to decide as to whether we should adopt the recommendations made unanimously by the Commission or whether we should continue to bless the policy which has brought about serious consequences in this country, which has brought about a state of economic dependence incomparable in the annals of the history of the world. India had once the reputation of being one of the richest countries in the world. To-day, as the House knows, it has the reputation of being one of the poorest countries in the world. Its dependence to-day is almost entirely, on land; and in years of famine especially, one feels in the words of Lord Curzon that

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"the resisting power of the people is practically nil." The Fiscal Commission has made recommendations. I do not want to go for the moment into the differences that exist between the Report that is signed by all the members of the Commission and the views laid down in the note of dissent that has been recorded by the minority. Because, although one feels that there are some points on which a difference exists it cannot be denied and I am sure my Honourable colleagues on the Fiscal Commission here will bear me out when I say that so far as the fundamental question is concerned the Commission has come to a unanimous conclusion. I may also be permitted to say that in my opinion a few of my colleagues started with a bias in favour of a policy of free trade and after the examination of witnesses, after a perusal of the written evidence that was submitted to us, and after the deliberations that were carried on in our meetings, they came to the conclusion that, all said and done, the policy of protection was best suited to the interests of this country. It is to the credit, I think, of the Members of this House that even on this Commission, where members of both the Indian community and the European community worked together, not much difficulty was felt in deliberating this question of vital importance, round which so many controversies have raged in the past and that so far as the fundamental conclusion is concerned we were practically unanimous. The Commission has recommended that the policy of protection is best suited for this country and that this policy of protection should be applied with discrimination. The Commission examined the economic situation that exists in this country. The Commission found that the dependence of the mass of the people was too much on land. The Commission found also that the argument that if India went in for industrial development, it would be at the cost of agriculture, had no force in it, because the population that could be drawn for the purpose of industrial development assuming even that industrialisation went on at a very rapid pace, would not be so large as to affect the work of the agricultural population in any way, that considering that more men were now engaged in agriculture than it was necessary or wise for them to do, it would be a help to the agricultural population if members of their families devoted themselves to the work of industrial development in this country. Not only that. But the Commission also found that if a policy of protection were adopted, and if as a result of it the wealth that is now drawn away from the country would remain in the country, the country would be the richer for that, the country would then have better resources at its disposal to be used towards the furtherance of the irrigation policy which would ultimately go to increase the prosperity of the agricultural population. Incidentally the Commission found also that, apart from being a hindrance to the agricultural population, a policy of industrialisation would go a great way in placing at the disposal of the country resources which could be used for the furtherance of the agricultural policy of this country; for, the object of the policy of protection and thereby encouraging industries in this country is mainly to keep the wealth of the country in the country itself. The wealth that is now being drawn away from the country by the necessity of importing from foreign countries manufactured articles and exporting from here raw materials which could be very well used for producing manufactured articles at much cheaper rates if a policy of industrialisation was adopted will remain in the country which would be the richer for that. At present what happens is that most of our manufactured articles are imported from foreign countries. Many of these articles are produced out of the raw materials that are exported from this country. The raw materials are the real wealth of the

country, but the use of this real wealth of the country is made not by this country but by other countries, for these raw materials are sent back to this country in another shape; only the country has to pay a much larger price for these articles than the price the country received for the raw materials out of which these articles were manufactured and sent here. If we could by adopting a policy of reasoned protection encourage the industrial development of this country, we could make use of these raw materials here so as to save us all extra cost that we pay for the manufactured articles that are imported. We found that the only remedy for solving the economic problem of this country was to go in for a bold policy of industrialisation so as to keep the wealth of the country in the country itself and not to allow foreign countries to take the benefit of the abundance of raw materials and other conditions that are favourable to industrialisation which exist in this country. It is a fact, Sir, that India possesses a natural genius for industrial development, for, all those who have studied the ancient history of this country know full well that this country had never depended entirely on agriculture, that there were times when the industries of this country prospered, that there were times when the articles manufactured in this country were not only used by this country itself but were even exported outside this country. I admit that the invention of machinery was probably the first reason that hurt our trade outside this country, but to say that this country does not possess an industrial genius, which is the *sine qua non* of industrial development, is to show a complete ignorance of the facts of history. That this country possesses a natural industrial genius, and that it is rich in raw materials and other natural resources cannot be denied by any one who has studied even the Report of the Industrial Commission. That the country has also a large labour supply is a fact which is beyond question. As a matter of fact, I feel that it contains such a large labour supply that even if the attention of a fraction of our population was diverted by a policy of industrialisation to work in factories, it would bring about very good results indeed.

Another argument that has very often been used is that the capital of this country is shy. Now I admit that to a certain extent that argument does hold water. But why has the capital of this country been shy? Honourable Members will realise that the capital of this country has been shy not because that the people were not willing to invest in industrial enterprises, but because they had no confidence in the policy of the powers that be, because the policy that they dictated was not in the best interests of this country but it was in the interests of other countries. Just consider for a moment what the situation was when a natural protection was afforded during the war. Was the capital of the country then shy? Has it not been the experience of all of us that in those days when an opportunity was offered by a natural protection given to this country by the war that capital could easily flow wherever there was need for starting industrial concerns? And if a stable policy and a more steady policy in the interests of this country were decided upon by the Government of this country, then I have not the slightest doubt in my mind, and I am sure Honourable Members will have no doubt whatsoever, that it will not be a difficult proposition to induce the people of this country to allow their capital to flow for the purpose of promoting industrial concerns. But apart from that, I am not one of those who shut out the possibilities of allowing foreign capital in this country for the purpose of helping the industries of this country. Under certain limitations imposed as a consequence of the concessions made in their favour by a tariff protection and other forms of

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protection, I should certainly welcome foreign capital to flow into this country for the purpose of building up the industries of this country. But I repeat that I would allow it only under certain limitations imposed by Government. So far as the question of concessions, licences, monopolies, contracts is concerned, the Government themselves have declared the policy of imposing certain limitations on foreign capital. I shall go a step further and impose those limitations even in the case of industries which are started and which are given tariff protection. But that is a matter of detail. My point is that every possible advantage that a country can possess for the purpose of industrial development exists in this country. All that is needed is to give an impetus by means of a policy of protection which will stimulate the people of this country to go in more and more for industry to the ultimate advantage of this country itself. Now, we have, therefore, recommended a policy of protection to be adopted by this country. But we were not blind to the dangers that necessarily accompany the adoption of such a policy. We had the opportunity to see that no country that can boast to-day of having industrially advanced has reached its present stage without at one time or another of its industrial development adopting a policy of protection. Look at Germany, look at America. We do not want to copy the example of the United States of America. The tariffs are too high there, I admit. But look at Germany. Look at England itself, which has risen from a policy of protection to be a free trade country when it was able to stand on its own legs and hold its own against other countries. But, even to-day, those of us that have read the discussions in the House of Commons on the safeguarding of Industries Act and the debate on the dye-stuff question, know full well that the policy of protection is still being resorted to by England where its interests conflict with the interests of other nations. Take the example of Japan. Mr. Montagu and Lord Chelmsford pointed out in their report that India always holds up the example of Japan, which, in our own times and having started on its industrial development long after we established our factories here, has reached a stage of industrial development by which it holds its own against other nations of the world. What is that due to? A policy of protection. A policy in which the Government and the people combine for the furtherance of the interests of their country. We have then the example of other countries none of which has reached its present stage of industrial development without having resorted to the policy of protection at one time or another of its industrial development. But, as I said, we were alive to the dangers that would naturally accompany the adoption of such a policy and therefore we have provided safeguards in our recommendations which would minimise those dangers. For one has got to remember this, that, if this country after a period of continuance of the policy of free trade which has rendered it helpless and incomparably poor and miserable, if it adopted a policy of protection with a view to rapid industrialisation, although the ultimate gain to the country would be certain, the period of transition would be fraught with great dangers to this country, if proper safeguards were not provided in the recommendations of the Fiscal Commission. What would be the danger? The danger would be that it would unnecessarily raise the prices of articles of the necessities of life which ought to be made available to our poor countrymen at as cheap a rate as possible. Now, I admit that there is great force in this argument, and it is because I admit that, that, I think the Fiscal Commission has provided safeguards against it. Take our present

revenue tariff. No one who knows anything about the present revenue tariff can deny that the tariff rates are not quite low, that the necessity of larger revenues for meeting the heavy military expenditure of the country has forced the hands of the Government to resort to high revenue tariffs which do tell, I admit, on the pockets of the poor people of the country. But what an unscientific and arbitrary system of revenue tariff you have at the present moment. If you can adopt a policy of protection and replace this present arbitrary unscientific system by a scientific tariff system which would bring into the coffers of Government the revenues that they require for their legitimate purposes and at the same time go a great way in helping the industries of this country, then, it seems to me that it would be futile to deny that that policy should be acceptable to the Government and the people of this country. I hold that, if proper discrimination in the selection of industries were exercised, if proper discrimination was exercised in considering the claims of each industry by means of establishing a Tariff Board, as recommended unanimously by the Fiscal Commission, it would not be difficult to evolve a policy of protection with discrimination which would bring about prosperous results for this country, reducing to the minimum the burden that in the transitional period the people might have to bear as a result of the adoption of that policy. No one denies that in order to rise from the position of helpless dependence on other countries for manufactured articles to a position of self-containedness, one must pay a price. We do wish that that price should be as small as possible, that it should be reduced to the minimum that it is possible for us to reduce it to, and it is for that purpose that we have recommended that that policy should be applied with discrimination. There is a small difference here between the majority and the minority. Both recommend that the policy should be applied with discrimination. Both recommend that a Tariff Board should be constituted with a view to investigating the claims of various industries as they come before us. Both say that due regard should be paid to the conditions that are indicated in paragraph 97 of the Fiscal Commission's Report. But, while the majority in my opinion insists that those conditions should be rigidly and for all time applied, the minority dissents there and says while these conditions may go on for the moment, it is not wise nor right to tie down the hands of the Tariff Board or of the Indian Legislature and the Government of India to a rigid and permanent application of these conditions. In the light of experience that we might gain in the course of a few years, it might be possible for us to say whether those conditions should be made more stringent; or as the minority think that the conditions should be less stringent when the people are prepared to bear a greater burden than they are at the present moment in a position to bear. It is no use, therefore, says the minority, to tie down the hands of the Government of India, the Tariff Board and the Indian Legislature to a rigid and permanent application of these conditions. But that is a matter of detail again. But so far as the policy of protection with discrimination is concerned, the Commission is unanimous on the point that that policy should be adopted by this country. There were other differences also between the majority and the minority. For instance, on the question of foreign capital, about which I have already spoken. The minority is anxious that the object with which protection is being adopted in this country should not be frustrated.

As a result of the recommendation made by the Joint Committee the Secretary of State has no longer that power, but the Government of India and the Indian Legislature now enjoy that power. The House will

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remember that in those old days Mr. Gokhale pointed out that he would have no hesitation in recommending a bold policy of protection if the application of that policy was in the hands of the Government of India itself. But, he said, as the situation stood then, it was entirely within the purview of the Secretary of State to direct the application of a policy of protection. In that case, he said, the danger would be that influential interests in the foreign countries would persuade the Secretary of State to give them all the benefit of the adoption of a policy of protection, thus perpetuating the grievance that we have, that the wealth of the country is driven in one form or other from this country to other countries. That danger no longer exists. As a result of the recommendation made by the Joint Committee the Secretary of State has no longer that power, but the Government of India and the Indian Legislature now enjoy that power.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Not yet entirely so.

Mr. Jamnadas Dwarkadas: It was established by convention by the late Secretary of State when he refused to interfere at the request of the Manchester deputation with a conclusion that was reached by the Government of India and the Indian Legislature. I am sure the present Secretary of State will also respect that convention and respect the recommendation made by the Joint Committee. If it is not done, then I am afraid the policy laid down in the reforms will be futile and will create a good deal of suspicion in this country. I am not prepared for a moment to doubt the *bona fides* of the Secretary of State or of the Government of India so far as that policy is concerned. Now, the Government of India and the Indian Legislature will direct the application of that policy, and the danger that Mr. Gokhale thought existed then, no longer exists. But even then, if without imposing any limitations or any conditions we give the benefit of a policy of protection to foreign capital, we might probably be running into some danger of the wealth of this country being driven away into other countries as a result of the adoption of that policy. That is why on this question the minority would like to extend the application of those conditions which are accepted by the Government in certain instances also in the case of industries which are under tariff protection. Then there is another question dealt with by the Commission with which, for the present at any rate, we are not concerned, and that is the question of Imperial Preference. I am informed that a discussion on this subject, if at all it is raised, will be raised on a subsequent date. I am not concerned with that question for the moment at any rate. Then there is the question of excise. I don't think I need go into the question now.

Mr. President: No, I cannot allow the Honourable Member to go into that question.

Mr. Jamnadas Dwarkadas: I am sorry, Sir, if I have exceeded the time limit. I shall try to bring my remarks to a close. With regard to export duties the Commission has laid down that export duties should not be encouraged and that the policy of having any export duties should not be adopted by Government and the Indian Legislature, for that policy hurts the interests of the growers. We were anxious to see if we could get further benefit of a policy of protection by imposing export duties but we have unanimously come to the conclusion after deliberation that that policy

cannot but hurt the interests of the growers in this country and therefore, except in the case of a monopoly like jute, we have excluded from our recommendations the question of export duty, altogether. I have in the brief space of half an hour tried to place the case for protection . . .

(An Honourable Member: " Three-quarters of an hour ".)

Mr. President: Order, order.

Mr. Jamnadas Dwarkadas: I do not think so. I have tried to place the case for protection before the Honourable Members of this House. I have tried to be as fair as I possibly could. I have avoided all references to controversial questions because no useful purpose can be served by raking up memoirs of the past. I have only dealt with what the future is concerned and I believe that if we bury the dead past and decide to launch to-day upon a policy of reasoned protection which will help rapid industrialisation in this country, we shall have done a great service to the permanent interests of this country. Not only that. But having launched upon a policy of encouraging the growth of those industries which are considered the key and basic industries of this country as recommended by the Fiscal Commission, we shall have established in this country itself those resources which will be our real wealth for all time to come, and not only our wealth, but they will be of the greatest advantage to the Commonwealth in times of emergency. In the time of war the resources that exist will be of the greatest advantage to the Empire. So, a policy of reasoned protection applied with discrimination will not only further the interests of this country but will enable India to be a tower of strength to the British Commonwealth in times of difficulty. It is for the House to choose which policy it will adopt. The country has for years past demanded that a policy of protection alone could give rise to industrial concerns in this country and would help the establishment of industries in this country. It is for the House, as I say, now to decide. I should only like to remind the Government of India that the fear that the Secretary of State is likely to interfere must be allayed by them unmistakably and in clear language. Whatever be the policy, let that policy be decided not by anyone who is not in this country but by those who are competent to decide it, namely, the Government of India and the Indian Legislature. I am convinced that this policy is in the interests of the masses of the country. I am not here to plead for the interests of a particular class or of a particular province. I am here to plead for the interests of the country as a whole and I want Honourable Members to remember that nothing should be more dear to them than the interests of the country, that the country is greater than the classes or the masses, and that every policy that is in the interests of the country should be resorted to without any reference to any class. Let me concentrate on one result that will be achieved by the adoption of a policy of protection. That result is that your country as a whole will be enriched, that the wealth that is now drawn away from your country will ever remain in this country, that your people will be prosperous, that your people will be rich, that your people will be happy and they will be more serviceable not only to this country but to the rest of the world by attaining to that position. I leave it to the House again as I say to adopt any policy that they like. The Commission never wanted industrialisation to be built on the shaky foundations of the poverty of the poor and the tremendous wealth of the rich. The Commission wanted that industries in this country should be built up on the solid foundation of the simultaneous growth of the prosperity of the

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classes as well as of the mass of the agricultural population and the labour population. It is because of that that the Commission has provided all those safeguards that are necessary in the adoption of the policy of protection. I commend this Resolution to your vote. If the House decides that the policy of protection should be accepted, then I think it will be a red letter day in the history of this House; it will be a red letter day in the history of this country for, from a period of helpless poverty, we shall have taken a step which will ultimately enable us to reach a position of equality with other nations, of prosperity and happiness within our own country. Sir, I move the Resolution.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I beg to move that for the original Resolution the following be substituted:

"That this Assembly recommends to the Governor General in Council:

- (a) that he accepts in principle the proposition that the fiscal policy of the Government of India may legitimately be directed towards fostering the development of industries in India;
- (b) that in the application of the above principle of protection, regard must be had to the financial needs of the country and to the present dependence of the Government of India on import, export and excise duties for a large part of its revenue;
- (c) that the principle should be applied with discrimination, with due regard to the well being of the community and subject to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission;
- (d) that in order that effect may be given to these recommendations, a Tariff Board should be constituted for a period not exceeding one year in the first instance, that such Tariff Board should be purely an investigating and advising body and should consist of not more than three members, one of whom should be a Government official, but with power, subject to the approval of the Government of India, to co-opt other members for particular inquiries."

Sir, may I begin with one preliminary remark? I do not propose to follow the example of Mr. Jamnadas Dwarkadas in his speech on the original Resolution. I do not propose in any way to go into the controversial history of the past. If this amendment means anything at all, I am sure that the House will see that it means the wiping of the slate, that it rests for us to decide what the new writing on that slate should be. I entirely agree with the remarks of Mr. Jamnadas Dwarkadas made at the end of his speech that instead of occupying ourselves with the dead past we should concentrate on the future. And let me add one more remark. I do not propose again to follow Mr. Jamnadas Dwarkadas's example and I do not propose in any way to range at large over the field of the Fiscal Commission's recommendations. My purpose here is to put two practical questions to the Assembly. I want first to get a principle accepted, and secondly, to concert with the House measures to make that principle effective, and that, Sir, is the whole purpose of my amendment.

In moving that amendment, the Government feel, as I am sure this House realises, a heavy sense of responsibility. I will discuss later the exact implications of the terms in which my amendment is couched. For the moment, the point I wish to emphasise is that this amendment marks an epoch in the fiscal history of India. Hitherto, traditionally, our tariff has been a revenue tariff. I am free to admit that in recent years the character of the tariff has undergone a change. In the last year or

two, under the stress of our financial needs we have travelled far from our old policy of a light uniform duty on almost every class of import. Our general rate of duty is no longer light, and there have been breaches in the principle of uniformity. The general rate of duty is 15 per cent. ad valorem. On some classes of import the rate of duty is as high as 80 per cent. On other classes it is as low as 2½ per cent., and yet on other classes, there is no import duty at all. It is perfectly true that, as the Fiscal Commission has pointed out, in the framing of a tariff which contains such high rates of duty and such a wide variety of rates considerations other than those of pure revenue must have entered and I do not deny that they have entered, but the fact remains that the Government of India have never yet consciously adhered to the principle of protection as an integral part of its tariff policy. That is why I say that this amendment of mine marks a fundamental change of policy. For the first time, the Government of India ask the Legislature to agree to the proposition that their tariff policy may legitimately be directed towards fostering the development of industries in India. Some people in this House may think that we have hedged round the principle with too many reservations and too many safeguards. I will come to that point later. But what I say now is that in a matter of this kind, the all important thing is the admission of the principle. It is the first step that counts. As I said, the Government feel a very heavy sense of responsibility in asking the Legislature to take this step. We owe it to ourselves and to the country that I should give a brief explanation of the main considerations which have weighed with us in coming to so momentous a conclusion. But it is not my purpose to enter into any elaborate, any lengthy or any abstruse economic argument. That part of the case has been fully dealt with in the Fiscal Commission's report and I am content to leave it at that. My feeling is that this debate in the Assembly to-day will lose half its value if we attempt to deal with this vast and complex subject except on the broadest and most general lines.

Now, Sir, let me be quite frank. Some of us, Members of Government, have not come to the conclusion embodied in this amendment without deep searchings of heart and without forebodings. However authoritative the report of the Fiscal Commission may be, that report cannot and does not relieve the Government of its responsibility in the matter, and some of us cannot help feeling that there is cause for anxiety. If the result of our policy is that development of industries which we all have so much at heart, that is all to the good. But let us look at the other side of the shield. I am not concerned at present with the more obscure dangers which seem to be inherent in a policy of protection. I refer to the danger of political corruption and the danger of the formation of trusts. Nor am I concerned with the danger that the only result of our policy may be the fostering up in India of inefficient industries. But what I am concerned with is this. Whatever may be the merits of a policy of protection, I do not think that there is any one in this Assembly who can stand up and say that the argument is entirely propitious for the inception of that policy. It is no use blinking facts. We have to take into account the state of affairs as it exists in the world around us and outside us. Half that world has tumbled into ruin. It no longer exists as a customer, and that means that the remaining countries, especially those countries whose prosperity is bound up with their export trade, must fight more desperately than ever for the markets which still remain open to them. Moreover, in those countries, the potential productive industrial

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capacity has increased enormously owing to intensive reorganisation and extension during the War. Now those countries are faced with the spectre of unemployment. The manufacturers are fighting with their backs to the wall merely to keep their works open and their men employed. The workmen are accepting reductions in wages. Owners are foregoing profits. Shareholders are going without dividends, and vast reserves of inherited skill, aptitude and efficiency are being mobilised all to one end, namely, the bringing down of the cost of production. That is one side of the picture. It shows the sort of competition that India has got to meet,—better directed, more intense, more efficient,—economically than ever before. On the other side there is India. India has still to organise most of her industries; she is in most of her industries confronted with that most difficult and most protracted of all tasks, the training up of a force of skilled efficient operatives. While that task is in progress the cost of production must be high, and that means that however carefully we may discriminate, the measure of protection necessary to ensure the end in view cannot be small. And that again means that *pro tanto* our

12 Noon. policy of protection must increase the level of prices for the consumer generally and particularly for the agricultural and middle classes. There is no getting away from this fact. By discrimination we may mitigate the rise. But the fact remains, and it is so certain that I do not propose to argue it, that a policy of protection must mean an increase in prices in India. Now, I am well aware that many countries, most countries in fact, have gone in boldly for a policy of protection in spite of this disadvantage. But we are not considering the case of other countries. We are considering the case of India. We are not considering the case of countries with rich natural resources, with sparse or comparatively sparse populations and with a high standard of living like the United States of America and like Dominions such as Canada and Australia. People of countries like that can no doubt pay the inevitable price that protection demands. They can no doubt stand up to a high level of prices and a high level of taxation. But in India we have a country of 200 millions. Two-thirds of that population are agriculturists. Most of them are poor and the standard of comfort is low. One thing, I think, is certain. If the agricultural classes which form the bulk of the population in India were able fully to grasp the issues involved in this question of free trade *versus* protection, and if they were able fully to bring their influence to bear upon this Assembly, I doubt very much whether this Assembly to-day would accept my amendment. I doubt indeed whether I should be putting that amendment forward. The agricultural classes in every country in the world, I think I may say this with confidence, stand to gain the least and lose the most by a policy of protection. But even if we leave the agricultural classes out of consideration is there anyone in this House who can view without alarm, having regard to the conditions of India, the prospect of a substantial rise of prices following upon the development of a policy of protection. It is easy to speak of measuring prospective gain against immediate loss. It is easy to say that India must be prepared for a sacrifice. But surely the experience of the last few years has demonstrated even to the most unobservant the effect of high prices not only upon the public finances of India but also upon political, social and economic conditions throughout the country. Let this House remember that high prices have added to the wages bill for the Public Services in the last few years, 9 crores of

rupees. Let this House remember that high prices created a period of industrial unrest with all the vast economic loss that a period of industrial unrest involves, from which period we are only just emerging. I am aware that Chapter V of the Fiscal Commission's Report deals with this point, but naturally it weighs with peculiar gravity upon us, who are responsible for the Government of India.

Nevertheless we are prepared to accept the considered conclusion of the Fiscal Commission that on the whole the right policy to adopt is a policy of discriminating protection. The first point I have to make is this. I do not suppose that there is any country in the world where this question of free trade or protection has been decided on purely economic grounds. Some of you may have read Mr. Percy Ashley's book "Modern Tariff History." In that book he points out that even Lists' great work in which he developed the theory of infant industries and argued the need for protection to enable a country to pass from a purely agricultural state to a mixed agricultural and industrial state owed the widespread approval it received in Germany less to its economic argument than to the great political appeal it made to the necessity of maintaining, completing and strengthening German nationality. There is the same sentiment at work in India. On the one hand India aspires to Dominion status, that is to say, she aspires to political independence within the Empire. On the other hand she aspires to economic independence. She hopes that within the Empire she may be economically independent. And behind this national feeling there is the pressure of a real economic grievance. Every impartial observer views with sympathy. I think, the difficulty which confronts every middle class parent in India in finding a career for his son. The Indian parent hopes that industrial development will increase the avenues of employment open to the educated Indian boy, and will open up more and more avenues which will bring that boy into contact with the hard practical realities of business life. Again the Government of India in the last few years has been doing its best to encourage industrial development, and we have long recognised that the introduction of the Reforms would mean a change in the fiscal policy of India. Lord Curzon gave public expression to this feeling in his speech in the debate in the House of Lords on the Government of India Bill, and it was with full knowledge of the trend of feeling in India that in 1921 we appointed the Indian Fiscal Commission. That Commission contained not only distinguished Indians but also distinguished Europeans. It contained three Presidents or past Presidents of important European Chambers of Commerce. It is quite true that there was a difference of opinion. There was a minority report as well as a majority report. But I am not concerned at present with the differences in the Commission. What I am concerned with is the fact that the Commission was unanimous in recommending that a policy of protection was the right policy for India. That, Sir, is a very remarkable fact and naturally it is a fact which has weighed very greatly with the Government of India. And finally as Mr. Jamnadas Dwarkadas has pointed out the issue to-day is not a clear cut issue between a policy of protection and a policy of free trade. The stress of events has forced our revenue tariff to a point where it is no longer a pure revenue tariff, and the choice that lies before us to-day is the choice between a tariff with arbitrary protective effects, irregular in its action and with no certainty of continuity, and an attempt to regularise the position by remodelling that tariff, in part at any rate, on frankly protectionist lines. That is to say the logic of events has reinforced the pressure of public opinion, and that is why we

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have acquiesced in the policy which this amendment seeks to get accepted to-day.

I come now to my amendment. I am free to admit that it differs little in form from Mr. Jammadas' Resolution. But I have thought it only right and only honest that I should explain clearly what is in the minds of the Government of India. Briefly our position is this. We agree in principle to protection. We make it clear that the principle must be applied cautiously and with discrimination, and we accept the unanimous recommendation of the Commission that before the principle is applied in concrete cases there must be a previous preliminary investigation by an authoritative impartial advisory board.

I will now take the clauses of the amendment in detail. Clause (a) needs no remark on my part. It accepts the principle of protection. Clause (b) makes it clear that in the application of this principle of protection regard must be had to the financial needs of the country and to our present dependence on import, export and excise duties for a large part of our revenue. Partly this clause is intended to make it clear that we must take our financial situation into account in considering certain specific recommendations of the Fiscal Commission in regard to export duties, certain classes of import duties, cotton excise and the like. The House will remember that the Fiscal Commission has recommended that two export duties, the export duties on hides and tea, should be taken off altogether; it has recommended that the cotton excise duty should go and it has recommended also that no import duty at all should be collected on machinery and on certain classes of imports, such as raw materials for Indian industries, copra and sulphur being cases in point. And it has recommended also that in certain classes of industries the most suitable form of assistance is bounties. These recommendations involve either a direct sacrifice of revenue or direct expenditure on the part of the Government of India, and I think that it will be clear to every one that, in considering recommendations of this kind, we must take careful note of the state of our finances. Partly again, the clause is intended to mark the need for caution in whatever advances we make. The House knows the importance of customs receipts in our Central revenues. Certain figures have been given in paragraph 25 of the Fiscal Commission's report; they are not quite correct, but I will give only the salient figures. In 1913-14 Customs revenues accounted for 13.7 of the total receipts of the Government of India; in the current year we have budgeted for a net Customs revenue of 45.11 crores of rupees, that is, 34 per cent. of our total revenues. Moreover, our basis of taxation is narrow, and I think that most people here will agree that we are perilously near the limit. It is true that strenuous measures may enable us to reduce our expenditure at a price; on the other hand we have over 9 crores of provincial contributions which we are pledged to reduce and ultimately to abolish. I do not wish to make too much of this point. After all, one of the main advantages claimed for a policy of protection is that industrial development will add ultimately to the wealth, and, therefore, to the taxable capacity, of the people. My point is that the transition period must be difficult, and that we must always keep in view the danger of disorganising the public finances by too rapid and too violent action. Sir, it would have been easy for me to omit all reference to the financial situation. After all, we are concerned to-day solely with the principle of protection, and it would have been easy for

me to omit all reference to the fact that the financial situation may operate as a brake on the application of that policy. But, Sir, the fact stares us in the face, and would it be honest for a responsible Government and for a responsible Legislature to shut its eyes to that fact?

I now come to the third clause, Sir, and, here again, I do not propose to say much. After what I have said, every one in the House will, I think, agree in the unanimous recommendation of the Commission that the principle of protection must be applied with discrimination, and, if we admit that discrimination must be exercised, I cannot think of any better criterion than a criterion based upon the well-known economic doctrine of comparative advantage. After all, what does it mean? It merely means this that we should concentrate our efforts on those directions where effort is most likely to prove fruitful of good to India.

In some ways the last clause of my amendment is the most important of all. The House will have noticed that I have made little mention of the difference between the majority and the minority reports. I have done so deliberately. I have not occupied myself with the question, as it was put to me, whether our protection should be protection with a big P or protection with a little p. The point to fasten on is that the Commission unanimously agreed in the recommendation that a policy of protection should be adopted and, whether we agree with the majority or whether we agree with the minority, it must be clear to all of us that the operative part of both reports is the Tariff Board. From the nature of the case both the reports deal mainly with generalities, and the one main, concrete, proposal made is that a Tariff Board should be appointed. Now, if I have carried the House with me so far, I think they will agree with me that, having accepted the principle of protection, the next step must be to decide what industries need and deserve protection and what kind or measure of protection they should get. There is, of course, a third question. There is the question whether we can afford to give the measure of protection recommended. That will ultimately need the decision of the Government and the Assembly, though even in the preliminary investigation it must be borne in mind. For the investigation of these first two questions, we agree with the Commission that what it calls a Tariff Board must be appointed. We feel that in questions of this kind a more detailed investigation is necessary than a Government Department can undertake, and, moreover, an investigation of a different kind. In many cases the interests of more than one industry will be affected; in many cases again there will be what the Fiscal Commission calls a conflict of interests. Each and every industry affected must be given a hearing, and that is why we think some kind of Board is necessary. It is quite clear, I think, that the duties of this Board must be purely of an investigating and advisory nature, as indeed the Fiscal Commission recommends. So far the matter seems clear enough, but there are many difficulties. The first question is whether the Board should be a permanent Board or a temporary Board. Now, I am quite prepared to admit that, if our policy is successful, we may require, if not a permanent Board, at any rate a Board for a long period of years. For industries tend to beget industries; but there are obvious dangers in a permanent Board. It may become an incubus rather than a help. Even in the United States of America the Tariff Commission at one time tended to become merely a sort of glorified Commercial Intelligence Department, very useful no doubt, but entirely beyond the resources of India at present. We think that the wisest course is to create a Board

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for one year in the first instance on an experimental basis. At the end of that year we can take stock of the position. We can see how the Board has worked; whether it needs alteration; we can decide whether to expand it or modify it, or whether to abolish it altogether and try some other expedient. That is to say, we follow the Australian precedent rather than the American precedent. Australia began by appointing its Board for two years in the first instance. We are in favour of this course for another reason. It assists in the solution of two other difficult questions, one the constitution of the Board and the other the exact relationship of the Board *vis-à-vis* the Government of India. I take the constitution first. I am aware that the minority report recommends that of the three Members of the Board two should be elected by the Indian Legislature, but I hope the House will agree with me that it is quite impossible for the Government to accept this suggestion. If we accept responsibility for a policy of protection, and, if we appoint a Tariff Board in order to help us in working out that policy, we must also accept responsibility for the constitution of the Board. What is the main essential of the Board which shall play such an important part in the working out of our policy? It is this. We must be able to rely on the Board for a perfectly impartial investigation of all relevant facts before it makes its recommendations. That is the first essential. The Board must be entirely impartial. No extraneous considerations of any kind must enter into its composition; and that is why I hope the House will not think that I am casting any reflection upon the Indian Legislature if I say that the Government feel that they must retain in their own hands the duty, or rather the responsibility, of appointing this Board. They cannot delegate that duty to anyone. They cannot trust to election even by the Indian Legislature.

Then again we have had some difficulty as regards the exact relationship of the Board to Government. If the House agrees that we should adhere to a policy of protection, then I am sure that it will also agree that we should take steps at once to make that policy effective and make it effective as rapidly as we can. That is to say—and I have particular reasons for this—I should like to set up the Tariff Board at once, and I should like to make such arrangements as will enable us to get quick decisions upon the recommendations of the Board. That is, why, again following the Australian precedent, we have proposed that one member of the Board should be an official of Government. He is not intended to represent the interests of Government as if those interests were in any way divergent from the interests of the country. I hope I have made it clear to-day, in this speech of mine, that in this matter our interests and the interests of the country are, we hope, entirely identical. (Hear, hear.) The Board will be empowered to investigate the question which industries deserve protection, and what measure and kind of protection is needed. In framing its recommendations it will of course have to bear practical considerations in mind. It will have to try to frame such recommendations as can be accepted and as are practicable. Now that is why we think it advisable to have one of the members an officer of Government. He will act as a Liaison Officer between the Board and the Government. He will assist not only in keeping in touch with the officers of Government but he will assist in formulating recommendations. If we have a Board which is entirely independent of Government, what will be the result? We shall get its recommendations. There will be three departments of the Government of India which will be concerned—the

Department of Commerce, the Department of Industries and the Department of Finance. The usual lengthy noting, which is a feature of the Government of India system, will go on. There may be disputes. The cases will then have to go to Council, and there will be inevitable delay. That is the reason for our proposal. We hope that in this way, by this device, we shall be able to get a quicker and an earlier decision upon the recommendations of the Board.

Sir, I am afraid that I have detained the House for a very long time; and even so I fear that I have been able to touch only the fringe of a very big and a very difficult subject. In our view the first essential in dealing with the recommendations of this very important Report is to get a decision on the question whether the policy of protection should be accepted, and if so, whether or not immediate steps should be taken to get that policy made effective. It is for these reasons that I have concentrated on these two main points. I quite admit that there are other important recommendations in the Fiscal Committee's Report and those recommendations will receive full consideration in due course. But it seemed to us to be useless to proceed to the consideration of those recommendations until we had got a decision on the main question of principle. Some people in this House may think that even on the main question of policy we have made only a grudging advance in the direction in which the House wants us to go. But I am sure on reflection the House will not endorse that opinion. We are dealing with a matter of vital importance. Our decision must have the most momentous consequences for the people of this country. In deference to what we know to be the strong feeling in this country, and for other reasons which I have explained, we are prepared to adopt a policy of protection. We accept the unanimous view of the Fiscal Commission that the principle must be applied with discrimination, and we are ready at once to set up the machinery which is necessary for the application of the principle. I hope the House will realise that we have done our best to identify ourselves with the aspirations which we know to be common in this country (Hear, hear.) But I am also confident that the House will recognise that a Government, placed as we are, are entitled, in dealing with this important question, to lay it down that the only safe and prudent course is to proceed with a proper measure of caution.

Sir, I commend my amendment to the House. (Hear, hear.)

Mr. Jamnadas Dwarkadas: Sir, there is only one difficulty with regard to (c). I thought the Honourable Mr. Innes read "with due regard to the well-being of the community and to the safeguards suggested," not "subject to the safeguards suggested" as printed on the paper.

Mr. President: Does the Honourable Member accept that?

The Honourable Mr. C. A. Innes: Yes, Sir, I am prepared to accept that in clause (c) of my amendment the words "subject" be omitted.

The proposed amendment was adopted.

Mr. J. P. Cotelingam (Nominated: Indian Christians): Sir, with your permission I would ask the Honourable Member if he would accept a slight amendment also in clause (d), namely, the omission of the word 'may'.

Mr. President: No, I cannot permit it. That is a substantial amendment which ought to be on the paper.

Mr. Campbell Rhodes (Bengal: European): Sir, as representing what may be called the other wing of the Fiscal Commission, I have very much pleasure in supporting the general conclusions at which my Honourable friend and colleague, Mr. Jamnadas Dwarkadas, has arrived in his Resolution. It is quite true we arrived by different paths. He chose the pleasant field path of national idealism which lies, I am afraid, sometimes very close to the quagmires of political and racial hatred. (Mr. Jamnadas Dwarkadas (and other Honourable Members): "No, no.") Whilst I travelled along the hard, dusty high road of plain economic truth, and therefore, Sir, I must be forgiven if perhaps I raise a little dust. I think one thing can be said of our Report, that it was an honest report; that we started with no preconceived ideas. We did not try to make out a case. Whenever we found a difficulty, whenever we found an argument against the conclusions at which we eventually arrived, we frankly put it down and therefore in our report I think are contained all the pros and cons of the question. I am in a little difficulty, Sir, as to whether I should support the proposal of my Honourable friend, or the amendment which has been put forward. At their annual meeting in January, the Associated Chambers of Commerce in Calcutta, over which I had the honour to preside, passed a Resolution, which has not yet been published, by an overwhelming majority. I think one Chamber only dissenting—very much on the lines of the amendment moved by the Honourable Mr. Innes, and therefore it is best perhaps that I should incline to the amendment. Well, Sir, what are the reasons which caused this wonderful unanimity in our general conclusions? We have been criticised both here and in other countries; but one criticism has never been directed against us, that we were a happy family playing at follow my leader. Mr. Jamnadas has referred to the cloud of witnesses. Well, some of those witnesses, Sir, were not helpful. National aspirations for self-determination and for self-development are admirable; but many of our witnesses seemed to think that because a thing was right for England it must therefore be wrong for India, and some of them seemed to think that in order to benefit India you must injure England. I do not think those arguments impressed us. A somewhat similar class of argument exists in England also. England has always laboured honestly under the impression that if a thing was right for England it must therefore be right for India; and in that, I think, lies a great fallacy. Mr. Innes has put his finger on the spot in this matter of unanimity. We did not find a clean slate. Had we done so, those who had preconceived notions of free trade might have tried to elaborate a free trade policy for India. We have not got that at the present time. We have a haphazard protection masquerading in the form of free trade. In all the criticisms by what I may call the whole-hog free trader since that report was published, I have seen no constructive criticism as to how we should have proceeded to produce a real free trade system for India as it exists, and I think rightly exists, for England. England depends for its revenue chiefly on direct taxation. Direct taxation in India can take two forms, one from the limited number of the wealthy from which sufficient revenue could not possibly be got; and the other by an increase in some of the existing direct taxation; for, obviously you cannot collect direct taxation of four annas or eight annas per head from the masses of the people. That means land taxes, and I think the Commission were convinced, whatever the rights or wrongs of increasing land taxation might be, that it was a physical impossibility to do so. In regard to import duties England is careful to keep her import duties confined to a few commodities which not only are not produced in

England but cannot be. If we look through the import list of goods coming into India, I think we could claim that, theoretically at least, practically everything that comes in could be manufactured in this country and therefore a logical free trader would have to put excise duties not only on all local manufactures but threaten to put excise duties equivalent to our import duties on everything that came into the country so as to warn local manufacturers that they must not start industries under the protection of these revenue duties. We have thus not had the advantage of free trade to which I shall refer in one moment. We have not had the advantages of protection. As was pointed out by two very able witnesses, Mr. Shakespeare of Cawnpore and our Honourable friend, Captain Sassoon of Bombay, these high revenue duties were of no advantage as long as there was no security. They were sufficiently high to protect but there was no security and therefore the whole of the advantage that might be derived from these duties was lost. I consider these duties at present are high enough for the class of protection with which India should experiment. Mr. Jammadas advocates a self-contained India. I know it is a popular ideal. He says it would be a great standby in time of famine. Has Mr. Jammadas ever heard of that happy island in the Pacific where the people gain a precarious living by taking in each other's washing? What will happen in a famine year if we are self-contained? The food supplies will fall off; you have a big industrial population to feed, the industrial population depend for their custom on the world and by the process of taking in each other's washing Mr. Jammadas hopes the country will thrive. I must warn Mr. Jammadas colleagues from Bombay that if that is the vision before you your wails will immediately stop working, for the demand for clothing will be satisfied not by Bombay but by Bengal. The country will then need to clothe itself only in sack cloth and ashes. I am not one of those who are so very pessimistic of the progress so far made. Industrial progress hitherto, in large factories at least, has been confined mainly to the temperate zones; we call them temperate but the real fact is that the rigours of the climate drive people to choose indoor occupations. Now, India stands alone, it is not only the foremost industrial country in the tropics, but is the only industrial country in the tropics. I admit the pace has not been fast enough, but I think it is wrong to overstate our case and say that there has been no progress whatsoever. I think that would be a reflection not only on the Scotsmen in Calcutta but on my Indian friends in Bombay and elsewhere. The Honourable Mr. Innes has drawn attention to the fact that this is an inopportune time to start a protectionist policy. I agree in a certain measure, but every business man knows that it is in times of dull trade that you put your house in order so as to be ready when good trade comes; and in that sense I think this is the most opportune time to make a start. Mr. Jammadas has mentioned the controversy between India and Lancashire or, as I would rather say, between Bombay and Lancashire, because the Punjab, Bihar and Bengal have never had any quarrel with Lancashire. (A Voice: "They are beginning to have.") I do hope that after this debate to-day one fact will emerge, that we agree to bury, and that our Resolution will bury, this old animosity. (Hear, hear.) (A Voice: "Let Lancashire follow suit.") I have put my signature in this Report to that Chapter which recounts that regrettable history, let us be frank, of the interference of Lancashire with India's self-determination. But we must also remember that Lancashire has always been in the forefront of all political efforts of nations all over the world, including India, to develop self-Government and it is pathetic that, owing to the fact that she supported the Reform

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Scheme in India, she is the first in a measure to suffer. At the same time, I am not prepared to believe that there is any real conflict between the two. Bengal requires double the amount of cloth than she uses now. She has a limited amount of money to spend on cloth, and as has been pointed out in the Dissenting Minute, in a quotation from a speech which I made in this House, 10 yards per annum per body is not sufficient. We therefore require all that Bombay and Lancashire can give us, and we also, I think, have a right of speaking for the people of Bengal, to buy what clothes suit us best. Therefore, when we get that Tariff Board at work, we shall find the conflict is not between Bombay and Lancashire, for I would draw Honourable Member's attention to that very illuminating sentence in our Report which says that "if we get rid of this conflict between Bombay and Lancashire, the Tariff Board will then be in a position to decide the real point at issue, and it will no longer be a matter between Bombay and Lancashire but between the Indian producer and the Indian consumer". There will, therefore, be conflict. There will be if we establish protection, a desire on the part of the manufacturer to consider his interests perhaps before those of the consumer. That has been so in all countries, and it will be no greater in this country; it may even be less. My Honourable friend, Mr. Townsend, will remember when he and I some years ago went down to Bombay to arrange standard cloth for the poor of Punjab, Bihar and Bengal, that we met with a most sympathetic response from the Bombay Millowners, and I am still grateful for what happened in the budget debate last year when they supported my amendment for the reduction of the import duty. I do not know what secrets are locked up in the breast of the Honourable the Finance Member, but I can let out one secret that, if he proposes to put up the duty this year, there will be at least one vote in the lobby against him. It is this possible conflict of interest between province and province, between industry and agriculture, between industry and industry, which has caused us to recommend in the best interests of India that the adoption of a policy of protection should be applied with discrimination along the lines of our Report. We do not recommend a rash and reckless plan of protection, for we believe that that way leads to disaster. We do not recommend the present haphazard system of protection masquerading under the guise of free trade. We do not recommend that our policy should be settled for us by any one outside this country. (Hear, hear.) We recommend protection not only of the interests of our industries but of the interests of the agriculturist. We recommend protection, by the exercise of wise discrimination, of the consumer. If I may misquote in conclusion a famous democrat, I would say that we have recommended protection of the interests of the people in this land, by the people in this land, and for the people in this land.

Mr. O. A. H. Townsend (Punjab: Nominated Official): I regret, Sir, to have to turn this debate to a provincial aspect, despite what the Honourable Mr. Innes said, but I come from the Punjab and the views which I am about to put forward represent, I think, not only the views of a great number of people in that province but perhaps also those of other agriculturists in other parts of India. Now, Sir, the Punjab is and must continue for very many years, so far as I can see, even under protection, to be an agricultural and not an industrial province, and to put it briefly, many of us think that under a policy of even discriminating protection, however much you may discriminate it, we will certainly suffer, at any rate, for very many years to come. The great majority of our Punjab people are agriculturists, pure and simple. We have but few minerals,

no cheap waterways to help our transport, and practically no coal: practically all the coal we use has to be brought many hundreds of miles by rail from the Bengal coal-fields, and costs at least Rs. 5 per ton more in Lahore than in Cawnpore owing to the longer railway journey.

The Punjab generally exports raw materials and imports manufactured articles. On the average of the last five years I find that no less than 84 per cent. of Punjab exports—not all to foreign countries—consisted of raw materials, and 66 per cent. of our imports was manufactured articles. Of the balance much was food for our cattle. And, Sir, despite what the Honourable Mover said on the subject, labour in the province, both skilled and unskilled, is both scarce and dear, and costs more than in the neighbouring United Provinces, thereby placing us at an additional disadvantage compared with it from the industrial point of view. Nor will our difficulties in this matter get less, when the large tracts of the country which will be irrigated by the Sutlej Canals, now under construction, come under cultivation. Whatever degree of protection, Sir, may be introduced, I can never visualise the sandy tracts of Mianwali or Multan or the arid country lying to the south of the Sutlej as industrialised. Again, Sir, as Mr. Calvert, the Registrar of Co-operative Societies in the Punjab, points out in his book "The Wealth and Welfare of the Punjab," to which I am indebted for much of what I say this morning,—we are handicapped in this matter by our geographical position. Assume industries to become successfully established in the province, where are we to find a market for our manufactures? The Punjab is bounded on three sides by countries which offer no market for its products. Kashmir, Ladakh and Tibet lie on the north, on the west Afghanistan and Baluchistan, on the south Rajputana, sparsely populated and undeveloped. None of these regions have sufficient population to make them satisfactory markets for our manufactured goods. It is often said that an ounce of fact is worth a ton of theory. Well, here is an ounce of fact. During the war, one of the few Cotton Weaving and Spinning Mills in the Punjab came into the market. It was purchased lock, stock and barrel, by a firm in Bombay. Instead of using the factory, as it was, in the Punjab, the purchasers found it to their advantage to remove all the machinery of the mill at very considerable expense to Bombay, where it was, I understand, used in a new mill, and the shell of the building is still standing, a sad monument to Punjab industries, decaying and unused. Briefly, Sir, many people in the Punjab fear that a policy of protection for India will only impoverish the agriculturists who form the great majority of our people at the expense of those parts of India which are already manufacturing centres, as Bombay and Calcutta. During the war, Sir, the industries situated at those places had in effect, as Mr. Jamnadas Dwarkadas said, protection. I hold in my hand a well-known commercial paper and, glancing down the dividends paid by the Bombay Cotton Mills for the years 1918—1921, I see the figures of 50, 60 and even 100 per cent. Now, in the Punjab, Sir, during those years, cotton cloth and yarn, much of which came from Bombay, went up nearly 100 per cent. in price. Mr. Jamnadas Dwarkadas did not mention, I notice, this point when he discussed the effect of the war on Indian industries.

In this connection, I might criticise incidentally the personnel of the Fiscal Commission. I do not know if I am in order in doing so. It was composed of eminent men, but the eminence of, at any rate, the great majority of them was that of either successful business men or professors

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of economics. No one of them, I think, had attained any great eminence as a "consumer," though I readily admit it is not easy to find a "consumer" such as I would like to find in this connection. Punjab agriculture, and agriculture generally in India, asks for free trade, whatever industries ask for. The great majority of our people wish to import what they require free of duty and also they ask that no restrictions should be placed on the export of their products, which are, as I have said, generally raw materials, though of course we would not object to a very small cess designed to help our agriculture as the proposed cotton cess. It is true, Sir, that the Commission decisively pronounced itself against any policy of export duties on food grains. For this relief much thanks. But experience in all protected countries of the world shows that a policy of high protection on imported goods eventually has the effect of reducing the prices that other countries are willing to pay for the exports of protected countries, and it is possible that in the long run our Punjab exports of raw materials may suffer in this way.

Before I conclude, Sir, I wish to say a few words on the question of protection for India as a whole. The example of America as a country which has successfully adopted protection is often quoted in India. Well, Sir, let us see what Professor Taussig, an American Professor of Economics, whom the Commission itself calls distinguished, has to say on the subject. After discussing in detail the pros and cons of the relative advantages and disadvantages of protection to the United States, he comes to the considered conclusion—I quote his own words—"that there probably remains a heavy debit balance against protection."

Mr. Jinnadas has quoted, approvingly, the example of Japan in this matter and has urged India to follow the example of that country. Well, Sir, let me give him an extract from Mr. Calvert's book to show how Japanese industries have been faring recently:

"The expansion of industries in Japan in recent years was abnormal and unhealthy. In 1919, for example, there were erected 2,700 factories, involving a capital of 522 million yen, but depression set in and a great slump in business followed, and many failures ensued. The unbridled speculation and wild company promotion led inevitably to severe reaction. In the single month of June 1920 no less than 134 Joint Stock Companies went into liquidation."

There is, Sir, all through India a wide belief that the mere introduction of protection in India will, *ipso facto*, cause industries to spring up on a large scale all over the country; that there is in the mere word a charm, as in Abracadabra. Believe me, Sir, never was a greater mistake made, so far at any rate as the agricultural provinces of India are concerned. Of the three tests laid down by the Tariff Commission which industries claiming protection must face, the third test is infinitely the most important. It is that the industry to be protected must be one which will eventually be able to face world competition without protection. The last few words are all important. The intention is that the protection given should in no case last for ever. Professor Taussig calls this test the decisive test. Well, Sir, experience all over the world shows how difficult it is, once protected duties are imposed, to take them off; each protected industry, when a proposal is made to remove protection from it, sets up a howl. Professor Taussig says:

"We are told in the same breath that prices have been brought down and a flourishing industry brought to maturity, but at the same time, that the duties must not be touched."

Particularly from this point of view, but indeed generally, I do not envy the proposed Tariff Board in the discharge of its duties. What is said on the subject by another distinguished American Economist is in point. He says:

"Protection involves political corruption on a gigantic scale. One has but to witness the scenes in and about the Committee room when a tariff is being framed in the United States to realise that there exists no more potent engine of political demoralisation: section is pitted against section, interest against interest, and business against business; and the final decisions arrived at are only the results of log-rolling and a series of unholy alliances."

I direct these remarks to the attention of the House. I am only too well aware, Sir, that vocal Indian public opinion and sentiment is very strongly in favour of protection, and sentiment will largely influence the decision which will be come to in this matter by the House to-day. I would ask it, however, not to let sentiment in this matter be entirely separated from economic considerations, and also to remember that the decision they will arrive at, as was well said by Mr. Jammadas Dwarkadas, as to the future fiscal policy of India is a matter of the very greatest importance to the welfare of the people of every part of India and that that decision may have effects in future years which are not now anticipated or even considered. Still, Sir, we must realise that the Punjab cannot cut itself off from the rest of India, much though we might like to do so, not only on this matter but also perhaps on another matter that is coming under discussion in this House next week. Nor, of course, can the financial difficulties of the Government of India, which are brought out in Mr. Innes's amendment, be overlooked. So, Sir, I am unwillingly forced to support this amendment, lest a worse thing befall us.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, as I propose to maintain a critical attitude towards both the original Resolution as well as the amendment proposed by the Honourable Mr. Innes, I think it is my duty at the outset to make my position clear on one fundamental principle. Sir, I am not against the development of industry. I fully appreciate the difficulty of the country dependent for its livelihood upon mere agriculture. I am fully alive also to the dangers of famine, but, Sir, Mr. Jammadas Dwarkadas has not proved how famine would be averted by industrial development. But, although famines cannot be averted, I admit this much, that it is necessary to give varied occupations to the people of this country in order that the pressure on the land should be relieved at least to some extent. Sir, I also want to make my position on another question clear. As long as the nations of the world have not ceased fighting with each other, I admit it is necessary that every nation should try, as far as possible, to be self-contained. There are disadvantages of this attempt, and those are pointed out by my Honourable friend Sir Campbell Charles.

But, Sir, I admit that it is necessary, as long as the world has not ceased fighting with each other, that every country should make an attempt to be as self-contained as possible. Having accepted these two fundamental principles I want to discuss whether a high tariff is the only method of protecting the industries in this country. Personally I divide the methods of protecting industries into three categories. The first is a high tariff, which is a very popular method. Secondly, the method proposed by the Industries Commission, namely, assisting the industries by various means such as research, industrial training, giving concessions in the form of land, etc., or even giving bounties to the industries or guaranteeing interest as we do in the case of Railways. There is a third

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method of protecting and developing industry and that is by the State undertaking to manage the industry. (*Some Honourable Members*: "No, no.") Some people say "No, no." I am not much concerned with them. Let me first refer to the advantages and disadvantages of the first method of protecting the industry, namely, a high tariff wall. The reason why this method is preferred is, in the first place, that the burden which is thrown on the people is indirect. The poor people, especially the illiterate people, cannot see that they are contributing towards the building up of the industry. The Industrial Commission knew very well that if they had proposed that the industries in this country should be developed not by indirect taxation but by direct taxation, the Legislative Assembly would not have accepted that principle. The industrialists want that the people on whom the burden falls should not know that they are bearing the burden.

Mr. Jamnadas Dwarkadas : Has the Commission claimed that?

Mr. N. M. Joshi : Sir, I am asked whether the Commission has claimed that or not. I am explaining what people, when they advocate protection, have in their minds, and I feel that this is in their minds whenever they advocate high import duties instead of advocating direct contribution to the industry. Sir, there is a second advantage to the industrialist in having protection by means of a high tariff wall, and that is that he is free of all Government intervention. If an industry wants protection or is given protection by direct method, Government will insist upon intervening in its affairs. Take the case of Railways. Government guaranteed interest to the Railway Companies, but then when Government guaranteed interest, they kept to themselves the right of intervening in the affairs of the Companies. Therefore the industrialists do not generally like that the assistance to be given to them should be direct. They generally prefer assistance which takes an indirect form, which leaves them free to do what they like. The third argument that may be urged in favour of a tariff wall instead of direct assistance to the industry is that the collection charges of indirect taxes are not so large as the collection charges of direct taxes. Sir, this is a matter of proof. My Honourable friend, Mr. Innes, will tell the House how we stand in the matter. But even admitting that the collection charges of direct taxes are a little higher, is it right that we should throw away all the advantages of direct taxation and accept a method of assisting industries which contains several dangers which have been admitted by every speaker who has spoken up to this time? We have seen the advantages. They are not many. But there are great disadvantages in the method of protecting industries by means of a high tariff wall. Let us suppose for the sake of argument that a high tariff wall is necessary. A large amount of money will be thrown into the pockets of the industrialists by a high tariff wall. But what is the guarantee that the money thrown into the pockets of the industrialists by that means will be spent for the development of the industries? Sir, it will not be very uncharitable if I say that at least some part of that money will be spent on the luxuries of the industrialists themselves. Will they not spend part of the money for their motor cars, for hiring half a dozen palaces and for purchasing race horses? Sir, the money for all their luxuries will come out of the money which will be placed in their hands by means of protection. Therefore, let the House be sure that when you put money into the pockets of the industrialists with the intention that the industries should be developed, at least all that money will not be

spent for the development of the industries, but a great part of it will be spent for the luxuries of the industrialists. There is another disadvantage in giving protection to the industry by means of a high tariff wall, and it is this. If you give help to an industry by means of a high tariff wall, you cannot discriminate between a good industrialist and a bad industrialist. A good industrialist may spend all the money that he gets in developing the industry but a bad industrialist will not so spend that money. This is a great disadvantage. But we can discriminate between a deserving industrialist and an undeserving one by giving direct help to the industries. But, Sir, the main disadvantage of a high tariff wall, which has been mentioned both by the Honourable Mr. Innes and the Honourable Mr. Rhodes is high prices. Sir, the high prices have to be borne by the poor people in larger proportion to their income than the richer classes. Nobody will say here that if you have got a tariff wall on articles such as cloth, the poor man will not suffer more in proportion to his income than the rich man. The poor man pays on cloth more in proportion to his income than the rich man pays. This fact is absolutely clear. Therefore, a high tariff wall on necessities of life can never be just. It falls unjustly on the poor man. I am not saying that the poor man should not pay at all. But nobody will also say that the poor man should pay more in proportion to his capacity to pay than the rich man. This is the greatest disadvantage of the method of protecting an industry by means of a high tariff wall. Sir, I know there are people—I do not know whether they are here or not, but I have met them several times—who say “where is the harm? Is it not the duty of the people of this country to support the industry? Is it not our duty to support Bombay as against Lancashire?” Sir, I can appreciate the sentiment of patriotism, and I also know that the poor people of this country have got some patriotism. But should your patriotism be only confined to the poorer class? If industry is to be developed at the cost of the poor people, can it not be developed at the cost of the wealthy? Sir, I have read through the report (of the Fiscal Commission). I have read through the majority's recommendations as well as every line of the recommendations of the minority—the patriotic minority. But I have not found one sentence there appealing to the wealthier class to spend their wealth not in luxury but in developing industries. Sir, I have not seen one appeal to the richer class there asking them to develop the industries, even if it were necessary for them to suffer loss for the developing of industries. On the contrary, it has been said that our capital is shy, capital requires encouragement. It is, therefore, clear that the Indian capitalist is not sufficiently patriotic. If the Indian capitalist is patriotic he will not be shy to invest his capital in a national industry, the capital will come forth even if there are losses. Therefore, when people talk of patriotism, what they mean is that that patriotism should be shown by the poorer classes and not by the richer classes. The richer classes require temptation, encouragement in order that they should put their money into industries. But, Sir, some people say “Do you not want industries?” Suppose we cannot develop industries without putting even an unjustifiable burden upon the poorer people. Sir, I do not wish to answer that question. I only say that these are not the only two alternatives. If these are the only two alternatives, namely, either not to develop industries at all, or to develop industries by putting a burden, an unjustifiable burden upon the poorer classes, then I do not know what would be my answer. I shall think then. But I believe there is a third alternative. You can protect your industries without putting an unjustifiable burden, at least without putting a disproportionately

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high burden upon the poorer classes, and that method is to assist the industries by means of direct assistance. Give any kind of direct assistance, I shall not object. If there is direct assistance, naturally in the first place, that assistance could be given only to those industries that are deserving. It will be given only to those industrialists who deserve, who do not spend their money in luxuries and whose industries do not suffer losses on account of mismanagement. Sir, it may be said, "If you give direct assistance to the industries, how are the taxes to be collected, how is the money to come?" That money will be collected by indirect taxation." Sir, it is true that the amount of direct contribution may have been obtained by indirect taxation. I do not approve of indirect taxation, but even if the taxation is indirect if you give direct help there is the pressure of public opinion. The public will know what person is being helped with the public money, and the public will exact that that industrialist is careful in managing the industry. That is the great advantage. The whole industry will be under the criticism of the public of this country who pay towards that industry.

Then, Sir, as regards the State management of industry, this is one of the methods which has been recommended not by me alone but by the Industrial Commission itself. The Industrial Commission has said that under certain circumstances it is necessary for Government to pioneer a new industry.

Mr. President: Order, order. That is not strictly in order under this Resolution.

Mr. N. M. Joshi: I do not wish to speak on this subject alone. As a matter of fact, it is not necessary for me to dilate on the advantages of State management.

Mr. President: Not necessary! It is not possible

Mr. N. M. Joshi: I only content myself by saying that a high tariff wall is not the only method of protecting an industry. An industry can be protected by the State managing the industry. This has been done not only in this country but outside, and as a matter of fact the advantages of that method will be explained to this House not by a theoretical man like myself, but by experienced industrialists like my Honourable friends Mr. Jammadas Dwarkadas and Mr. Kamat, when the question of the management of State railways comes before this House. Therefore, I do not propose to speak about the advantages of that method.

But, Sir, there is one more point on which I should like to speak and it is this. My Honourable friend, Mr. Jammadas Dwarkadas, said that there are dangers in protection. He admitted that. Unfortunately he did not mention them, but I propose to mention them only in a few words. Those people who want to know the dangers of industrialism should visit the Slums of Bombay. That beautiful island given by Nature to this country has been turned into a hell by the industrialists. (A Voice: "Are you against industrialism?") Is it not necessary if we want to develop our industries to take precautions that more such hells are not created in this country? Then again take the question of people who leave their villages and go into cities. People in villages have got the joint family

system. If any one of them is ill, he is looked after by his relatives, by his neighbours. If he is old, his son, his grandson

Mr. President: That does not arise on this Resolution.

Mr. N. M. Joshi: I am only pointing out the dangers of protection.

Mr. President: That danger may happen even where there is no protection. It is not relevant to the subject under consideration.

Mr. N. M. Joshi: It is true that these dangers may take place where there is no protection, but here we are advocating protection in order that industries should develop very fast and there is the greater danger of these evils arising when you are developing industries very fast. As a matter of fact, all the slums in Bombay are due to the fact that the industries developed very fast without giving sufficient time for people to build houses.

Mr. President: The Honourable Member must address his remarks to the policy of protection. I may point out to him that the clock tells me that he has already spoken for more than fifteen minutes.

Mr. N. M. Joshi: I do not wish to take up the time of the House, but I wish to refer to only one other evil of protection, and it is a direct evil of protection. When a country undertakes a policy of protection, it means high prices. High prices mean discontent and when poor working classes become discontented, the only method possible for them of getting redress is to organise themselves and getting their grievances redressed by means of strikes. But at this stage what happens? The industrialist who wants to develop his industries very quickly by means of protection wants to restrain those organisations as much as possible. That has been the experience of the world.

Mr. President: I cannot allow the Honourable Member to discuss trade union legislation on a motion asking for the establishment of protection.

Mr. N. M. Joshi: I have felt that, if a policy of protection is followed there will necessarily be discontent among the working classes, and if there will be discontent among the working classes they will have to organise themselves, and in order that the organisation should grow strong it is necessary that freedom of organisation and freedom of strike should be allowed.

Mr. President: If I had not been in the Chair I would have been very glad to discuss this matter with the Honourable Member. But I have to tell him that his argument is entirely out of order.

Mr. N. M. Joshi: I shall content myself now by making an appeal to the Honourable Members of the Assembly. My Honourable friend, Mr. Innes, has already referred to the fact that the masses on whom the burden of protection will fall are not represented here. After all, whom does this Legislative Assembly represent? It represents the electors whose number is a very small fraction of the population. It may be one per cent. I assure the House that it is after all a very small percentage of the population. I do not mention this point to belittle the importance and dignity of this House. As a matter of fact, I admit that for practical purposes we could not have got a more representative Legislative Assembly than this. But, Sir, that should not blind us to the fact that the masses

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of the people are not represented here and when we are considering the question of putting a burden on the masses more in proportion to their income than the burden falling upon the richer classes, it is our duty to put greater restraint upon ourselves, to be more cautious in pressing burdens upon the poor people than it was necessary for us if the burden had to fall more upon us and more upon our electors. With these words I move the amendment which stands in my name to the amendment moved by the Honourable Mr. Innes.

Mr. President: The Honourable Member will realise that during the conversation which I had with him I informed him that the last half of his amendment is out of order, seeing that it attempts to bring in the question of trade union legislation before adopting a policy of protection. That is not within the scope of the Resolution.

Mr. N. M. Joshi: If the second part is out of order, I propose the first part:

"Provided that measures adopted with that end in view be so framed that the financial burden resulting therefrom will fall upon the people in proportion to their capacity to bear it."

I hope the House will accept my amendment.

Mr. President: If I had known that the Honourable Member was moving his amendment, I should probably have called somebody else, because I think it is desirable to have the proposition put by the Government debated against the proposition put forward by Mr. Jannadas Dwarkadas. At the same time, the first part of the Honourable Member's amendment is in order.

Mr. N. M. Joshi: I shall move my amendment later on.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Does the Honourable Member move his amendment as an additional amendment to the original Resolution or as an amendment to Mr. Innes' amendment.

Mr. N. M. Joshi: As a matter of fact it can be made an amendment to anyone of the two.

Mr. President: I must inform the Honourable Member that his amendment was originally put down as an amendment to Mr. Jannadas Dwarkadas' Resolution. He did not know then that Mr. Innes' Resolution is going to contain the words "with due regard to the well being of the community." I should imagine that these words would have satisfied the point raised by the Honourable Member, though, as I have told him, he is perfectly in order in moving it.

Mr. N. M. Joshi: I do not know what will suit the House. If it suits the House that my amendment should be an amendment to the original Resolution, I do not object. If it suits the House, I have no objection to its being treated as an amendment to the Honourable Mr. Innes' amendment.

Dr. H. S. Gour: On a point of order. It is for the Honourable Mover of the amendment to say as to whether it is an amendment to the original motion or any particular amendment. It is not left to the decision of the House to accept that amendment as either an amendment to the motion or an amendment to an amendment.

Mr. President: I think it will simplify the position if I treat this as an amendment to Mr. Innes' amendment.

The question is:

"That at the end of the amendment as proposed by Mr. Innes, add the following:

'Provided that measures adopted with that end in view be so framed that the financial burden resulting therefrom will fall upon the people in proportion to their capacity to bear it.'

The motion was negatived.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): I believe what is germane and also important to the discussion of this morning is a criticism of the amendment standing in the name of my friend, the Honourable Mr. Innes, and not a general discussion ranging over a wide field over the advantages and disadvantages of free trade or protection, a discussion like the one indulged in by my friend, Mr. Joshi, or even by Mr. Townsend, from the Punjab; because it is only half an hour ago that the Government announced and committed themselves to the principle that they are prepared to accept protection. All that concerns us therefore this morning is to discuss whether the amendment standing in the name of Mr. Innes requires any criticism at all. I shall direct my remarks only to this aspect of the question. In the first place let me congratulate the Government on coming to a satisfactory decision on such a momentous issue. The question was hanging fire for decades, for almost half a century and I believe the Government have done well in coming to a favourable decision, however tardily it might be, on so important a point; further, it is indeed a matter of gratification, Sir, for the country that Government are prepared to accept protection with discrimination as unanimously recommended by the Fiscal Commission. Having said that and offered my congratulations to Government on this decision, it remains for me to meet certain criticisms and remarks made by Mr. Innes in his opening speech. Mr. Innes pointed out that although Government are accepting this policy of protection they are accepting it with a great deal of anxiety and a great deal of caution. I realise the anxiety of the Government at the present moment. I also realise that a certain amount of caution in the application of this policy is necessary but I venture to think, Sir, that Government are in one or two respects at any rate labouring under an excess of caution as I shall presently show. I agree that there is a certain amount of anxiety involved in undertaking this policy at the present moment when we are passing through financial depression and deficits in the Budget. On the other hand, Sir, it is precisely at this particular period of transition in India when existing industries are threatened that this question has to be boldly tackled by Government, especially owing to the world facts to which Mr. Innes has referred; it is precisely at this moment that protection is necessary, either to keep alive certain industries which are struggling in the country or to withstand the low prices which foreign manufacturers are announcing in order to keep their own industries alive. Therefore if there was any time which was urgent for protection, it was, I believe, this time. Government, I say, need not, therefore, be very much uneasy that the time is inauspicious. Now with reference to certain observations of Mr. Innes regarding factors within India relating to the internal situation which compelled caution, he mentioned two or three things. He referred to the effect of this policy on the agricultural classes. He referred also to what the effect

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of this policy would be on the middle classes. He also referred to the effect of this policy on the finances of the Government, that is to say, the sources of revenue. With reference to the effect of this policy on the agricultural conditions in India, those who have studied economics, those also who have read the Report of the Fiscal Commission will be able to see that after all it is a question of balance of advantages. It is perfectly true that the rise of prices has a certain adverse effect on the agricultural community but, on the other hand, take a long view of the whole thing and just see the effect of this policy of protection, say at the end of 15 or 30 years. Take the example of other countries like Germany and America which were at one time agricultural countries. The policy of protection has made those countries now more or less manufacturing countries with the result that the wealth of those countries is immensely better than what it would have been if they had remained agricultural countries. The question is, do you want wealth for agriculturists or not? Now we know there are 72 per cent. of agriculturists in the country out of the total population, but out of those 72 the real workers in the field are, let me point out, 46 per cent. only. The rest are workers of a casual character either in industries or even in agricultural labour. The point therefore is, if owing to a system of industrialism the wages go up, will it not profit those workers who come to factories or those workers who are also in agricultural industries. There, therefore, remains only a residue of 46 per cent. of the population who are directly concerned with the sowing and ploughing of their own fields who will be no doubt for some time adversely hit. The other agricultural workers who are more or less labourers will profit to some degree by the automatic rise in the prices and also in wages. Then again, even if there is a little bit of temporary evil in this policy of protection for the agriculturist, I think Government has provided safeguards to minimise the burden. We know that the Tariff Board will see that the burden will not be too heavy for the agriculturist. The machinery provided to fix the rate of protection is a very sound safeguard; I therefore think judging by the analogy of the other countries and considering the proportion of burden that will fall upon the agriculturist population and also the safeguards, namely, the creation of an impartial and thoroughly investigating body, namely, the Tariff Board, we can, in spite of some disadvantages which I have dilated upon, go ahead and accept protection. I need not refer to what fell from Mr. Joshi about the capitalist and his luxuries. I believe that luxuries do give a benefit to the capitalist no doubt, but the benefit is not confined to the capitalist. If a capitalist buys a motor car, he has to employ a chauffeur and a portion of the money of the capitalist goes into the pocket of the chauffeur, also into the pocket of the man who sells petrol and also into the pocket of the cleaner. And, perhaps, if there is a manufacturing industry of motor cars in India some day or other in accordance with this policy of protection, possibly that factory will be able to employ hundreds of labourers into whose pockets also the money of the capitalist will go. We need not therefore fear that a manufacturing country will benefit only the capitalist. England was at one time an agriculturist country. At the present moment 56 per cent. of the population of England is a manufacturing population and every man who goes into some factory draws more wages and leads a better life, has a higher standard of living, has far better clothes to wear and far better houses to live in than perhaps the agriculturist in India who,

merely because he remains an agriculturist, lives in a wretched hut and draws only the bare means of subsistence. I know that the agriculturist could be a richer man and live a better life if he goes into a manufacturing factory. That is, so far as the aspect of the agriculturists' disadvantages is concerned. Now about the amendment, there is one aspect of what fell from the Honourable Mr. Innes to-day to which I wish to address my remarks, that is, with reference to this Tariff Board. If you read clauses (a), (b), (c) and (d) of the Honourable Mr. Innes' amendment, in clauses (a) and (b) probably we shall find nothing very seriously objectionable. He has admitted the word "protection" in clause (b). He has put in a safeguard that regard must be had to the financial needs of the country. We admit that that must be our policy as well and a Tariff Board which will fix the rate of protection will see to it that the financial needs and the financial exigencies of Government are not sacrificed to the hobby of protection. But, Sir, let us discuss the safeguards introduced in paragraph 97 of the Fiscal Commission's Report on which the whole of the amendment of the Honourable Mr. Innes is based. I had hoped that Mr. Jannadas Dwarkadas, while making his speech, would refer to the points of difference between the majority and minority on this specific question. The position is this: Government accept protection; Government accept discrimination, but Government say they are willing to accept discrimination as laid down and subject to the three conditions in paragraph 97. The only question which is very important is, do we, on the non-official side, subscribe to these three conditions which Government are prepared to accept? That is the question at issue. Now, the first condition is that the industry to be protected must have certain natural advantages. I admit this is a condition which is not very seriously objectionable. The second condition is that the industry must be one which without the help of some protection is not likely to develop or will develop only at a very slow speed. That, again, probably may be a condition which is unobjectionable from a certain point of view. But, Sir, look at the third condition to which Mr. Townsend referred, namely, that the industry must be able eventually to face world competition. If that is the condition to which Mr. Innes refers in accepting the policy of protection with discrimination I have my own misgivings. In a country, situated as India is at the present moment, with immense handicaps owing to poverty, untrained men and inexperienced capital, with world competition from all the different countries to face with I am afraid, if you rigidly follow this condition and this safeguard, as the majority of the Fiscal Commission recommend, it will be difficult for any Tariff Board to give protection, subject to this condition, if rigidly followed. My criticisms, therefore, against Mr. Innes' amendment is that, even supposing they accept discrimination and refer the question to the Tariff Board, the instructions to the Tariff Board should not be to stand upon each and every letter of the third test laid down in paragraph 97. I contend that if, really speaking, the Tariff Board is to do good to India, and at an early date, a certain amount of latitude must be given to that Tariff Board. That is so far as clause (c) of Mr. Innes' amendment is concerned.

Now, I come, Sir, to clause (d), *viz.*, the constitution and the period of time allotted to this Board. Mr. Innes wants that the life of this Tariff Board, which Government are prepared to accept, should be only one year, and he bases that on the analogy of Australia, where even it was two years, in the first instance, I think, Sir, that a period of one year only

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for any corporate body is too small a period for a trial. It is an experiment, as I have said, made with an excess of caution and is not likely to benefit India. If you accept protection, if there is no escape from protection, there is no escape from a permanent Tariff Board. I do not like that Government should show this suspicion and a certain amount of hesitation in stating to this House that we should subscribe to the view that the Tariff Board should be appointed only for twelve months. I submit that it will take twelve months for the Tariff Board simply to think out its ideas to fix their preliminaries and to know where they are before they investigate a single industry. I therefore think that this should be a permanent Tariff Board, or at least one constituted for a longer period, say five years.

And now I come to the composition of this Tariff Board. Government want that the Chairman of this Tariff Board should be a Government official on the analogy of Australia where the Controller of Customs is the Chairman of the Tariff Board. I do not object to that, namely, that one member out of the three should be a Government official. The other two are to be members not necessarily chosen by the Legislature according to the amendment of Mr. Innes. The minority report of the Fiscal Commission suggested that the two members, if there are to be three in all, should be elected by the Legislature. Now, between these two methods of appointment we have to compare where the greater advantage lies. After giving my close consideration to this matter, I am inclined to think that the amendment of Mr. Innes is reasonable and right. It would be difficult I believe at the present time for the two Houses of the Indian Legislature to elect persons of the right type we want to serve on the Tariff Board. In the first place, the conflict of interests either between capitalist and agriculturist, or between industry and industry, or between Bengal and Bombay, would be so great, that it would be far better that the Tariff Board should be above any sort of suspicion by the public at large. Even, speaking from the point of view of the Members of this House, I think it would be far better for the Members of this House to be away from the Tariff Board and, therefore, to be away from the criticisms and the suspicion that they have succumbed to any kind of political corruption, as my friend, Mr. Townsend, put it. Sir, at the present stage of India, we want to be above any reproach that what we do in that Tariff Board is one way or other against the agriculturist or in the interests of the capitalist. From this point of view, I certainly think that it would be far better that the two other members of the Tariff Board should be outsiders chosen by Government but confirmed on the Tariff Board with the approval and with the consent of this House, that is to say, that the two other members of the Board selected or suggested by Government should have their names placed for approval or consent before this House, so that we should also have a means of knowing that the selection of Government was right and proper. Our approval also should be given to the appointment either of the co-opted members, or the two permanent members forming the Tariff Board. This would be in the spirit of the recommendations of the minority who have cited the example of the Senate of the American Tariff Board. These are the few criticisms which I had to make. I do not think I shall enter into the merits of the long speech of my friend. Mr. Joshi, although he went for capitalists and made certain remarks which were not quite relevant to the question at issue. We can discuss those questions on some other occasion. What is now necessary is to

discuss, as I said, the Honourable Mr. Innes' amendment and I have ventured to offer these suggestions and these criticisms in the hope that when the Tariff Board comes to be appointed Government will see that the Board will enjoy the confidence of this Legislature and of the country at large and will be a properly constituted body.

Sardar Bahadur Gajjan Singh (Punjab: Nominated Non-Official): Sir, I rise to address this Honourable House in the interests of agriculture. There is not a single Member of this House who, I venture to think, is not anxious to see the development of the industries of the soil, but at the same time it should be borne in mind that in making provision for the development of our future industries we are not damaging our existing industries. As is well known, agriculture is the industry of the largest number of people in India. As has been pointed out by the Honourable Mr. Innes, more than 66 per cent. live upon it; they make their living out of it. Now it is admitted on behalf of Government as well as on behalf of my friend on the right that the imposition of protection is likely—in fact, not only likely but certain—to be more harmful in so far as agriculturists, or those who are busy in agriculture, will have to pay high prices for the things which they require for their industry. Now, Sir, as we all know, agriculturists are very very poor. My province is mainly a province of small holdings. This, I think, is also true to some extent or perhaps to a greater extent of the United Provinces, Bihar and Orissa, and in fact all other Provinces with the exception perhaps of Bengal, and the United Provinces in so far as they have very big taluqdars. At present their position is very deplorable. They cannot make both ends meet and their produce as we all know is from time to time subjected to various unnatural restrictions in the way of restrictions on the export of wheat and so on. So if that will be the result on agriculture of protection, then I am afraid I must warn the Government against the introduction of this policy. At any rate, they have to be more cautious. There should be more discrimination—of course, we are assured there will be,—so that the interests of agriculturists and of the middle-classes may not suffer. As has been pointed out by my Honourable friend, Mr. Joshi, some other means may be adopted for the development of industries in India other than protection, and if that cannot be done I am afraid we must go without it, because it is not advisable—it will, in fact, be unwise for us to injure the present agricultural industry which, of course, is the life and soul of India. Other industries will manufacture things which perhaps may be necessary or may not be necessary and in certain cases probably will be luxuries, but agriculture gives us our food; the agriculturists are the food givers of India. If by protection, which, of course, obviously means that the local markets of India are meant for local manufacturers, we are at the mercy of these industrialists and we have to pay high prices, then agriculture in this country is sure to suffer. On account of high prices cultivation might go low; perhaps it may not be worth while to cultivate land and produce the necessary food for the consumption of the consumer. I am afraid therefore I cannot give my support to the Resolution of my Honourable friend, Mr. Jannadas Dwarkadas. I think those who have studied the question may perhaps be able to throw more light on it, but my apprehension is that if there is a protective tariff against the import of articles from other countries, as for instance, piece-goods and cloth, the agriculturist will get a very low price for his produce. Take cotton for instance. It is no doubt a raw material and every one should wish that it should be manufactured and then sent abroad; but as long as those conditions do.

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not exist in India the producer will surely look forward to getting a higher price for his cotton. If the men in Bombay, Calcutta or Madras will pay say Rs. 10 a maund only, we shall indeed be very sorry and we shall be very glad if Japan or Lancashire comes into the field and gives Rs. 25 or Rs. 35 per maund. I mean to say that as long as the industries of India are not in a position to offer the same prices as the foreign consumer, agriculture will be hit very hard. The same can be said about other forms of produce. Possibly it will have a very prejudicial and injurious effect upon the export from India of other agricultural produce. To start with, it will only benefit a very few capitalists situated in suitable localities such as Bombay, Calcutta and Madras. Therefore I submit, Sir, that it will be unwise to make a move which will benefit only a very very small number of people and will be harmful to a very large majority of the people. My friend, Mr. Kamat, has pointed out, I think quite inadvertently--that 56 per cent. of the people of India live upon industry

Mr. B. S. Kamat: I never said 56 per cent. in India; I said in England

Sardar Bahadur Gajjan Singh: Here as far as is known from the Fiscal Commission's Report 1 per cent. live by industries; the rest of the labour lives by agriculture. So judging from that point of view I think Government will not be well advised in launching this policy of protection. It is admitted on behalf of the Government that the people, especially the middle class people, will have to pay high prices and that the cost of living will be high. India is a poor country, and for that reason I am afraid she will not be able to pay high prices. There is no evidence to show that industries in India have suffered to any very great extent as a result of foreign competition. Indian industries are doing very well indeed, and especially during the war, as was pointed out by the Honourable Mover himself, they have a natural protection, and the profit derived by the industrialists was cent per cent. or perhaps even more. Therefore, I think, Sir, that in the interests of Indian industries, which are doing very well indeed, it is not desirable that another industry, which is already poor and which I am afraid, Government have chosen to neglect, I mean agriculture, another blow should be given to it by the introduction of this policy. Therefore, Sir, I associate with all the remarks that fell from my Honourable friend, Mr. Townsend. I also submit a note of warning to all my Honourable colleagues in this House, that by voting in their zeal in favour of this Resolution, they will be doing incalculable harm to the only industry which is the mainstay of our population, I mean the agricultural industry. Sir, while maintaining on the one hand that industries should be developed, I am not at all in favour of agriculture being in any way prejudicially affected by the introduction of this policy. One thing I should like to make clear before I resume my seat. I should submit a suggestion for the consideration of my friends who live in towns. They must remember that all their trade, all their welfare and all their wealth depends upon agriculture. If they do anything which will go against the interests of agriculture, they will be doing considerable harm to themselves and to the country as a whole. This is a point to which, I am afraid, men of the towns are very seldom alive. (*A Voice:* "With so much agriculture, the country is still poor.") You cannot help it. You make the country poor by your own action, for instance, in September last, by refusing to remove the embargo on wheat. Of course, there was

the stringency of the money market, but that scarcity was simply due to the fact that we could not get that money from foreign pockets. Punjab alone got 9 crores of rupees, and so you neglected all these things. As my friend, Mr. Jammadas, said, the wealth of the country will increase as a whole. Possibly the wealth of Bombay will increase, no doubt, perhaps a hundred times or a thousand times by the introduction of this policy, but the Punjab will starve. In the United Provinces also probably agriculturists will starve, and poor people will die. Therefore, on these grounds, Sir, I think the Government of India will be well advised in not adopting the policy of protection, at least for a great number of years to come. It is unfortunate, but I must bring it to the notice of the Government of India, that they care more for the Press, they care more for those who speak loudly, and they neglect the interests of those whose interests are really at stake, those who cannot speak loudly and who have not such able representatives as other interests have. I therefore strongly oppose the Resolution of my Honourable friend, Mr. Jammadas, and I have great hesitation in supporting the amendment.

STATEMENT OF BUSINESS.

The Honourable Mr. C. A. Innes: Sir, I just want to make a statement about the business of the House. We propose to have a rather large order paper for Monday. We propose to keep on the order paper on Monday the Racial Distinctions Bill and we propose to take that up, if the Honourable the Home Member is able to attend to his duties in the House that day. If he is not able to attend to his duties in the House that day, we propose to take up the following business:

- (1) To introduce a small Bill to amend the Post Office Savings Banks Act, 1873, and any other small Bill which may be ready.
- (2) To dispose of a Message from the Council of State regarding the Contingents House-Accommodation (Amendment) Bill.
- (3) To consider and, if the Assembly agrees, to pass the Repealing and Amending Bill and the Currency Consolidation Bill.
- (4) To complete the consideration of the Official Secrets Bill, and, if possible, pass it.
- (5) To take into consideration and pass, if the Assembly agrees, the Bill to amend the Indian Penal Code, commonly known as the White Slave Traffic Bill, the Report of the Select Committee on which was presented to the Assembly on the 8th.
- (6) To take into consideration the Report of the Joint Committee on the Cotton Cess Bill which was presented to the Assembly the other day and to pass the Bill, if the Assembly agrees.

If the Honourable the Home Member is able to attend on Monday, we shall proceed, as I have said, with the Racial Distinctions Bill. We shall again take it up on Wednesday and also on Saturday next week. On Saturday also next week we shall take up the Official Secrets Bill and we hope to be able to finish it, and in that event the other business which I

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have read out as coming on on Monday will be taken up probably on the following Monday—Monday the 26th.

The Assembly then adjourned for Lunch till Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Five Minutes to Three of the Clock. Mr. President was in the Chair.

RESOLUTION *RE* ADOPTION OF A POLICY OF PROTECTION.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, before I speak on the Resolution and the amendment, I should like to say how cordially we worked with the European Members of the Fiscal Commission, and how willingly they sacrificed some of their scruples in order that there might be unanimity on the major points on which we were asked to give our decision; and I want to tender to them my cordial acknowledgments for the way in which they treated us during the discussions in the Fiscal Commission. I wish also to express our satisfaction in that the Government on this occasion have shown their appreciation of the desire of the people that there should be a change in the fiscal policy; Sir, the speech which was delivered by the Honourable Mr. Innes shows that—his Resolution is not half as good as his speech,—his heart is with the people on this question. Sir, on behalf of the Assembly I think I may congratulate the Honourable Mr. Innes on the exceedingly able speech which he has delivered and on the very conciliatory language he has used in his Resolution, although I am of opinion it leaves a great many things unsaid which I should like it to have said. I may point out that the manner in which this Resolution has been brought forward is not very satisfactory. A costly Commission was appointed, it toured round the country and examined a large number of witnesses. A number of issues were submitted for its consideration and it gave its decision on them. The country expects that the Government should make a pronouncement upon all those issues. Instead of that, although my Honourable friend, Mr. Jannadas Dwarkadas, gave notice of a number of Resolutions dealing with every one of the subjects which were submitted for our consideration, the Government has chosen to take up only one of these Resolutions. The result is that we are not in a position to discuss the other problems, problems intimately connected with, problems absolutely necessary for carrying out, the policy which has been recommended by the majority and the minority members of the Fiscal Commission. Sir, I must express my regret that the Government has not seen its way to bring forward a Resolution which would have covered all the issues submitted to us.

Sir, before dealing with the amendment of the Honourable Mr. Innes

3 P.M. I should like to say a word about one of the bogeys which has been raised in this House, namely, that relating to agriculture. I do not know whether my Honourable friend, Mr. Joshi or Sardar Gajjan Singh, know, that I was appointed to represent agriculture. I am not an agricultural labourer. (*A Voice*: "That makes all the difference.") My friend behind me says that it makes all the difference. But I should like to know whether any agricultural labourer would have been able to follow the

evidence—I am speaking of a labourer—whether any agricultural labourer would have been able to follow the discussions and give an impartial decision upon the evidence placed before the Commission.

I tried my best as representing agriculture,—although as I said I am only an employer of labour and not a labourer myself,—to take up the cause of the agriculturist; and I do say that the decision come to by the Fiscal Commission is in no way injurious to the interests of agriculture. I think there is a great deal of misapprehension as regards the position of agriculture. If my Honourable friends had studied the Fiscal Commission's Report they would have found that about 95 millions are actual workers in the field, whereas in industry the number of labourers employed is 13,67,000. Even if there is very extensive industrialisation, ten times as much as we have to-day, the number of people who would be absorbed in industrial pursuits would be about a million or so. Still there will be for agricultural pursuits about 95 millions of people. Do my friends seriously believe that 95 millions of people in this country are not enough for working in the fields? The Honourable Mr. Innes remarked that if the agricultural labourer had been fully represented in this House, it is doubtful whether he would have accepted even the very modest and watered down Resolution which he has put before the House. I demur to what he says on this point. I do not think that the agriculturists, if they have a voice, would in the least object to the report of either the majority or the minority of the Fiscal Commission, and they would certainly not object to the Honourable Mr. Innes' Resolution. On the other hand they would be delighted to find that he has shown such great sympathy and great concern for the welfare of the agriculturists. As I pointed out, there are enough people in this country who can be taken away from agricultural pursuits to be employed in industries; and agricultural pursuits would in no way suffer by these people leaving that class of work. There is another consideration which people do not take note of; and that is this. There have been frequent famines in this country. When the rain fails and the crops fail, the agriculturists find themselves out of employment. If there are a large number of industries, what would be the result? Some member of a working family would find employment in these industrial pursuits and his earnings would be able to supply the other members with their daily livelihood, whereas if all of them entirely depended upon agriculture and there is a famine, they will find that they will have to look to famine camps for their livelihood. And therefore if there are a number of industries and some members of the family find employment in industries and some members in agricultural pursuits, when there is a failure of crops, the person who is employed in the industries will be able to supply the means of livelihood for the persons who have been thrown out of employment; therefore starting industries would be a help to agriculturists and would not be a hindrance. I said before there are enough people, some of them can well be spared for industrial pursuits. On these grounds I consider people are unnecessarily worrying themselves about agriculture being jeopardised. Upon that point I wish my Honourable friends had the whole of the evidence before them and they would then have seen that even agriculturists gave evidence to the effect that by persons being employed in industries agriculture would not suffer in the least.

I turn to the amendment of which the Honourable Mr. Innes has given notice. I must at the outset say that I am very much dissatisfied with the propositions which he, on behalf of the Government, has put

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forward. Take for example the first of these. He says that he accepts in principle the proposition that the fiscal policy of the Government of India may legitimately be directed towards fostering the development of industries in India, when he, in the next clause says that in the application of the above principle, of protection, regard must be had, etc., the Honourable the Commerce Member apparently believes that the first clause enunciates the principle of protection. I say with respect that there is a mistake in this. Because according to certain economists, industries can be fostered and developed even under free trade, industries can be fostered by State aid, and industries can be developed by Government pioneering; therefore clause (a) does not necessarily imply that the Government has given its adhesion to the policy of protection. It would have been better and more graceful on the part of Government if they had stated in the forefront of their Resolution that they are whole-heartedly in favour of protection, instead of in a left-handed manner and in a grudging spirit bringing in the word "protection" in the second clause.

Sir, if I am in order I should like to move in the first clause the deletion of certain words and the insertion of certain other words. I would suggest that the words "may legitimately" coming after the words "Government of India" be deleted, and after the words "Government of India" these words be inserted: "should be based on protection." The whole clause would then read thus:

"(a) That he accepts in principle the proposition that the fiscal policy of the Government of India should be based on protection and should be directed towards fostering and developing of industries in India."

I have no doubt after listening to the speech of the Honourable Mr. Innes that that is really his idea, and I do not see why clear expression should not be given to that idea, why this idea should not be placed in the forefront of the Resolution. If he accepts my amendment there will be no difficulty in carrying out this proposition, and I think the whole House will be with him so far as the first clause is concerned.

Sir, as regards the second clause; here again I find there is some defect. (Clause (b) reads:

"That in the application of the above principle, regard must be had to the financial needs of the country"

and then it goes on to say:

"and to the present dependence of the Government of India on import, export and excise duties for a large part of its revenue."

Sir, both Sir Campbell Rhodes and the Honourable Mr. Innes have very rightly drawn attention to the need that the past should be buried in oblivion, and that we should not rake it up for the purpose of showing up the differences between Lancashire and India. At the same time, if we allow this clause about excise to remain, what will be the inference? The inference will be that the Government of India's revenue is dependent upon excise, that they can never think of a time when the excise duties can be abolished. If that is the idea, and I think the idea is likely to be generated by the Resolution standing in the terms in which it has been worded, it would lead to considerable heart-burning. I take it, Sir, that everybody is agreed that this chapter in the financial history of this country should be closed; that the excise duty which has been forced on

us at the dictate of Lancashire should go. It may be, Sir, that under the present circumstances, having regard to the financial condition of the Government, it is not possible to abolish it. Nonetheless if you allow this clause to remain, it would indicate that the Government for all time to come is dependent upon excise duties and that they do not contemplate that the day will come when the excise duty can be removed.

The Honourable Mr. C. A. Innes: What about the word "present"—"to the present dependence of the Government of India on import, etc."

Mr. T. V. Seshagiri Ayyar: But you do not say that there will ever be a time when the excise duty can go. I think therefore, Sir, that the introduction of the word "excise" in this clause is likely to lead the people of this country into the belief that the Government do not contemplate its removal. At any rate, I did not in listening to the speech of the Honourable Mr. Innes, find any passage in which he foreshadowed a time when the excise duty can be removed.

Then, Sir, I come to the third clause:

"that the principle should be applied with discrimination, with due regard to the well-being of the community and to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission."

Sir, my point is that this clause which relates to paragraph 97 should not be allowed to remain in this Resolution. Those of my Honourable friends who have read paragraph 97 will remember that certain conditions are mentioned there. Then in paragraph 101, in elaborating the reasons which have led to the mentioning of the various conditions, the majority point out that in the case of new industries there should be no protection. Therefore, Sir, if you leave paragraph 97 in the third clause it would lead to the inference that the Government accept the further elaboration by the majority of that paragraph, namely, in paragraph 101 where they hint at the impossibility at any time of protection being given to new industries. If they omit this clause it would still carry out the intention which the Honourable Mr. Innes has in view. It would read that the principle should be applied with discrimination, with due regard to the well-being of the community. Why spoil this Resolution by a reference to paragraph 97, which when read with paragraph 101 suggests that there should be no protection for new industries. Therefore, Sir, I object to those words:

"and to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission;"

and I hope that the Honourable Mr. Innes will agree to their deletion. Sir, although I think that the words I have objected to are likely to be misunderstood and will be regarded as showing a very grudging spirit on the part of the Government towards the legitimate aspirations of the people of this country who want that their industries should be developed, I must say that a great advance has been made by the Government in assuring us, through their spokesman in this Assembly, that they are prepared to accept a policy of protection for this country. That is a great advance. But I say, Sir, that in order that that pronouncement may be regarded as fully satisfactory and as meeting the wishes of the people, it is desirable that the objections that I have taken to the Resolution should be considered by the Honourable Mr. Innes, and that he should give his consent

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to the deletion of the words which I have suggested should be deleted. If he agrees to that, he will carry the whole House with him, and that would be a great advantage. Instead of having half-hearted support for his Resolution he will find that the entire House is with him. (*An Honourable Member*: "It is not enough.") My friend says it is not enough; but from my point of view I would advise my friend to accept the Resolution of the Honourable Mr. Innes, if he would be good enough to accept the various suggestions I have made with regard to this matter. If he does not, he is likely to find the House divided. But having regard to the fact that we are getting from the Government as much as the Government think they can give us,—I would suggest to all my Honourable friends on this side of the House that they should, even though it is found that the Honourable Mr. Innes is not willing to go as far as I want him to go, give their support to his Resolution.

Mr. President: Further amendment moved:

"In the Honourable Mr. Innes' amendment, in clause (a), omit the words 'may legitimately' in order to insert the words 'should be based on protection and should'."

The Honourable Sir Basil Blackett (Finance Member): Sir, I should like to ask whether in dealing with this amendment one must confine oneself strictly to the matter of this particular amendment or whether one could traverse rather wider ground.

Mr. President: The Honourable Member has actually moved three separate amendments, but, for the convenience of the House I will put all three together.

Further amendment moved:

"In sub-section (b) of the amendment to omit the words 'and to the present dependence of the Government of India on import, export and excise duties for a large part of its revenue.'"

Further amendment moved:

"In sub-section (c) to omit the words 'and subject to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission.'"

The Honourable Sir Basil Blackett: Sir, I very much hope that the Honourable Member will not find it necessary to press these particular amendments. The Government has, in the words of the last speaker, made a very considerable advance, and it will be a pity to cloud the issue by getting into a discussion of the details of the particular phraseology in which that advance is made. I would draw the attention of Honourable Members in the first instance to the word 'present' which already finds a place in clause (b)—"that in the application of the above principle regard must be had to the financial needs of the country and to the *present* dependence of the Government of India on import, export and excise duties for a large part of its revenue." The fact that the Government at present depends on import, export and excise duties does not in the least mean that the Government will necessarily depend so, shall we say, three years hence. Do it now, an Honourable Member says; but if that is impossible, there is nothing whatever in the phraseology of that clause which implies that any of those particular duties are perpetuated. Now, with regard to

the next clause, clause (c), Government has already agreed to eliminate the words 'subject to' and that really makes a very considerable difference. The words 'subject to' made it an instruction to the Tariff Board that it was to introduce a new policy of protection with discrimination *subject to* those safeguards. Now, it is required to have due regard to those safeguards and I ask any reasonable person who reads clause 97 to say whether any Tariff Board would be so foolish as to start introducing a policy of protection without due regard to those safeguards. I really feel that in the position which we have reached there is nothing in these small amendments which have been suggested.

I would like now with the permission of the House to turn to more general points and continue the debate as a whole. It has been an unexpected debate to one coming from England where the subject of protection and free trade has for some time raised an almost mystical enthusiasm in the adherents of one side or another, an enthusiasm only comparable to the zeal with which people in the Greco-Roman world used to quarrel about the exact nature of the persons of the Trinity. To-day we have had no such discussion. It has been simply a question of the extent and methods of a policy of protection, on which, subject to due regard being had to the interests of agriculture, we all seem to be agreed.

I may perhaps be allowed to make a personal observation at this point. A Member of the Government of India when he speaks on behalf of the Government of India has only a very limited power of expressing personal views. He is an eighth part, or rather less than an eighth part, of a unity known as the Governor General in Council, and he is expressing the views of the Government of India subject to the general instructions of the Secretary of State. There is not much room for very personal views. Some of us, as Mr. Innes has said, have felt considerable doubt as to whether or not the present is a wise moment to introduce protection. I am not one of those who believe that one must be either a protectionist or a free trader; I can never understand why one should be either an Arian or an Athanasian on the question. It has always seemed to me to be a question of time, place and opportunity. I have been able to agree with the free trader that if there were no differences of race, religion, language, nationality, climate or geography between the peoples of the world free trade would be undoubtedly the right policy. But I have never been able quite to subscribe to the doctrine as I saw it stated only yesterday that free trade is the only policy which is consistent with true international morality. At the same time I have never been able to agree with the protectionist when he tells me that it is necessary that everything that comes into the country should be taxed highly, or that it is very bad for a country that it should take payment for its exports by taking imports in return. There is a famous picture in Addison's Spectator of a Tory squire who waxes violently indignant over the new fangled importations that are coming in from every part of the world, and drinks death and damnation to them in a glass of cognac from France !! The question is really one of time, place and opportunity, and I think the House must have been much struck with some observations that fell from the Honourable Mr. Innes about the difficulties of introducing protection into India in the present state of world commerce and industry. I do not want to be ruled out of order by you, Mr. President, by getting lost in questions of exchange and currency, but they really have a considerable connection with this question. It has happened more

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than once in the history of the world that a nation has gone in for protective duties and has found in quite a short time that somehow or other in some curious way the exchanges have nullified the effects of protection. At a time when all the exchanges of the world are in a state of chaos, at any rate some consideration ought, I think, to be paid to that matter. There is a paragraph, I think it is paragraph 92, in the Commission's Report which makes a passing reference to that, but if I may be permitted to say so, not a very satisfactory reference. However, as I said, a Member of the Government of India has only a limited right to speak his personal views and my object in expressing a doubt as to whether the present is altogether an opportune moment for introducing protection into India was merely to draw attention to the need for caution. I accept whole-heartedly the doctrine that it is India's right to decide what fiscal policy she shall have, and so long as I remain a Member of the Government of India I shall whole-heartedly attempt to assist in the introduction of the policy which India has chosen. That being the position, the House has, I think, the duty to remember that the Government of India must have the responsibility of doing the administrative work of introduction and must be content to go perhaps a little slower than the fastest sailing vessels of the fleet might wish. After all we are embarking upon a sea, which is known to be subject to cyclones and which has many sunken reefs. May it not be wise to steer slowly at first and set a course among the islands near the coast? Of these we have already some knowledge in our existing revenue tariff which it will be foolish to pretend was not already a protective tariff without being either consistently or discriminatively protective. I suggest, therefore, that it is clearly right that the House and the Government working together should proceed cautiously in this matter.

Now, Sir, some criticism has been made as to the constitution of the Tariff Board. I think it was Mr. Kameit who suggested that he would prefer to see on the Tariff Board two Members elected by this Assembly, but he was willing . . . (A Voice: "No, it was the other way.") If everybody is agreed on that matter, I need not further defend the view that Government has taken about the nature of the Tariff Board. It is, of course, quite natural, it is a natural function of every Parliament to be critical of its executive. It is quite right that it should be so. An executive that is not really responsible and responsive to the will of the people constitutionally expressed is a bad executive. It is even more natural that the Assembly should be jealous in the present state of affairs of this executive, which is only in part responsible to the present Assembly. I do not wish to enter into its constitution at this stage, but it is at any rate responsive to the views expressed in this Assembly. I would suggest that the House, in considering this question of a Tariff Board, should throw its mind forward to the day when the executive will not only be responsive but will be responsible to this House. Let us keep faith with the future. It will be a great mistake if at the present moment, during the present transition period we should allow accidents belonging entirely to the transition period to lead us astray. My strong personal belief is that the two main *desiderata* in a constitution with an executive responsible to a Parliament are that the executive should be thoroughly responsible to Parliament, and that Parliament should not usurp any of the functions of the executive. I would suggest, therefore, that in dealing with this question of a Tariff Board, we should throw our minds forward

and consider whether, supposing we had an executive which was entirely responsible to this Parliament, we should not be making a mistake by trying to usurp their function of appointing a Tariff Board which would take from them the responsibility, which after all they cannot shift from themselves, of bringing this policy into execution.

Mr. S. C. Shahani (Sind Jagirdars and Zemindars: Landholders): Sir, I rise to point out that it will be a very great mistake on the part of the House to accept the amendment of the Honourable Mr. Innes in the form in which it stands at present. It has been pointed out by my Honourable friend Mr. Seshagiri Ayyar that the first clause of this amendment is not properly worded, and he has accordingly suggested some amendment to it. I would read the clause and consider the amendment that has been suggested. Mr. Seshagiri accepts the principle that the fiscal policy of the Government shall legitimately be directed towards fostering the development of industries in India. But his suggestion is that it should be based on protection and directed towards fostering the development of industries in India. I thought the industries of a country were fostered either directly or indirectly. They were fostered indirectly by tariffs, and directly by bounties, cash credits, railway rates and in the great variety of other ways indicated in the Report of the Industrial Commission. I therefore suggest that the first clause should be worded thus: "That the fiscal policy of the Government of India shall legitimately be directed towards fostering the development of industries in India by protection and by direct aids". That would be more exact, and that would convey the idea which is intended to be embodied in the first clause.

In the second clause as my Honourable friend, Mr. Seshagiri Ayyar, has rightly pointed out, the existence of the word 'excise' will no doubt lead to considerable misunderstanding in the country. Misunderstandings on vital questions should be avoided with special care. So far as I see, if the intention of the Government is to give up excise duty at any future time, it is best not to indicate in this clause that regard must be had to the finances of India depending largely on the collections from imports, exports and excise. Cotton-exercise duty ought to be done away with at once. It has been said by some that it exists in other countries. I have to point out that such a tax exists in very few countries, and that wherever it exists it exists only for revenue purposes. Japan has been often instanced, but we have to remember that Japan not only refunds the excise duty but also pays freight to destination on her manufactured goods which are sent abroad.

Then, Sir, I come to the third part of the amendment, which is really the most important part. With all deference to the Honourable Mr. Seshagiri Ayyar and to my Honourable friend, Mr. Jamnadas Dwarkadas, I must point out that, while they have felt that there is something wrong about the recommendations of the Fiscal Commission, they have never been able to localise it. The chief defect in the Report of the Fiscal Commission consists in this, that while they recommend a policy of protection, they try to render that policy as ineffectual as possible by loading it with unworkable conditions. They do come forward rightly to answer all the objections that have been raised to the policy of protection being adopted in India—and on this point I feel greatly disposed to congratulate the members of the Commission, particularly the European members, on their having risen above petty considerations—and to give

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it as their deliberate opinion that the policy best suited to the interests of India is a policy of protection. But while they have done that, we have got to remember that they have sought to neutralise the effect of this policy which they have recommended for adoption to the Government of India. Now how have they neutralised it? I would refer Honourable Members to paragraph 97 on page 54 of the Fiscal Commission's Report that has been read out but by no means duly pondered. Now what is the main recommendation of the Fiscal Commission's Report? Their main recommendation is this. Adopt the policy of protection because it is best suited to the interests of India. But since this will involve sacrifice on the part of the consumer and the interests of the consumer should be protected you must be discriminating, and in order that you should exercise discrimination with regard to industries that may apply for protection, what should you do? You should appoint a Tariff Board which is undoubtedly a very good step suggested by the Fiscal Commission. Probably this recommendation of the Fiscal Commission's Report may be usefully followed elsewhere too, say, in settling the question of State *versus* Company management. State management finds favour with the people, and I have no doubt that for that the appointment of Boards should be insisted on in order that the State management may be efficiently conducted. A Tariff Board is undoubtedly necessary, but what further do the Fiscal Commissioners do? They lay down that the Tariff Board in fixing the rate of protection must necessarily respect three conditions. And what are these three conditions? I shall read the three conditions. The first is "That the industry must be one possessing natural advantages such as an abundant supply of raw material, cheap power, a sufficient supply of labour or a large home market." That is a valuable condition, though here too I feel disposed to omit the consideration of "labour" and "market" as well. It is a mistaken idea that India suffers from insufficiency of labour. We have plenty of labour, but it is unorganised. And it is for that reason that the foreign capitalist is able to exploit Indian labour. I entered into conversation in regard to this new fiscal policy with the Honourable Member from Champaran only last night, and he told me that the foreigners who have established their plantations there allowed sometimes no more than two pies a day to the labourers that they employed. The question of labour may not therefore be worried about. I would also omit the word "market" because India is a continent and it has, I think, wrongly depended upon a vagarious foreign market disturbed by fluctuating exchanges. It can be self-contained and it is no exaggeration to say that India can find a secure home market quite sufficient for the purposes of all its important industries. I would retain the words "raw material" and "power" only. But yet comparatively that is a small thing and, if my other friends in the House do not go with me, I would be prepared to drop it. Then, I come to the second condition which says: "That the Tariff Board shall afford aid only when an industry claiming protection is able to show that it is not likely to develop at all or not likely to develop so rapidly as is desirable." Now this is a hard condition. I at once state that what is given with one hand is sought to be taken away with the other. Alien interests could easily put up experts to swear that an industry cannot develop at all or so rapidly as is desirable. According to me all that an industry should be required to show is that, although it has possessed natural advantages, it cannot carry on without protection. And this should be quite enough for the Tariff Board. No

other consideration should intervene. The third condition is absurd. And that is that an industry should be able to show that eventually it will be able to face world competition without protection. I have known magical results produced in these days. Some time ago it was deemed impossible for a man to fly—he can fly now. But, if we have scientifically developed so far, if to-day our Chemistry can become alchemy in certain respects, I am very doubtful if in the domain of free will we should be able to secure the same results, if we should be able to say beforehand as to what the conditions of world competition will be after thirty or forty years. But even if we are able to divine, do the Fiscal Commission propose that an astrologer or a theosophical clairvoyant should be put on their Tariff Board? It is no use providing these stringent and unworkable conditions, and I draw the attention of my friends here in the House to these three conditions and ask them to carefully consider them. They are represented by Mr. Jannadas Dwarkadas as being a detail but with all respect I beg to point out that the dissenting Commissioners have not taken into consideration the import of these three conditions and have missed the meaning that underlies them, and I therefore beg to propose that here we should adopt the amendment that I have suggested, namely:

1. (a) That for the purpose of rapid intensive industrialization of the country the Government of India adopt a policy of protection to be applied with discrimination along the following general lines:

- (i) Every industry to which protection is given must possess natural advantages in abundant supply of raw material and adequate sources of power.
- (ii) The fact that, although there exist natural advantages for an industry, it has not been started or has not made rapid progress under the existing regime, should be considered sufficient proof that protection is needed in its case to inspire capital with confidence and to make the progress of the industry rapid."

It is said that my amendment is a long one, furnishes the basis for a Bill, is a speech or an essay. My reply is that those who raise that objection have not studied the subject. (Laughter.) I would not mind stimulating laughter by being so positive here. It is true that very probably the force of the amendment that I have proposed will not be realised by my friends and the amendment that has been proposed by the Honourable Mr. Innes will be carried, but let it be remembered that there is at any rate one man to point out that this amendment in its unmodified form is dangerous and that the House would be committing a serious mistake in adopting it. I am not concerned with the issue at all. It is not given to man to command success; he can do more, he can deserve it. I must point the great flaw which I notice in the amendment that has been put forward by the Honourable Mr. Innes. The whole forenoon I have been getting up and I thank my stars that I have at last had an opportunity of saying my say now. I want also to point out that there is a very great omission in the proposed amendment in that no reference has been made to the employment of foreign capital. Now, kindly consider the context. To restrict the consumer's sacrifice to the necessary minimum a policy of protection should be applied with discrimination; and foreign capital is to be freely employed, say the Fiscal Commission. Discriminating protection on the one hand and what is more free employment of foreign capital: what will these two things do? They will minimise the burden that is to fall on the consumer. And therefore you should be very particular about the employment of foreign capital. I wish to point out that the employment of foreign capital is altogether undesirable, that that has caused the economic

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enslavement of the country, that places like Champaran and Assam have become plantations in consequence of the free employment of foreign capital.

Mr. President: I would point out to the Honourable Member that the discussion of foreign capital is not in order.

Mr. S. C. Shahani: Sir, if it is not in order, I desist, and hope there will be some other opportunity of discussing it. I would also give up on this occasion the consideration of one other question, namely, the question of Imperial preferences. It has been probably deferred for consideration to some other time, and I willingly abide by the arrangement that seems to have been made. I therefore consider one other point, namely, the point of the Tariff Board. If any part of the dissenting Minute is most satisfactory it is that which is devoted to the appointment of a Tariff Board. The dissenting Commissioners have in general rightly pointed out that the Tariff Board should consist of three members of general attainments and two assessors representing the different interests of trade, commerce, and industry. (*An Honourable Member:* "Not agriculture.") Yes, agriculture too. I say that the minority Commissioners have rightly suggested that the Tariff Board should consist of three members—one Chairman and two ordinary members, and that, whenever further investigation becomes necessary, the Board should call in the aid of two assessors elected by the different Chambers and mercantile associations in the country and that their help should be requisitioned for the purpose of investigating the claims that are advanced by different industries to protection. I say this is an improvement upon the position that has been assumed by the Fiscal Commission and by the Honourable Mr. Innes in this House. I am suggesting a further improvement. The Chairman as suggested by the minority Commissioners should be a lawyer of the status of a High Court Judge for impartial judicial decisions amongst conflicting interests. It is also right that two members of broad views should be elected by the non-official Members of the Assembly who should have a voice in the constitution of the Board. But the representatives of the different mercantile associations should be regular members and not mere assessors. Those who are specialists, businessmen conversant with special industries, will not on that account be necessarily disposed to protect the interests of the industries which are very near to their heart. I would suggest that all the four members should be appointed by the non-official Members of the Indian Legislature. I therefore slightly modify the useful suggestion made by the dissenting Fiscal Commissioners and propose that the amendment which has been proposed in clause (d) by the Honourable Mr. Innes be superseded by the amendment which I have proposed. The amendment which I have proposed is:

"That a permanent Tariff Board, consisting of a trained Indian lawyer of the status of a High Court Judge for its Chairman, two members elected by the Non-Official members of the Central Legislature and two members representing trade, commerce and industry elected by recognised chambers and mercantile associations in India, be created whose duties will be, *inter alia*, to recommend the rate of protective duty or any alternative measures of assistance, to watch the operation of the Tariff, and generally to advise Government and the Legislature in carrying out the policy indicated above."

I have only one other remark to make, and it is this. The Honourable Sir Campbell Rhodes has emphasised the conflict that would arise between the interests of the consumer and the producer, if the policy recommended

by the Fiscal Commission be adopted. He went the length of saying that there was really no conflict of interest between Lancashire and India, but that in India there will be a conflict between the consumer and the producer. I have heard this point made by some others also. I take this opportunity of stating what has been conceived by my own mind as being an answer to such an objection. The consumer must naturally make some sort of sacrifice in order to gain culture, skill and powers of united production. My Honourable friend Mr. Gajjan Singh came forward to say that agriculture would suffer from protective policy. My Honourable friend Mr. Seshagiri Ayyar has given a reply to that. If time were allowed me, I would read a paragraph from the Fiscal Commission's report; but as it may not be allowed me, I merely refer to what has been said by the Fiscal Commission's report on this point. Agriculture, say they, will not suffer. Agriculture will gain, and distinctly too, by the adoption of the policy of protection. I am an agriculturist, and do agricultural labour. You may look at my dress and imagine that I cannot handle a plough, but that is not so. Few cultivators can distinguish between one kind of soil and another better than I do, or select seasons for different cultivations or settle different rotations or

Mr. President: I must ask the Honourable Member to bring his remarks to a close. He is getting irrelevant.

Mr. C. S. Shahani: Sir, if that is not allowable, I make no further reference to it. I only say that I feel convinced that agriculture will gain

4 P.M. by the adoption of the policy of protection. Most of the agriculturists are mere middle-men and it is only few that participate in agricultural labour. Agricultural labourers are not employed throughout the year on agriculture. It is only in very few places that you have perennial canals and it is therefore most common in India that for nearly six months the cultivator has got to do nothing. If industries are created, the agriculturists would benefit, and very largely too. The cultivator is starving. It is a fact that he does not get even the two meals a day to which he is entitled. And if that is so, the sooner India came to be industrialised, the better would it be for the country. It has been said—I do not recollect by whom, I think it was by my Honourable friend, Mr. Joshi, I am not sure, it may have been by Sir Campbell Rhodes; so I won't say by whom—that India suffers from famines. Famines never affect all parts of India at once.

Mr. President: I must ask the Honourable Member to resume his seat. I gave him a warning three minutes ago and he did not bring his remarks to a close.

Mr. S. C. Shahani: I would only take a minute or two more, Sir.

Mr. President: The Honourable Member is perhaps not aware that I have already given him 9 minutes over his time.

Mr. S. C. Shahani: There are others who were given more time.

Mr. President: What did the Honourable Member say?

Mr. S. C. Shahani: Sir,

Mr. President: I ask the Honourable Member to repeat his remarks.

Mr. S. C. Shahani: I thought that others had got more than 20 minutes.

Mr. President: May I ask the Honourable Member what he implies by that?

Mr. S. C. Shahani: I imply nothing. I only refer to the fact.

Mr. President: May I ask the Honourable Member why he refers to that fact?

Mr. S. C. Shahani: In order that my request for further time may be considered.

Mr. President: I pointed out to the Honourable Member that I had already given him 9 minutes over his time, and I warn him now that I shall not again pass over in silence remarks which imply any reflection on the conduct of the Chair.

Mr. S. C. Shahani: I will be as brief as I can, Sir. I will take only a minute or two more.

Mr. President: I ask the Honourable Member to resume his seat. I understand the Honourable Member desired to move his amendment as an amendment of the Honourable Mr. Innes' amendment. If he will show where the amendment should come in the Honourable Mr. Innes' amendment I should be prepared to accept it.

Mr. S. C. Shahani: Sir, I am omitting that part of my amendment which relates to Imperial Preference, that is to say, part (3). I am also omitting that which relates to the Sea Customs Act, that is, part (5).

Mr. President: I am not asking what the Honourable Member is omitting. I am asking where the amendment comes in the amendment of the Honourable Mr. Innes.

Mr. S. C. Shahani: I seek then to suggest that clauses (a) and (c) of the amendments of the Honourable Mr. Innes be replaced by my clause (a). Then

Mr. President: I will allow the discussion to proceed on the amendment moved by Mr. Seshagiri Ayyar in that case.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadian Urban): Sir, in the first instance, I think the House would like to express its appreciation of the handsome manner in which the Honourable the Finance Member has recognized—as a matter of agreeable surprise—that in this House at all events we are not all irresponsible fire-eaters but are occasionally prepared to take a reasonable view of things. I hope others outside this House whether in the press or elsewhere will share those opinions. Government is prepared to go as far as it may in the present circumstances and we in both the parts of the House, I believe, are agreed that no obstructive tactics should be adopted by which what the Government is prepared to concede may be nullified. At the same time one does feel and one is bound to press that the amendments, more than verbal, that have been moved by Mr. Seshagiri Ayyar are necessary in the interests of the situation. Recognizing that Government cannot afford to be more than general in its acceptance of the principle of protection and following up that desire, I think these amendments are more than necessary. Reading the Honourable Mr. Innes' amendment, one thought that Mr. Seshagiri

Ayyar and his friends in the minority of the Fiscal Commission had scored a point, because when Government accepted the principle of "protection with discrimination" and omitted the words "along the lines of the Report" about which there was a great deal of ununderstandable dispute between the majority and the minority—I say, one thought that Mr. Seshagiri Ayyar and his friends had scored so far. The moment, however, any details are gone into, even in the way that Mr. Innes' amendment attempts the Government's object^s, to some extent, nullified. As Mr. Shahani has pointed out, by accepting the principles laid down (they are more than principles, for they are details) in paragraph 97 of the Report, you will be really handicapping the Tariff Board that is to come and not giving them the free hand which they should have if they are to direct our deliberations in the way that they ought to. For these reasons, and without going further into details and confusing issues that have been gratuitously imported into the consideration of this circumscribed Resolution and the amendment of the Honourable Mr. Innes, I should press the Government to reconsider the position and agree to the suggestions of Mr. Seshagiri Ayyar.

Sir, the issues have been confused. One of them is the so-called agricultural issue which is looming somewhat large in our deliberations. I come from an essentially agricultural province, more agricultural I believe than any other in India. Bengal has its own problems. Bengal is however fairly "protected" in economic and industrial matters or shall I say a great deal of "free trade" is there. Its interests on the Fiscal Commission were entrusted to the care of an European merchant, no doubt a prince among them, a Marwari merchant, a very successful merchant, and also a Parsi Professor of Economics. Whoever was responsible for the framing of the personnel of the Fiscal Commission never thought that Bengal might have its own point of view to be put forward by its own representatives. Be that as it may, Bengal has its point of view essentially agricultural as it is. The lower middle classes of Bengal have been and are largely agricultural in the villages. I am one of them, sometimes a labourer of the stamp of my friend, Mr. Shahani. But agriculture has not solved her problems and Bengal wants to be and must be increasingly industrial. It has no other salvation in the near future. Whatever the reasons may be, the lower middle class in Bengal will not take with that zeal to agriculture that will ensure anything like success in life. Unlike in the past it is taking gradually more, however, to industrial and mechanical life. We have more than a promise of that in my Province in the same way as I think they have in the Punjab in spite of what Sardar Sahib Gajjan Singh and Mr. Townshend have told us. I had been recently to the Punjab and I found quite appreciable industrial awakening there along with commendable educational progress all round. Industrial consciousness is coming over the whole of that province which will soon enable its inhabitants to take their place in the industrial life. With its Hydro-electric and other schemes and promising water power the Punjab will take care of itself. I believe that there can be no gainsaying the fact that even in the Punjab the agricultural interests will not be inconsistent with industrial interests. Certainly, in Bengal that is not going to be the case, and that is not the case. Even with regard to agriculture itself, if what is called scientific agriculture is to come, is not that another form of industry. How can agriculture and industry be dissociated like that? We want cheap clothes no doubt—to talk of one only of the many narrow issues raised. We want here protection not only against Lancashire and

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Bombay and Nagpur, but I am afraid sometimes against Clive Street also. We have a representative of it in the House—he is not here, but he is listening to me quietly from a distance in the corridor. We want protection against some of our own so-called swadeshi workers who are piling up the prices of cloth above their intrinsic value. We want protection against all these, and who knows that the Tariff Board is going to give the cloth industry any protection of the kind that cloth dealers are hoping to have? It may give protection to yarn, or to some other branch of the cloth industry, but the finished cloth industry is not likely to have much consideration. Therefore, by raising these false issues let us not get away from the real point. An important advance has been made. We have to be thankful for the smallest of small mercies, and if a man from Mars came to-day and found that we were congratulating ourselves and the Government upon the fact that after near upon two centuries of British rule here we are in a very patronising way told that the fiscal policy of Government "may legitimately be directed towards the fostering and the development of industries in India", he would be more than astonished. Why, that is a common-place, that is, obvious in any country. But we have to accept that small mercy and be thankful. I am not therefore prepared to risk that mercy by moving amendments that may not be acceptable to the Government. For fifty years, certainly for 37 years since the Indian National Congress came into existence, the better mind of India has been asking for protection in some shape or other. Are we now going back upon that? Government is prepared to concede it in some shape, and to concede, in Sir Basil Blackett's language, that we are now to be masters in our own house so far as fiscal policy is concerned. This is another reason for thankfulness. And there is a third. The Honourable Mr. Innes made a statement which must not be lost sight of, namely, that we are perilously near to taxation limits, we have been urging this long and anything that will get rid of further direct taxation is welcome. The way in which Mr. Innes' amendment has been framed, even when amended by Mr. Seshagiri Ayyar, will not bar those other aids to industrial development that many of my friends have referred to. But protection should be placed in the forefront of our programme, and that is why I believe Mr. Seshagiri Ayyar is wanting to move the amendment in a pointed manner and that is why I believe the Government ought to accept it. I do not want to labour points that have already been dilated upon, but I want to make it quite clear that whatever class *versus* class differences may be, whatever province *versus* province differences may be, whatever other differences may be, the country is fairly united that some protection of the kind that has been indicated is necessary, not alone in the interests of industry but also in the interests of agriculture which must go hand in hand together. If protection is really bad for agriculture I should not have it at any price. These considerations commend the amendment of the Honourable Mr. Innes, subject to the further amendment of Mr. Seshagiri Ayyar, to most of us. If Government saw its way to accept Mr. Jamnadas's original motion and added clause (d) of the Honourable Mr. Innes's amendment to it, the object of the Government and ourselves would have been better attained. Mr. Jamnadas's Resolution is fairly general. It covers nearly all the ground covered by clauses (a), (b) and (c) of the Honourable Mr. Innes's amendment. If it is permissible to do so, I should recommend that Mr. Jamnadas's Resolution shall stand and be amended by addition of the Honourable Mr. Innes's amendment, clause (d).

so that the whole object aimed at by Mr. Jamnadas and the Honourable Mr. Innes which is also our object, so far, may be achieved.

The Honourable Mr. C. A. Innes: It will be convenient if at this stage I explain the view of the Government in regard to Mr. Seshagiri Ayyar's amendment. I do not propose to refer to Mr. Shahani's speech except to say that that speech illustrated a danger which I think is a real one. If every one here to-night worded the Resolution so as to embody his own particular brand of protection, every one of us in this Assembly would have his own Resolution, and we should never come to a finish at all. In this very difficult matter I say that there must be a reasonable spirit of give and take and that being so I hope Mr. Seshagiri Ayyar will withdraw his amendments. I must confess that I listened to Mr. Seshagiri Ayyar's speech with a certain amount of disappointment. He said that the Government had made only a grudging advance. He said that we had so worded our Resolution that it was open to misconstruction and misunderstanding. Sir, on my part, I may say that I do not think that any reasonable man reading my Resolution can misunderstand it at all and I say that if there is any misunderstanding it must be a wilful misunderstanding. The first clause of my Resolution has been attacked on the ground that it does not bring in the word protection. It has been suggested by Mr. Seshagiri Ayyar that under cover of this clause I am probably referring only to other methods of giving assistance. Sir, Mr. Seshagiri Ayyar, when he made those remarks, entirely overlooked the word 'fiscal'. I say that the fiscal policy of the Government of India may legitimately be directed towards the development of industries in India. Sir Deyva Prasad Sarvadilakari accuses that as being a patronising reference to India. It is nothing of the sort. What is the point of that clause. Surely this House will give us credit for the fact that every line of this Resolution has been most carefully thought out and the reason why clause (a) of the Resolution has been worded like that is to mark the transition, the profound transition from a purely revenue tariff to a tariff which is directed to other objects and that is why the Resolution has been worded in that way. I come to clause (b). Here again Mr. Seshagiri Ayyar says that clause (b) has been so worded so as to give people the idea that we propose for ever to keep on the cotton excise duty. Nothing of the sort. I explained at the very greatest length in my last speech why we had put in this reference to the financial position. I explained that it would not be honest for us to pretend that in the present state of our finances we could pledge ourselves to take off the duties referred to by the Fiscal Commission and that is why I put in particularly the words 'the present dependence.' We are not discussing the question of cotton excise duties at all in this Resolution. It has nothing to do with this Resolution. All we are discussing is whether or not this House is to admit the principle of protection. That is the whole point. Again we come to clause (d). Mr. Shahani has found all sorts of dangers, all sorts of dishonesties on the part of the Government of India in this reference to the safeguards in paragraph 97 of the Indian Fiscal Commission's Report. Mr. Seshagiri Ayyar suggested that because I made a reference to paragraph 97 I must have had in my mind a reference to paragraph 101. I had no idea of the sort. Any one will see, as Sir Basil Blackett has pointed out, that this suggestion that the Tariff Board must have regard to these safeguards is a perfectly reasonable suggestion. No Tariff Board considering questions of this kind could avoid paying regard to the considerations mentioned in paragraph 97 of the Fiscal Commission's Report. As I pointed out in

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my last speech, all that paragraph refers to is the doctrine of comparative advantage. Can Mr. Shahani or any one in this House suggest any better criterion than that? I do not think I need say more. We have on this side made a fair and even generous advance in order to meet the wishes of this House and the wishes of the people of India. I do not think that it is generous on the part of the House that it should make small and niggling amendments in the wording of my Resolution. As I have said, every line of this Resolution has been most carefully thought out and I must ask the House to accept that Resolution as it stands. I am afraid that if Mr. Seshagiri Ayyar presses his amendments then I must oppose them and the responsibility will not be mine. Sir, I oppose the amendments.

Dr. H. S. Gour: I move that the question be now put.

Mr. President: The question is that the question be now put.

The motion was adopted.

Mr. President: Amendment moved:

"That in the amendment moved by Mr. Innes in clause (a) the words 'may legitimately' be omitted and that the words 'should be based on protection and should' be inserted in their place."

The motion was negatived.

Mr. President: Further amendment moved:

"That the words in clause (b):

'and to the present dependence of the Government of India on import, export and excise duties for a large part of its revenue' be omitted."

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Having regard to the fate of these amendments I do not press the other amendment.

Mr. President: Further amendment moved:

"That in clause (c) the words 'and to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission' be omitted."

The motion was negatived.

Mr. P. P. Ginzwa (Burma: Non-European): Sir, somehow to-day I do not feel the least enthusiasm over the subject which is being debated, for by what I can see there is very little ground on which there is really much controversy. The points that are under debate are really two as the Honourable Mr. Innes has more than once pointed out. Is India committing itself to the principle of protection? That is one point; and the second point is—if it is going to commit itself to the principle of protection—does she wish that part of the machinery to give effect to that principle shall be the constitution of a Tariff Board?

Now it was said this morning,—and I think it is believed by most Honourable Members,—that to-day we are burying the policy of free trade, and that we are giving it a decent burial with the Honourable Mr. Innes as one of the principal pall bearers. But the question that I should like answered is this. If free trade is dead to-day, and it is going to be buried in a few minutes, has protection really come to stay? Now I am not very sure that the way we are proceeding about it to-day leads me to think that protection, even if a Resolution approving of it is passed by this

august Assembly, is going to stay for ever. I see no indication of any element of permanence in the proposition that has been made either by my friend, Mr. Jaminadas Dwarkadas, or the amendment moved by the Honourable the Member for Commerce and Industries. For what does it amount to? We pass a Resolution that the future fiscal policy of India shall be on the lines of protection. We then say that we should constitute a Tariff Board to give effect to it. But what is there which gives any sanction either to the first Resolution or to the second Resolution? What is there to prevent this policy being set aside by a subsequent Resolution of this House, and what is there to prevent this Board being also wiped out by a subsequent Resolution of this House? Now, Sir, the point that concerns me most is this,—if we are going to embark upon a policy which is going to break with the past wholly and which is going to inaugurate a new era, the House must safeguard itself against fluctuations of political views in this Assembly and outside. I am not in a position to suggest how this House is going to accomplish that; but I venture to think that the mere passing of these two Resolutions will not ensure that permanence which is essential to the growth of this fiscal policy on which this House is about to embark. It is also necessary that some legislative provision be made by this House by which this House pledges itself, so far as itself is concerned, to adhere to this policy. Unless this is done I do not consider that we should be wise in venturing upon this policy, for there are no precautions taken against its reversal at any time. I put the question in this way. Take the Tariff Board. The Honourable Mr. Innes says, the Board shall come into existence and shall remain in existence for a year.

The Honourable Mr. C. A. Innes: In the first instance.

Mr. P. P. Giwala: Of course in the first instance for a year. But we do not know what is going to happen to that Board at the end of the year. Many of us may not be here at all to hear the fate of that Tariff Board. It is not merely a bogey I am raising; it is a real fact that you have got to reckon with. If our friends outside the Council who have kept out of it change their minds, as they are about to change, we hope, you may be certain that this would be one of the election cries—and it must be an election cry—as to whether the Honourable Mr. Innes with his Tariff Board and we with our support should be allowed to come back to this House or not. I venture to submit, Sir, that before any violent changes are made in the policy of the country, sufficient provision must be made to ensure its permanence, and I submit, that this is not the way to do it. I have said before in this House, and I have not changed my opinion since, that I am a protectionist to the core; but I do not wish to be a protectionist to-day and be changed into a free-trader by the sheer brutal force of votes next year. That is the thing we have got to guard against. (*An Honourable Member:* "There is no danger of that.") There are gentlemen here who are so sanguine as to suppose that there is no danger of that. Well, I foresee the danger myself, though it is not that I wish that the House should not embark upon this policy of protection. That is not my wish. My wish is that something more tangible than a mere Resolution should come from the Government, so that at least for a reasonable period we are committed to this policy of protection.

Then, Sir, with regard to the constitution of the Board. Now I am not a great believer in any bureaucratic form of Government.

The Honourable Mr. A. C. Chatterjee (Education Member): Nor do you believe in a democratic form of Government.

Mr. P. P. Giwala: My Honourable friend says, that I am not sufficiently a democrat. But there is this to distinguish real bureaucracy from real democracy, that the bureaucracy will not improve nor is willing to improve upon somebody else's ideas. Democracy has this affliction about it, that it wants to improve everybody and it wants to improve upon everybody else's ideas. This being so, let us consider whom we should prefer. What would happen if democracy prevails and this principle of election is adopted in the constitution of the Board? Those Members who are elected by the House will be subject to the influence of the House. We cannot get away from that fact; we need not disguise it. They must come under the influence of the House. Again the House itself, in its turn is bound to come under the influence of the outside world. This will not be so in the case of the bureaucracy and I submit, that in the conflict between these two principles and under the peculiar circumstances of this case, I would prefer the bureaucracy and confer on it the power of determining the constitution of the Board. But, Sir, I would go further. I am not impressed by the fact that the mere passing of a Resolution constituting this Tariff Board is sufficient. If this Board is to be constituted it should be a statutory body, constituted by an Act of this Legislature, and that its duties as far as possible should be defined. I object to treating the Board merely as an advisory body. For in the end it may come to this, that it may advise as much as it likes the protection or otherwise of a particular industry, but if its advice is to be submitted to the opinion of the whole House, I venture to submit, without meaning any offence to this House, that that advice will not more often than not be examined on its own merits. There are always political forces at play, under whose influence the advice is bound to come. If their advice is to be subjected to the scrutiny of the House on each occasion, it would be better that the advice had better not be tendered. We have seen, and it is a legitimate exercise of our powers—we have seen on many occasions how much we have got a tendency to doubt to scrutinize and amend the reports of all Select Committees. That I say is legitimate in legislation, but when one comes to the examination of an important department of business, the examination should be from a business, and not from a political point of view as would be the case, if it was undertaken by this Assembly. I maintain that is a thing to be avoided, and if the Honourable Member for Commerce is desirous that this Tariff Board should be a really live Board with possibilities in itself of doing good, it should be a statutory Board exercising statutory authority, by which this House and the outside world may be bound for a reasonable period of time. There is another point. In the elements of permanence to which I referred there is the attitude of one gentleman, the gentleman who sits in Whitehall with a big stick in his hand over the heads of my Honourable friends on the Treasury Benches; we have heard nothing at all as to what his ideas and intentions are and what he means to do. (*Mr. Jamnadas Dwarkadas:* "He has no voice.") We think he has got no voice, but I should like to have an official statement made that he is going to give up this big stick in his hand so far as this aspect of administration is concerned. I have heard nothing about it. I should like to hear from the Honourable the Commerce Member what is the position of this gentleman going to be with regard to any Resolution that this Assembly may pass to-day. We have been just told by the Honourable the Finance Member, that Members

of the Government have got very little scope for the expression of personal opinion; we know it and we feel it pretty often; but we want really to know what is the official information on this question. Is this gentleman going to take his legitimate position in the machinery of the Government of the country, or is he going still to persist in interfering with our affairs when his interference is not required? I put a plain question to the Honourable Member for Commerce and I shall expect a plain answer.

Sir, these are some of the few matters which have rather made me feel some anxiety about the future fate of the policy we are adopting by the Resolution which is before the House. It may be that I do not understand economics in the way in which my Honourable friend to my right (Mr. S. C. Shuhani) claims to do, but I think I am entitled as much as anyone else to know from the commonsense point of view what our position is going to be hereafter; whether if free trade is dead protection has come to stay?

Mr. Jamnadas Dwarkadas: Sir, we have now before the House my own Resolution and us against that the amendment of my Honourable friend, Mr. Innes. We have heard speeches from many Honourable Members, some supporting the Resolution, others supporting the amendment, and others criticising both; and I am called upon now to exercise my right of replying to the debate that has followed my moving this Resolution. I shall try and take my Honourable friends one by one. I shall deal with Government last. I shall first take my Honourable friend, Sir Campbell Rhodes, one of my esteemed colleagues on the Fiscal Commission. I must at once say that with the exception of one point that it seemed to me he made, my Honourable friend, in spite of differences of opinion—and I still maintain that they are small differences—has treated me more or less fairly; but I must insist on telling him something about one point that it seemed to me he made, and that was to the effect that considerations of racial hatred had shown themselves in the conclusions at which we arrived. Now I at once deny the charge. I deny it . . .

Sir Campbell Rhodes: On a point of explanation, Sir, may I assure the Honourable Member that those were not my remarks? I referred to evidence given before us, but to any action in the Commission itself.

Mr. Jamnadas Dwarkadas: I am glad, Sir, that my Honourable friend has explained his position. But even on behalf of the witnesses themselves I am not prepared to admit the fact that they were moved by racial considerations in dealing with this question on which the voice of India had spoken long, long before this House ever ventured to take the matter into consideration. It is a question that has been discussed on its own merits by every one who has discussed it, and I refuse to believe that any one of all the witnesses that came to give evidence before the Commission introduced the element of race in putting forward his views before the Commission. Then my Honourable friend made another point and said that I maintained the position that when India became self-contained famines would disappear. I was surprised to hear that from my Honourable friend. I never for a moment maintained that. In a limited sense, so far as the necessities of life are concerned, I do believe that India can reach a position of being self-contained, and it will reach that stage if proper encouragement is given to industrial development in this country. So far as famines are concerned, I maintain that if pressure on land is diminished by a portion of the people who now belong to the agricultural class diverting their energies to industrial labour, then it is likely that the

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resisting power of the people will increase and they will be able to bear famines more than they have hitherto done. With regard to the other points referred to by my Honourable friend, I have nothing to say. He has presented his own point of view, but fundamentally I find that there is an agreement between us so far as the general conclusion with regard to protection is concerned. Now, I must come to my Honourable friend, Mr. Joshi. Believe me, Sir, I never expected that my friend, Mr. Joshi, who is supposed here to represent the interests of labour of the poorer classes of the community, not by election but by nomination of the Government, would ever put forward views that would be most detrimental to the interests of the poor classes. I was wondering what it was that had influenced Mr. Joshi's views so as to enable him to present a case, pretending of course that it was a case for the poorer classes, but which was most detrimental to the interests of the poorer classes. I was wondering what it was that had influenced him. (Mr. N. M. Joshi: "Have you found out?") And it then dawned on me that perhaps his going to Washington and Geneva nominated as he was by the Government of India to represent the cause of labour had perhaps removed him to a large extent from touch with the poorer population here and had brought him in the midst of the surroundings of those pleasant labour gentlemen of other foreign countries whose views on the question as to whether India should have a policy of protection or free trade would not be acceptable to any portion, to any class of people belonging to this country. We know that the people who would most resent the adoption of a policy of protection would be perhaps the class which seems to have influenced my Honourable friend, Mr. Joshi's views. I want to assure Mr. Joshi this, that if I had not known him I would have for a moment thought that he was here representing the views either of Lancashire labour or of Lancashire merchants and that he was not in any way advocating the cause of our country. (A Voice: "No, no.") I am entitled to my view. I find fault with his judgment, not with his motives; but believe me, Sir, that it has really pained me to feel that Mr. Joshi's prejudice against capitalists goes so far as to make him use this momentous occasion for emptying himself of the hatred that, it seems to me, he has generated in his breast against these "wretched classes". I hope Mr. Joshi will realise that the country is much greater than any of the classes that constitute this country. I hope Mr. Joshi will take a leaf from the book of his own late leader Mr. Gokhale, and make up his mind to study the speeches and writings of that great respected leader and try to give something of his views both to the people and to the Government which of course will be to the advantage of this country.

Then, Sir, I come to my Honourable friends from the Punjab. Both my friends from the Punjab, Messrs. Townsend and Sardar Bahadur Gajjan Singh seem to imagine that an adoption of the policy of protection will hurt the interests of the agriculturists. Now I do not want to go into the details of their arguments, but it seemed to me when my Honourable friend, Sardar Bahadur Gajjan Singh was arguing, that he was arguing against himself. He maintained that if industries were set up in this country and if a demand for raw materials increased in this country, then the agricultural interests would suffer. I could understand my Honourable friend bringing that argument forward if the Fiscal Commission had recommended that an embargo should be placed on export or even that an export duty should be resorted to, but the Fiscal Commission, as I pointed out in my opening remarks, has deliberately excluded

export duties from their recommendations. Now what will be the result of the establishment of industries here? The demand for raw materials would increase in this country. Not only that, but a competition would be set up for securing those raw materials between this country and the foreign countries. I ask my Honourable friend whether the agriculturists are going to gain or lose by the existence of that competition? When the demand is greater and the supply remains the same, do the prices go up or do they go down? Will it stimulate the agriculturists to pay greater attention to their crops and increase their production or will it dishearten them and compel them to give up growing their crops? I personally believe that the policy of protection, if adopted will not compel the agriculturists to suffer in any way, but it will bring greater prosperity to them. But apart from that, even to-day we realise that the pressure on land is so great and so many more men than necessary are engaged in agriculture that there is an insistent demand to provide for them in their spare moments facilities for resorting to cottage industries like handloom, and so on. If we draw a certain number of people, a very small fraction of the population for industrial labour, even then, I submit, there will be a large number of people left who will be required to pay attention to the carrying on of cottage industries in the villages.

Then lastly, I come to my Honourable friend, Mr. Shahani. Mr. Shahani, I think, has attempted to give views which he thinks are beneficial to the interests of this country. He referred to the question of the constitution of a Tariff Board and said that the constitution of a Tariff Board, as suggested by my Honourable friend, Mr. Innes, would not be desirable and is opposed to the recommendation made by the Minority Report. I admit that that is so, but I will, when dealing with the speeches of my Honourable friend, Mr. Innes and my Honourable friend, Sir Basil Blackett, deal with this aspect of the question of the constitution of a Tariff Board. Let me now come to the amendment of my Honourable friend, Mr. Innes. I agree with my Honourable friend, Mr. Seshagiri Ayyar, that the Government have shown a great deal of wisdom in approaching this question in the spirit in which they have done. I agree with my Honourable friend, Mr. Ginwala, that in addition to the remarks made in his personal capacity by the Honourable the Finance Member, a more definite statement ought to have been made by the Government to the effect that hereafter the Secretary of State will never interfere in the fiscal policy of the country when the Government of India and the Indian Legislature are in agreement. I hope my Honourable friend will take the opportunity of making that statement before this debate is closed to-day. Then, I said that my Honourable friend had approached the subject in a good spirit. I maintain that, because I believe, and I think Honourable Members will do well to keep this in mind, that the present transitional constitution of the Government of India provides that in all matters in which there is an agreement between the Government of India and the Indian Legislature, in those matters alone, so far as the fiscal policy is concerned, the Secretary of State will not interfere. An obstructive attitude on the part of my Honourable friend, the Commerce Member would have perhaps made it difficult for us to get the policy of protection in some form or another adopted in this House. He has made our course easier, and I have reason to believe that the Government have been able to do so, perhaps because the present Secretary of State has respected the convention established by the late Secretary of State and not interfered with the decision of the Government of India. Now, I wish my Honourable friend on behalf of

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Government had gone far enough as suggested by my Honourable friend, Mr. Seshagiri Ayyar. I believe, for instance, he should not have shirked to introduce a more definite language in his Resolution boldly proclaiming the adoption of a policy of protection for this country. I know that he has done so in spirit. I know that in his Resolution,—whoever reads it—he cannot conceal that,—he accepts the policy of protection as recommended by the Fiscal Commission. I know also that in the speech that he has made he has given expression fully to the view that Government to all intents and purposes have accepted the policy of protection. But I wish that nothing should have persuaded him to keep back that boldness which ought to be the characteristic of every Resolution, either when it is framed by Government or by any Member of this House. However, as I look more to the substance than to the shadow, I have no hesitation, as a practical man, in accepting the wording as suggested by him, especially because he has accepted certain changes which were suggested to him. Now, coming to clause (b), I labour under the same difficulty under which my Honourable friend, Mr. Seshagiri Ayyar, laboured. His amendment is lost and I have no right to refer to it. But I want to make it clear that by accepting the clause—"the present dependence of the Government of India on import, export and excise duty for a large part of its revenue," we should not be taken to mean that we have for all time to come blessed the present method of taxation which is resorted to by Government. With that reservation, I have no hesitation in accepting that clause. With regard to the third clause, the omission of the words "subject to" alters the character of that clause and I feel that the Tariff Board will be called upon only to pay due regard to those conditions and it will not be insisted that they should rigidly apply those conditions for all time and in all cases. If this is the meaning, I have no hesitation in accepting that. And now, lastly, I come to the question of the constitution of the Board. I must explain the reasons which led the minority to make the recommendation which we made. We again were faced with the difficulty of making some arrangement for the transitional period. Until we reached self-Government, so long as we have an Executive which is not responsible to the people, it is very difficult for us to accept a Board which is nominated by a Government not responsible to the Legislature. We were faced with that difficulty. We know that there is no constitutional precedent for such a Board being elected by Members of Parliament or the Members of a popular House. But no other country is faced with the difficulty of going through a transitional period, as we are faced. We have here an irresponsible Executive controlled, as it were, obnoxiously very often, by the Secretary of State and we have an elected majority in the House. How are we going to compel the hands of Government to make an appointment which is acceptable to us? Well, it is that which led us to make a recommendation that the Board should be elected. However, I think we should not insist on that being carried out, especially after the remarks that have been made by my Honourable friend, Sir Basil Blackett. For I am free to admit that, in cases where that gentleman from Whitehall, of whom my Honourable friend, Mr. Ginwala, has so eloquently spoken, in cases where he has not continuously interfered with Honourable Members of the Government, may have behaved much better with us. And, as I believe in the dictum that "trust begets trust," I feel that we shall be acting wisely in showing our trust and confidence in the Members of the Government and hope that they will use this trust well and see to it that the appointment that they make

on this Tariff Board would be such as would be acceptable to the Members of this House. And in doing so, I beg of them not to allow "foreign" influence to bear upon them. (*An Honourable Member*: "Outside influence.") By "foreign" I mean the influence of the gentleman from Whitehall who does not know much about India and who continuously thrusts his finger in everything that is being done by the Government of India. We had a very sad experience in the appointment of the Royal Commission. I wish I were free to admit, like my Honourable friend, Sir Basil Blackett, that Government has always been responsive, if not responsible, to the wishes of the Legislature. Our experience in the

case of the Royal Commission has been too recent and too sad
 5 P.M. to cheer us up with that kind of statement. But we hope, at any rate, so far as fiscal matters are concerned, we shall have no interference from that gentleman from Whitehall and that we shall be masters in our own house and that we shall be left to decide matters as we like ourselves. But I may also warn the Government that, if they do not use the trust well in this matter, they will find it difficult to deal with this House in other matters, because they have got to deal with this House on every question and, once it is shown that the trust is misplaced, which I hope it will never be, then this House knows how to deal with the Government in questions that will come up to us for discussion in future. So, to all intents and purposes, I am prepared to accept the amendment of my Honourable friend, Mr. Innes.

And, last but not the least, I want to touch one of the arguments that has been advanced.

Mr. President: I cannot let the Honourable Member advance a new proposition.

Mr. Jamnadas Dwarkadas: This is not a new proposition. I will bring my remarks to a close, Sir. Mr. Ginwala complained that, while we were busy burying free trade, he did not know whether the new House would not bury protection. I do not think that the new House will do that. I do not think that any new House is going to bury protection for a long time to come. But, if it does so, none of us is bureaucratic enough to question the power of the Legislature in this country to bury any policy that this House is launching upon.

Sir, before I sit down, I want again to express my gratitude to the Government that, although not quite fully, at least in spirit they have largely met in this instance the desire of the Legislature. I feel as if I could say to my Honourable friend, Mr. Innes, that the long-lost brother has after all come back to the fold, that the policy which India has insisted on for a long number of years in the interests of this country, to which Government at the dictation of Whitehall turned a deaf ear, is accepted by Government, and I agree with Mr. Innes that it is an epoch-making proposition and that we are starting a new era in this country. I repeat that it seems to me that, if this Resolution is accepted, it will be a red letter day in the history of this country and I may take, if I may be permitted to do so, legitimate pride in the fact that I had the honour to initiate this discussion.

The Honourable Mr. C. A. Innes: Sir, I think that Mr. Jamnadas has exhausted my time as well as his own and therefore I will not detain the House for more than a moment. Mr. Ginwala appeared before the House in his usual impersonation of a doubting Thomas. He wanted to know what is the good of our passing a Resolution of this kind? He pointed

[Mr. C. A. Innes.]

out that that policy, even though we approved it to-day, might be upset by the Assembly of this time next year. Well, Sir, I can give him one answer to his question. The use of passing this Resolution which I have put to the House is this, that it pins down at any rate the Government of India to that policy. Mr. Ginwala also stated that he was a democrat. I must confess that, when I heard his views about the Tariff Board I felt very much inclined to doubt that statement. He apparently contemplates a Tariff Board with Statutory powers over and above the Indian Legislature, a Tariff Board which is empowered to fix rates, a Tariff Board which is beyond criticism by this Assembly. Well, Sir, that may be a very efficient Board but it is not democracy, nor, Sir, is it the sort of Board that I should agree to appoint. One more point and I have done with the Honourable Member from Burma. He challenged me to say what action His Majesty's Secretary of State for India would take in regard to my Resolution, if it is passed by the House to-day. Sir, the only answer that I can give to that question is this, to refer the Honourable Member from Burma and other Members of this House to paragraph 33 of the Joint Select Committee's Report, and to the Despatch of the 30th June 1921, in which Mr. Montagu, on behalf of His Majesty's Government at Home, accepted the principle recommended by the Joint Committee. Sir, Mr. Jamnadas's speech ended in a note of harmony. Mr. Jamnadas ended up his speech by saying that he was prepared to accept my amendment. I hope, Sir, that the whole House will adopt the same attitude in regard to this amendment. Only time can show, Sir, whether we are wise or not in the decision we are taking to-day, but I have one thing to say. We have adopted this policy and, as far as the Government of India are concerned, we are determined to carry it out in earnest.

Mr. President: The original question was that :

" This Assembly recommends to the Governor General in Council that a policy of Protection be adopted as the one best suited to the interests of India, its application being regulated from time to time by such discrimination as may be considered necessary by the Government of India with the consent and approval of the Indian Legislature."

Since which an amendment has been moved to substitute the following after the words " Governor General in Council " :

" (a) that he accepts in principle the proposition that the fiscal policy of the Government of India may legitimately be directed towards fostering the development of industries in India ;

(b) that in the application of the above principle of protection regard must be had to the financial needs of the country and to the present dependence of the Government of India on import, export and excise duties for a large part of its revenue ;

(c) that the principle should be applied with discrimination, with due regard to the well-being of the community and to the safeguards suggested in paragraph 97 of the Report of the Fiscal Commission ;

(d) that in order that effect may be given to these recommendations, a Tariff Board should be constituted for a period not exceeding one year in the first instance, that such Tariff Board should be purely an investigating and advisory body and should consist of not more than three members, one of whom should be a Government official, but with power, subject to the approval of the Government of India, to co-opt other members for particular inquiries."

The question is that that amendment be made.

The motion was adopted.

Mr. President: The question is that the Resolution, as amended, be adopted.

Sir Montagu Webb: May I, at this stage, make a slight verbal amplification, namely, the addition of the word "Indian" before the words "Fiscal Commission?" The Report of the Fiscal Commission, I have been told, is going to mark an epoch in the great Free Trade controversy, and I should like the name of India to be associated with it.

The Honourable Mr. C. A. Innes: I have no objection, Sir.

Mr. President: Further amendment moved:

"That before the words 'Fiscal Commission' in sub-section (c), the word 'Indian' be inserted."

The motion was adopted.

Mr. President: The question is that the Resolution, as amended, be adopted.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Saturday, the 17th February, 1923.

LEGISLATIVE ASSEMBLY.

Saturday, 17th February, 1923.

The Assembly met at the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

STATEMENT OF "NEW INDIA" ON RESOLUTION RELATING TO INDIAN AUTONOMY.

358. ***Mr. Jambadas Dwarkadas:** (1) Has the attention of the Government been drawn to the following paragraph headed "Which is true" in *New India* of the 29th January?

"Sir Malcolm Hailey told the Legislative Assembly that no despatch was sent by the Government of India to the Secretary of State along with the Resolution of the Assembly demanding the curtailment of the ten-year limit. But the *Bengalee's* Special Correspondent at Delhi is responsible for the statement that the wishes of the Government of India, and particularly of Lord Reading, have been overridden by Lord Peel not only in connection with the appointment of the Services Commission, but also in the matter of the proposed revision of the Reforms Act. The *Bengalee* understands that the Viceroy submitted "a reasoned despatch" to the Secretary of State "urging a further extension of the Reforms," and our contemporary is disposed to accept this statement as likely to be accurate. If it is a fact that Lord Reading's Government was in favour of an extension of the Reforms Act it would only place the Government right with the people of India, and we are entitled to know who is our enemy and whom we have to attack. The people of India would like to know whether the statement of the *Bengalee* correspondent is accurate."

(2) Is the statement made by the Special Correspondent of the *Bengalee* true? If not, will the Government of India be pleased to state the true facts?

Mr. H. Tonkinson: The statement of the special correspondent of the *Bengalee* is not correct. The Resolution was sent to the Secretary of State with a forwarding letter only.

INCHCAPE COMMITTEE.

359. * **Mr. K. O. Neogy:** Will Government be pleased to state the probable date of the termination of the work of the Inchcape Committee?

The Honourable Sir Basil Blackett: I understand that the Committee hope to finish their inquiry by the end of this month.

Mr. K. O. Neogy: Is it a fact that a part of the Report has been received by Government?

The Honourable Sir Basil Blackett: Yes, Sir.

Mr. K. C. Neogy: When is it going to be published?

The Honourable Sir Basil Blackett: About the time of the Budget it is hoped to publish it.

WITNESSES EXAMINED BY INCHEAPE COMMITTEE.

360. ***Mr. K. C. Neogy:** (a) Will Government be pleased to state the names of witnesses examined by the Incheape Committee?

(b) Was there any non-official among the witnesses?

(c) Will Government publish the evidence given by these witnesses?

The Honourable Sir Basil Blackett: I am informed that no record has been kept of the witnesses. In some cases when the reports given by departments to the Committee required to be supplemented, the Heads of departments were informally examined.

The answer to the second and third parts of the question is in the negative. No complete record has been kept of the informal discussions above mentioned.

Sir Deva Prasad Sarvadhikary: Is it a fact that it was first given out that the Committee would not examine any witnesses, but would receive only written statements of those who desire to give evidence?

The Honourable Sir Basil Blackett: I am afraid I am not in a position to answer that question; I do not know.

Mr. K. Ahmed: Were the witnesses who were examined named by the Government of India specifically or was the matter referred to the Local Governments to send in witnesses to be examined by this Committee?

The Honourable Sir Basil Blackett: I do not think the Local Governments had anything to do with the question.

Mr. K. Ahmed: The Honourable Member did not understand the first part of my question, Sir. Did the Government of India name those persons who were examined, and if so what was the principle that was adopted in selecting persons to be examined *in camera*?

The Honourable Sir Basil Blackett: The answer to the first part of the question is in the negative, and the second part, therefore, does not arise.

Mr. K. Ahmed: Then, how did these people come here and how were they examined? Did any unknown person whisper in the ears of those persons who were examined as witnesses to come and give evidence here?

The Honourable Sir Basil Blackett: The Honourable Member has asked so many questions that I do not know which one to answer. But the Incheape Committee examined such witnesses as it desired to examine.

Mr. K. Ahmed: Who decided the point? Was it the Committee which selected the witnesses or was it the Government? If it was done by the Committee, under what principle, and if it was done by the Government, how did Government select the persons?

The Honourable Sir Basil Blackett: The Incheape Committee, on the principle of examining those people who they thought would be useful, examined those people.

Mr. K. Ahmed: Do I understand that Government was not a party and that the Chairman and the Members of the Committee selected the persons?

The Honourable Sir Basil Blackett: The Government gave the Committee free scope to make such inquiries as the Committee thought desirable.

Mr. K. Ahmed: That is not the answer. The Government should have given the names.

STAFF OF INCHEAPE COMMITTEE.

361. ***Mr. K. O. Neogy:** (a) How many Secretaries, and Assistant Secretaries have the Incheape Committee got?

(b) Is there any Indian in any responsible position in connection with the Incheape Committee, excepting as Members thereof?

(c) What are the positions of Messrs. Mant and Brayne respectively in connection with the Incheape Committee, and what are their respective salaries?

The Honourable Sir Basil Blackett: (a) There is one Secretary (Mr. Howard) and an attached officer (Mr. Milne).

(b) No Indian officer has been formally attached to the Committee, but amongst other Indian officers who have been connected with the investigations I may specially mention Mr. Mitra, Financial Adviser, Military Finance, who has been closely associated with the Committee in their enquiry into military expenditure.

(c) Mr. Mant was Secretary to Government in the Retrenchment Office during the preliminary enquiry and since the Committee has been sitting, he has discharged the duties of liaison officer between the Departments of Government and the Committee. His pay is Rs. 4,000 a month, as Secretary to Government. Mr. Brayne is an officer of the Finance Department deputed to afford the Committee such assistance as they may require. His pay is that of his regular appointment as Deputy Secretary, i.e., Rs. 2,350 a month.

CALCUTTA PORT TRUST.

362. ***Mr. K. O. Neogy:** (a) Have Government received any proposal from the Government of Bengal for the amendment of the constitution of the Calcutta Port Trust, specially with a view to increase Indian representation thereon?

(b) If so, are Government in a position to make any statement indicating the views of Government in this matter?

The Honourable Mr. C. A. Innes: (a) Yes.

(b) No. The legislation necessary to give effect to any changes in the constitution of the Calcutta Port Trust is a matter for the Government of Bengal.

MOTOR HAULAGE AND ALLOWANCE IN DELHI.

363. ***Rai Bahadur G. C. Nag:** Is it a fact that Members living in Metcalfe House are allowed motor haulage and motor allowance of Rs. 75 per mensem? Is it a fact that Members living in Delhi city are allowed no conveyance allowance of any kind? On what ground is the discrimination justified? Who made the rule, and when was it made?

Sir Henry Moncrieff Smith: Members living in Metcalfe House are entitled to draw motor haulage but not the conveyance allowance of Rs. 75 per mensem. If the Honourable Member will refer to Legislative Department Circular No. LXV, dated the 18th May, 1921, he will notice that the conveyance allowance of Rs. 75 per mensem is admissible to those who live at Raisina. It is a fact that Members living in Delhi City are not entitled to conveyance allowance. As Members living in Metcalfe House are not entitled to conveyance allowance there is no discrimination.

Mr. K. Ahmed: Is there any allowance given for haulage, Sir, to people living in Delhi but neither at Raisina nor at Metcalfe House?

Sir Henry Moncrieff Smith: I must ask for notice of that question.

Mr. K. Ahmed: If that is so, is there any sense, Sir, in not paying conveyance allowance to people living anywhere in the town?

Mr. President: That is a matter for argument.

Mr. N. M. Joshi: I should like to know, Sir, the reason why people living in Metcalfe House should be given motor haulage, if it is not a conveyance allowance. I should also like to know from Government whether they remember that during the last Budget discussion, the Honourable the Law Member at that time promised to inquire into the question as to why a Delhi Member should not get conveyance allowance.

Sir Henry Moncrieff Smith: The Honourable Member's question seems to mix up two separate things. Motor haulage is given to a Member to enable the Member to bring his motor to Delhi. The conveyance allowance is given to a Member to enable him to run his motor about Delhi. With regard to the Delhi Member, I have not got the papers, and I should like to have notice of that question.

Mr. K. Ahmed: Is it the principle followed here that Members coming here and living in Metcalfe House will get motor haulage and not the people living in the town?

Mr. S. C. Shahan: Will a Member coming from the mofussil to Delhi and residing in the city of Delhi be entitled to motor haulage?

Sir Henry Moncrieff Smith: Certainly.

CANCELLATION OF MANGALORE MAIL.

364. ***Mr. K. Muppli Nayar:** 1. Is the Government aware that by cancelling the Mangalore Mail, the South Indian Railway has done a great disservice to the travelling public of the West Coast of India.

2. In view of the great trouble and worry to and consequent dissatisfaction of the public, do the Government propose to advise the restoration of the Mangalore Mail as soon as possible?

Mr. O. D. M. Hindley: 1 and 2. The attention of Government has been drawn to a letter in a newspaper indicating that the changes in the time table have not met with public approval but beyond this they have no information. The matter is one which is within the competence of the South Indian Railway Administration, but has been taken up with the Agent.

Mr. K. Muppli Nayar: Do I understand, Sir, that we have no control in the matter? Has the Assembly no jurisdiction in the matter?

Mr. C. D. M. Hindley: I have already stated that this is a matter which is within the competence of the South Indian Railway Administration.

SIND MOHAMMADAN CONSTITUENCY FOR COUNCIL OF STATE.

365. ***Mr. Ahmed Baksh:** Will the Government be pleased to state the following:

- (a) The date on which the nomination papers for the Sind Mohammadan Constituency for the Council of State were put in during the last bye-election;
- (b) The date of scrutiny and polling;
- (c) The date on which the result was announced;
- (d) The date on which Mr. Ali Buksh Mohammed Husain, M.L.A., put in his resignation and also the date on which it was accepted;
- (e) Is it fact that under the Council of State Electoral Rule 5 (c) a person is not eligible for election if he is a Member of any legislative body; if the answer is in the affirmative will the Government be pleased to state how Mr. Ali Buksh Mohammed Husain was elected to the Council of State?

Sir Henry Moncrieff Smith: (a) 21st November, 1922.

(b) 23rd November, 1922, and 20th December, 1922.

(c) 21st December, 1922.

(d) 25th December, 1922, and 10th January, 1923.

(e) Yes. The Bombay Electoral Regulations do not allow the returning officer to reject a nomination on the ground that the candidate is barred under rule 5 (1) of the Electoral Rules.

Mr. K. Ahmed: Is not that, Sir, a violation of the rule under which, if a candidate stands for election, his seat should be left vacant?

Mr. President: If the Honourable Member expects an answer, he must make his question intelligible.

Mr. K. Ahmed: A violation of the rules under which a candidate is to be returned to this Assembly; that is that, unless he vacates his seat in the Legislative Assembly, he cannot be a candidate for the Council of State.

Sir Henry Moncrieff Smith: What is not a violation of what rule?

Mr. K. Ahmed: A violation of the electoral rules of the Council of State.

Mr. Ahmed Baksh: Does this rule apply only to Bombay or to other Provinces as well?

Sir Henry Moncrieff Smith: I believe the position is the same under all the electoral regulations. I may as well admit that this recent case has revealed a defect in the rules, and the matter is receiving attention.

Mr. K. Ahmed: Is it not a fact that the Commissioner of Sind referred this matter by a telegraphic message to the Government of India asking whether nominations cannot stand according to the rules of the election of the Council of State.

Sir Henry Moncrieff Smith: So far as I am aware, Sir, that is not a fact.

Mr. Muhammad Yamin Khan: What will be the position of the present Member who has been elected to the Council of State? Will it be considered to be a valid election or not?

Sir Henry Moncrieff Smith: If no election petition has been presented against his return within the period allowed his election is presumably valid.

Mr. Muhammad Yamin Khan: What will the Government consider it without an election petition? Will the Government consider it to be valid or not?

Sir Henry Moncrieff Smith: The Government is not concerned in the matter; it is the electors of the constituency who are concerned.

Mr. Ahmed Baksh: Under the electoral rules a person who is already a member of another body cannot stand for election, also a female cannot. Supposing a female has been elected, if there is no election petition what would be the situation then?

Sir Henry Moncrieff Smith: As regards the female it would be a matter of opinion. As regards the case of a Member who is already a member of a Legislative body, I have already said there is a defect. In fact the electoral rule which says that a Member who is already a Member of a Legislative body shall not be eligible for election to another Legislative body is possibly inconsistent with a section of the Government of India Act which distinctly contemplates that a sitting Member of one House of the Indian Legislature may stand for election for the other House. That is section 63E (2).

UNSTARRED QUESTIONS AND ANSWERS.

ARMY MARRIAGE ALLOWANCES.

184. **Rai Bahadur G. O. Nag:** (a) In the Army Budget what are marriage allowances to families in England, of British personnel serving in India? Since when have these allowances been granted, and why?

(b) Will Government kindly furnish a statement showing the marriage allowances paid to families of British personnel during the past 10 years?

(c) Are any such allowances paid to Indians? If not, why not?

(d) Are amounts paid as marriage allowances recoverable?

Mr. E. Burdon: (a) and (b). Marriage allowance forms part of the remuneration of the married British soldier, wherever serving. The allowance was introduced from the 4th October, 1920, and has its origin in certain allowances which had to be paid to the British soldier during the Great War in order to secure the personnel required. The conditions on which marriage allowance is granted are stated in an Army Order a copy of which I will give to the Honourable Member separately.

A statement showing the rates of marriage allowance paid to the families of British troops serving in India when the families are respectively (a) in the United Kingdom and (b) in India, is laid on the table.

(c) No. Marriage allowance is merely a part of remuneration and the terms of service at present in force for the Indian soldier are sufficient to secure efficient recruits in adequate numbers.

(d) No. It is only the family allotments which are recoverable, i.e., the amount which the soldier himself is required to contribute in order to qualify for marriage allowance.

Statement showing the rates of marriage allowance paid to the families of British troops serving in India when the families are respectively (a) in the United Kingdom and (b) in India.

	(a) In the United Kingdom.			(b) In India.		
	When not in public quarters.	When in occupation of public quarters. (Rent is charged at 7s. a week.)	Government quarters or tent always provided. Rent payable by certain U. L. ranks only.			
	Rs. A. P.	Rs. A. P.	Rs. A. P.			
Wife only	22 12 0	Nil	30 0 0			
Wife and 1 child	45 8 0	22 12 0	40 0 0			
Wife and 2 children	61 12 0	39 0 0	50 0 0			
" 3 "	68 4 0	45 8 0	60 0 0			
" 4 "	74 12 0	52 0 0	65 0 0			
" 5 "	81 4 0	58 8 0	70 0 0			
" 6 "	87 12 0	65 0 0	75 0 0			
" 7 "	92 12 0	70 0 0	80 0 0			
Each additional child	4 14 0	4 14 0	5 0 0			
<i>Where no issue is made to the wife and for motherless children.</i>						
1st child	22 12 0	Nil	10 0 0			
2nd "	16 4 0	16 4 0	10 0 0			
3rd "	6 8 0	6 8 0	10 0 0			
4th "	6 8 0	6 8 0	5 0 0			
5th "	6 8 0	6 8 0	5 0 0			
6th "	6 8 0	6 8 0	5 0 0			
7th "	4 14 0	4 14 0	5 0 0			
Each additional child	4 14 0	4 14 0	5 0 0			

RAISINA HOSTELS.

185. Rai Bahadur G. C. Nag: Is it true that both Eastern and Western Hostels are proposed to be given over to the Postal and Telegraph Departments? If the answer is in the affirmative, will Government kindly state the reasons for the decision?

Colonel Sir Sydney Crockshank: The Honourable Member is referred to paragraph 22 of the Report of the New Capital Enquiry Committee, 1922, copies of which have been placed in the library for the information of Members. The recommendations of the Committee are under consideration.

LONGWOOD HOTEL, SIMLA.

186. Rai Bahadur G. O. Nag: Is it a fact that the Longwood Hotel at Simla was originally purchased for accommodation of the Members? If the answer is in the affirmative, will Government kindly state how many rooms there are in the Hotel, and how many of them were given to the Members and how many to outsiders during the past two Simla Sessions?

Colonel Sir Sydney Crookshank: "Longwood" was originally purchased for the accommodation of Members of the Indian Legislature. There are 54 quarters in all, 3 of which are reserved for management and superintendence. Of the remaining quarters in 1921 the whole were placed at the disposal of the Members, but only 31 were occupied. In order to reduce the annual loss to Government on these quarters, 15 have been made available for occupation by Government officials throughout the year and certain other quarters during non-session periods. Of the 36 quarters available for Members of the Legislature, 31 quarters were in occupation during the autumn of 1922.

LOSSES ON ASSAM-BENGAL RAILWAY.

187. Rai Bahadur G. O. Nag: (a) Is it a fact that the Assam-Bengal Railway has been working at a loss since it was opened in 1895 to date, and under terms of contract with the Company, the Government have been bearing the losses which amounted to Rs. 30 to 40 lakhs annually in addition to paying interest at 3 to 3½ per cent. on the Company's share-capital of £1,500,000? If the figures are incorrect, will Government kindly state what the correct figures are?

(b) Will Government kindly state what was the amount paid in interests and losses separately to this Company during the past 5 years, and under what head of budget the payment appears?

Mr. C. D. M. Hindley: (a) The Assam-Bengal Railway has been working at a loss since it was opened in 1895, the annual losses being in respect of interest charges; except that in 1895 there was a small loss in working. Attention is invited to the figures given in the History of Indian Railways, copies of which are available in the Library of the Legislature.

(b) The amount paid to the Company annually for interest is £45,000 being the guaranteed interest at 3 per cent. on the Company's share capital of £1,500,000. There have been no losses payable to the Company during the last five years. The payment of guaranteed interest appears under the head "Interest on Capital contributed by Companies" and is included in the figure for interest charges shown in the Demand Statement presented to the Assembly.

IMPORT OF MOTOR CARS, BICYCLES AND TRICYCLES.

188. Mr. Darcy Lindsay: 1. Will Government state if it is a fact that during the first 9 months of the present fiscal year whilst the number has increased the value of imports of motor cars has considerably decreased in comparison with the same period of 1921-22 and is nearly four crores less than in 1920-21 and that the import of the British car has become reduced to only 10 per cent. of the total.

2. Is it a fact that during the same period the value of imports of bicycles and tricycles is in round figures 12,57,000 as against 8,89,000 in 1921-22 and 25 per cent. of the 1920-21 imports.

3. Do Government propose to re-examine the position with a view to re-adjusting the import duty on motor cars on a more equitable basis.

The Honourable Mr. C. A. Innes: 1 and 2. The figures given by the Honourable Member are substantially correct.

3. The effect of the present rates of customs duties has been fully considered by the Government of India in connection with the forthcoming budget, but the Honourable Member will not, I am sure, expect me to anticipate my Honourable colleague, the Finance Member's budget speech.

RESOLUTION RE KING'S COMMISSIONS FOR INDIANS AND INDIANISATION OF THE ARMY.

Mr. President: The Assembly will now resume the discussion of the resolution moved by Mr. Muhammad Yamin Khan, which is as follows:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commissions for Indians by direct recruitment and by promotion from the rank of Viceroy's Commissioned Officers in such number that all vacancies in the Indian Regiments be in future filled by such Indian Officers only till all Indian Regiments are wholly Indianised."

To which an amendment has been moved:

"That for the word 'and' the word 'or' be substituted, and that the word 'all' before 'vacancies' be omitted, the word 'only' after the words 'Indian Officers' be omitted, and the word 'wholly' before the word 'Indianised' be omitted."

The question is that that amendment be made.

His Excellency the Commander-in-Chief: Sir, with your permission I desire to make a statement to the House. Speaking in this Assembly on the 24th of January last, I expressed the hope that it would be possible to announce at no very distant date what measures are to be adopted in regard to the Indianisation of the Indian Army. In the short interval that has elapsed the correspondence which I then said was proceeding has been concluded, and I am able to announce to the House the following decision. The Government consider that a start should be made at once so as to give Indians a fair opportunity of proving that units officered by Indians will be efficient in every way. Accordingly it has been decided that eight units of cavalry or infantry be selected to be officered by Indians. This scheme will be put into force immediately. The eight units to be wholly Indianised will be mainly infantry units, but there will be a proportion of cavalry. They will be chosen judiciously so as to include as many representative types as possible of Indian battalions and cavalry regiments of the Indian Army. Indian Officers holding commissions in the Indian Army will be gradually transferred to Indianising units so as to fill up the appointments for which they are qualified by their rank and by their length of service, and the process of Indianising these units will then continue uninterruptedly as the officers gain seniority and fitness in other respects, which will qualify them for the senior posts. I have given the House these few details because I think they will be of interest as revealing some of the practical aspects of the change. There is one other point, however, which it is necessary for me to explain. It is that, simultaneously with the Indianisation of these selected eight units, Indians

[H. E. the Commander-in-Chief.]

who qualify for the King's Commission will continue as at present to be posted to the other units of the Indian Army. The number of Indian cadets now sent to Sandhurst each year, if all pass out successfully, is more than sufficient to replace the normal wastage in the eight units alone. I draw attention to this matter as it is of significance which the House I am sure will not fail to appreciate. Once more, before sitting down, I wish to express my gratification that this great step forward has been made. I hope that the people of India will appreciate the importance of this step and will realise also that it now rests with them to justify the decision of the Government. I hope that no effort will be spared to make the measure which has been approved a solid and a conspicuous success. The responsibility which lies before these young men who will officer the Indianised regiments, is no light one. They will have in their hands not only the lives of their men, but also the task of maintaining untarnished the high and ancient traditions of the regiments to which they are appointed. I can assure them that in the new and in the wider career which will now lie open to them, they will have the active and the generous support of the Government of India and of their British comrades in the Army. Their success or their failure will mean much to India. The initiation of this scheme constitutes an entirely new departure which, though limited in its scope, is one which may have far-reaching results. I trust that the Members of this Legislature and that the people of India as a whole will support the Indian officers of these Indianised regiments with living and with practical encouragement, for by this means only can Indianisation hope to deserve and to command success.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): May I ask His Excellency one question? How many units are there out of which these eight units are to be Indianised?

His Excellency the Commander-in-Chief: I thought I made it clear that there would be eight units.

Mr. Muhammad Yamin Khan: I wish to know how many units there are in the Indian Army out of which these eight units are to be Indianised?

His Excellency the Commander-in-Chief: The total number of units in the Indian Army are 120 infantry and pioneers and 21 cavalry.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, the information which His Excellency has given this morning and the speech which he delivered on the last occasion render it absolutely necessary that I should press the amendment of which I have given notice. Sir, His Excellency has just now told us that the correspondence between the Government of India and the Secretary of State on this subject has been concluded; and, therefore, there ought to be no difficulty in placing that correspondence on the table of this House. Sir, more than a year ago I asked a question in this Assembly of the Government as to whether they would be prepared to publish the correspondence relating to this subject

Mr. President: Is the Honourable Member moving his amendment?

Mr. T. V. Seshagiri Ayyar: Yes.

Mr. President: I think I must dispose of Sir Deva Prasad Sarvadhikary's amendments before we come to that. I understood he was rising to meet the new situation which has been created by the statement of His Excellency the Commander-in-Chief.

The question is that for the word "and" in the second line of the Resolution the word "or" be substituted.

The motion was negatived.

Mr. President: The question is that the word "all" before the word "vacancies" be omitted.

The motion was negatived.

Mr. President: The question is that the word "only" after the words "Indian Officers" be omitted.

The motion was negatived.

Mr. President: The question is that the word "wholly" before the word "Indianised" be omitted.

The motion was negatived.

(Mr. Seshagiri Ayyar rose to continue his speech.)

Mr. S. O. Shahani (Sind Jagirdars and Zamindars: Landholders): Sir, I have been authorised by Munshi Iswar Saran . . .

Mr. President: Order, order. Mr. Seshagiri Ayyar.

Mr. T. V. Seshagiri Ayyar: I will resume my remarks. Sir, as I said, the information given this morning renders it necessary that this House should have before it all the correspondence that passed between the Government of India and the Secretary of State. His Excellency has told us that out of 141 units in the Indian Army the Government of India have selected 8 units for being officered by Indians. That gives a proportion of 1 to 17. Sir, it is not doles of this kind that this House and the country would value. What we want to know is what is Government's definite programme which they and the Secretary of State have agreed upon, and whether that programme should not be laid on the table of this House for our criticisms and our suggestions. Unless they give us the details of the scheme sent by them to the Home Government, and, unless they tell us what their considered opinions were, and how far they have been either accepted or rejected by, what Mr. Jinnadas Dwarkadas would have called "the gentleman at Whitehall," until we know something of the nature of the correspondence that was carried on between the two departments of the same Government, we will not be in a position to give our adhesion to the scheme that may be outlined. Sir, this is a matter of great constitutional importance. I take it, Sir, that this Legislature, the Government of India and the Secretary of State are the three component parts of a united administration. If that is so, I do not see what necessity there is for one branch of the administration being kept in ignorance of what is going on between the other two branches of the administration. The Government will recognise in what a false position they are placing this Assembly by not placing before it all that passes between themselves and the Secretary of State. We have often been told by those who are not friends of the Government, by others who consider that we are not being treated properly, that we are not really representing the people and that the Government has no confidence in us. That accusation

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receives strength from the fact that the Government do not take us into their confidence. We have been asking times without number to be informed of what is passing between them and the Secretary of State. Every time they return the answer that it is in the correspondence stage and that they are not prepared to publish the correspondence. Why should not the correspondence which passes between the Secretary of State and the Government be laid on the table of the House, so that we may be in a position to know whether they represent the wishes of the people, whether they voice the considered opinion of the people; we want to be in a position to offer them such suggestions as may enable them to make further representations to the Secretary of State. If they do not do that, what is the position? We are considered as of no value by a certain section of our countrymen and the Government are regarded as irresponsible; it is believed that it is the Secretary of State who is ruling the whole country and that it is he and he alone can determine what our fate should be. Sir, the other day the Leader of the House made a statement which has enabled many a newspaper to have it as the headline of an article, namely, that this House is often not proceeding on facts but on suspicions. I wish, Sir, that the Leader of the House may soon be here and that his illness may soon be cured, because nobody feels his absence more than Members on this side of the House. Sir, who is responsible for the Assembly and the country basing their conclusions upon suspicions and not upon facts? Do the Government give us any facts? Do they ever place before us any data? Do they ever admit us into their confidence? Naturally, the result is that we are groping in the dark. We get some information from newspapers occasionally. The newspapers seem to have their confidence more than the Members of this House. We take our facts from these newspapers and we begin to spin out a theory which we believe is the one which has commended itself to Government. Under these circumstances, is it any use twitting us with proceeding upon suspicions and not upon facts, when we are not enabled to have the facts before us? I say this is a matter of grave constitutional importance and I ask Government how long are they going to keep the Assembly in ignorance, and how long are they going to keep everything that passes between them and the Secretary of State from us? If they continue in this mood, we shall regard it that they have no faith or trust in us; that feeling will be reciprocated; we cannot trust them if they do not trust us. Sir, that is the reason why I have added to the Resolution which was moved by my Honourable friend an amendment in these terms. There is, by the way, a printer's error in it. Instead of the word "substituted" the word should be "added."

That for the Resolution as it stands the following be added:

"This Assembly recommends to the Governor General in Council that he may be pleased to lay on the table of the House the scheme, if any, for the Indianisation of the Indian Army and the correspondence, if any, that has passed between the Government of India and the Secretary of State for India on the subject."

Sir, it is no news to His Excellency the Commander-in-Chief, nor is it news to the Government of India, that the whole of Asia is waking up. You will find in Japan, in China and everywhere there are National Armies officered by men belonging to the nation. It is only in India that we do not find the same thing; and unless Government enable us to officer our Army, unless they Indianise the Army itself, it will be impossible for us to be able to resist any invasion that may come to India from those quarters;

and I think it is in the best interests of the Government that they should take the people of India into their confidence and enable us to assist them in giving our own views as to the best means of Indianising the Army. Until they do that, there will be no feeling of trust or confidence in them. Sir, His Excellency the Commander-in-Chief on the last occasion said that he was exceedingly pleased with the conduct of the Indian Army, exceedingly pleased with their discipline; and he paid a glowing tribute to their general conduct. May I add to the testimony borne by His Excellency the testimony of one of his predecessors, Sir Charles Monro, in regard to the Indian soldier? There is no doubt there is good material in this country which can be developed and from which officers can be drawn who will be able to command the various units. This is what Sir Charles Monro stated in one of his despatches:

"The character of the terrain combined with arduous and trying climatic conditions alone presented difficulties before which the most hardened troops might well have desisted. The resistance of the enemy has been broken and the difficulties successfully overcome by a force composed almost entirely of Indian troops. No British troops, except for the Royal Air Force and a British Battery of Mountain Artillery was employed."

This fact has without doubt considerably raised the prestige of the Indian Army on the Frontier and increased the *esprit de corps* of the troops engaged. Sir, as I said, His Excellency the Commander-in-Chief has paid a similar tribute to the Indian Army.

Now if you find that the rank and file of the Army are so well equipped and so well able to withstand the enemy and in a position to render a good account of themselves, what is the difficulty in finding men from the ranks, what is the difficulty in promoting men from the ranks, to be officers in the Indian Army? His Excellency the Commander-in-Chief seems to think that it is almost impossible. We used to hear the saying in our schooldays that in France every soldier carries with him the possibility of becoming a Marshal, and if it was possible in France to get superior officers from the ranks, it should be equally possible in India to promote men of acknowledged ability from the ranks to be officers. I read sometime ago that in England there is a scheme for promoting from the ranks persons to the position of Captains and so on. If that is to be done in England, why should you not make the same attempt in India? The answer is "It is an uncertain factor and we do not know whether it will prove successful or not." My reply to that is this: If you do not try, if you never make the attempt, you will always be labouring under this difficulty. You must make an attempt, you must honestly endeavour to give Indians a chance of proving their mettle, a chance of showing that they can be not only good fighting men, but also good leaders of men. Government have not given them the least chance of doing that, hitherto, and that is the reason we do not find them holding important positions. I ask Government, Sir, to remove these suspicions from their mind and by their confidence in our soldiers, and by promoting them to responsible positions take the country with them. Sir, His Excellency the Commander-in-Chief on the last occasion used this language, namely:

"Do not try to run before you have begun to walk."

Sir, I agree with that maxim; but I would say: "Please give us an opportunity of standing up." If you do not help us to stand up, how can we walk at all? Government do not give us any chance, any opportunity of showing that we can stand up and walk a foot or two. If they do not enable us to do that, there is no use in telling us that we are trying to

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run before we can walk. When you give us the chance, if you find us stumbling in walking, you can then say "Do not walk so fast." But when you do not enable us even to get up, then you have no right to say that we are trying to run before we can walk.

Sir, I will conclude as I began. There is no use in giving us a few dribblets as was promised this morning. What we want to know is, what is Government's considered scheme? What is it they are going to do with the Army, and in what period of time do they expect that the whole Army will be Indianised? What is the suggestion, the advice, given by His Excellency the Commander-in-Chief? How has it been received by the whole Council of the Government of India, including the Indian Members who have been in the Executive Council? What has been the advice that they have given? Has that advice been accepted by the Secretary of State or has it been turned down? That is what we want to know. His Excellency the Commander-in-Chief just now turned his pencil towards my friend the Honourable Mr. Sarma, and I think he might as well point to the Honourable Mr. Chatterjee. They are no doubt there in the Executive Council. But, Sir, you will find that when Indians are in such responsible positions, it is almost impossible to get the slightest information from them. I can get some information from you, from His Excellency the Commander-in-Chief. I can occasionally go to the Honourable the Finance Member, and also to the Honourable the Commerce Member for some information. But if I go to Mr. Chatterjee or Mr. Sarma, all that they tell me is "Don't jeopardise the position of Government, don't embarrass the Government." Those are pet expressions of theirs. You cannot get any thing out of them. Under these circumstances, I say it is impossible to ask any of my countrymen in the Council of the Government of India to give us any information as to what has happened. They will not; and if the Government of India come to the conclusion that no correspondence is to be placed on the table, the whole country will be in the dark, and nothing about the steps which have been taken will ever come out from the Indian Members of the Council. I ask Government seriously and in all earnestness to place the whole correspondence on the table so that they may not allow us to remain in this unfortunate position of being told by our countrymen that we are not in the confidence of Government. Sir, it is necessary to enable us to attain Dominion Self-Government in future that we should have all the information available to the Government and the Secretary of State. Sir, I move the amendment which is standing in my name.

Mr. President: Before I put the motion, I must draw the Honourable Member's attention to the fact that his motion is in the form of a Resolution which he himself sent in and which is, so to speak, meant to stand on its own feet. Now as an addition to the Honourable Member's Resolution it does not fit very well. I do not rule it out, but I think it will require some change to make it a reasonable amendment. I do not think the Honourable Member has quite taken into account the fact that it is not a good practice to use a substantive Resolution as an amendment to another Resolution.

Mr. T. V. Seshagiri Ayyar: May I say, Sir, that the only word which it will be necessary to add is the word 'further'?'—"That this Assembly further recommends, etc., etc." If you would allow me to add that word there, it will make matters clear.

Mr. President: Even with the addition of that word, what the Honourable Member appears to contemplate is the laying on the table of the scheme and subsequent discussion of that scheme, whereas the Resolution asks, not for laying on the table or for discussion, but for instant action. If one is really an amendment of the other, I would assume that the word "substituted" was the correct word.

Mr. T. V. Seshagiri Ayyar: May I explain, Sir, even before the original Resolution came up for discussion I informed the Secretary of the House that I did not want to substitute mine for the original Resolution, but that I wanted it to be an addendum to the original Resolution. I gave that information long ago; it was not yesterday or the day before yesterday; I did this about a fortnight ago. My object in putting this amendment forward is this: it is not only the Indianisation of the Army we want; we also want to know the exact programme, the scheme of Indianisation which the Government of India and the Secretary of State have resolved upon. It is for that purpose that I want that the correspondence should be placed on the table, so that we may be in a position to know not only how far Indianisation has proceeded, but also what were the concrete proposals made by the Government of India which were either accepted or rejected by the Secretary of State. That is why I wanted to have the correspondence laid on the table. Under these circumstances I think, Sir, that my Resolution may be regarded as an amendment in the sense that it is an addition to the existing Resolution. And it does not contravene the main Resolution; it only adds to the requisition contained in the original Resolution.

Mr. President: Then it is the Honourable Member's intention that the scheme should be laid on the table for discussion and that at the same time, the Governor General should be recommended to take instant action in the direction recommended in Mr. Yamin Khan's Resolution?

Mr. T. V. Seshagiri Ayyar: Yes, Sir. The language is perhaps not quite clear, but that is my idea.

Mr. President: Amendment moved:

"That to the Resolution the following be added:

'This Assembly further recommends to the Governor General in Council that he may be pleased to lay on the table of the House the scheme, if any, for the Indianisation of the Indian Army and the correspondence, if any, that has passed between the Government of India and the Secretary of State for India on the subject.'

Mr. Muhammad Yamin Khan: May I ask, Sir, if the Honourable Member who has moved the amendment in addition to my Resolution is willing to number my Resolution as (a) and his amendment as (b)?

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, my Honourable friend, Mr. Seshagiri Ayyar, expressed his regret at the absence of the Leader of the House to-day. I can assure him and this House that his regret is nothing as compared to mine. If Sir Malcolm Hailey were here, I should be sitting in my seat and watching Sir Malcolm Hailey intervening in this debate with that debonair unconcern which marks all his interventions. As for me, I feel just like a man who is about to poke his head into the proverbial hornet's nest. Fortunately, Sir, my task, though it may not be a very palatable one to this House, is not a very difficult one. I propose to confine myself entirely to Mr. Seshagiri Ayyar's amendment. Mr. Seshagiri Ayyar asks that all the correspondence

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relating to this subject may be placed on the table of the House. He has complained that unless we do this, the constitution under which we are working is bound to breed only suspicion in the Members of the House. Sir, it is not my purpose to discuss that constitution. I see no useful purpose in discussing that constitution. Whatever the defects of that constitution may be, the constitution is there, and we have to work it and we have to make the best of it. There is only one answer to this amendment of Mr. Seshagiri Ayyar. Even if the Government of India wished and were prepared to meet Mr. Seshagiri Ayyar and to lay this correspondence on the table, we could not do so. We cannot lay that correspondence on the table without the express and previous concurrence of His Majesty's Secretary of State for India. We have not got that concurrence and that is the only answer I can give to Mr. Seshagiri Ayyar. If the House passes this amendment, naturally it will be communicated to the Secretary of State, but I can give no indication of any sort or kind as to what the Secretary of State's answer may be. I am afraid, Sir, I can give no other answer to Mr. Seshagiri Ayyar's amendment.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammudan Rural):

Sir, I shall venture to offer a few remarks with reference to the action which Government have been good enough to announce that they are prepared to take, and I shall also venture to indicate the lines on which the aspirations of the people are at present running. In the first place it is my duty, I think, to thank His Excellency the Commander-in-Chief for the announcement he has made and for the small mercies which Government have decided to show to this country. I do not wish to go into general propositions, but shall go into a few details, chiefly with a view to elicit more information from His Excellency the Commander-in-Chief. In order to do so I think I shall have to take stock of what this House decided two years ago, what Government did during the interval and whether what Government are prepared to do at the present moment meets with our satisfaction. This House two years ago in 1921 on a Resolution of Sir Sivaswamy Aiyer decided, and Government also accepted, that His Majesty's Government should admit Indians to all the different arms of His Majesty's forces. Now that means that Indians should be admitted to the Air Force and to the artillery among other branches. In the announcement which His Excellency the Commander-in-Chief has been pleased to make this morning, I find he has not told us whether, as a result of the correspondence which Government had with His Majesty's Government, they have come to any decision on these two points. If I understand Indianisation of the Army aright, Indians must be trained to defend the country in all its branches. They must be trained to use their intelligence in the Air Force and in the artillery and to command in these arms. I wish to know whether any decision has been arrived at on these two points. During the last two years I recognise that Government have done something; a Military college has been opened at Dehra Dun; a few military schools in connection with that college are contemplated and Government have also framed certain regulations for admission to the Dehra Dun college which is a preparatory and preliminary college for cadets being sent up to the Sandhurst College at Home. Now, when the Proposer of the Resolution and the Mover of the amendment opened up the principle that the vacancies in the Indian Army should be all filled up by Indian officers, I do not know whether they threw any light, or sufficient light, on what we wanted, or what they meant by Indianisation on the principle of filling up vacancies.

As far as I can find out the figures, Sir, the present British officers in the Indian Army are as follows: In the cavalry they are 548, and in the infantry they are 2,688, making a total of something like 3,200 British officers in the Indian Army. So far as the artillery is concerned the whole of that arm of the forces is officered by British service men. It is not open to officers of the Indian Army, if I am correct. Taking therefore this figure 3,200 as the total of officers which eventually according to the goal we have in view we have to replace by Indians, I am not quite able to follow His Excellency the Commander-in-Chief when he announces that 5 units will be thrown open to Indians. I want to know in terms of so many officers what proportion it bears, not to the total number of units or regiments but to the total number of posts of British officers, because after all what we want to do is to replace eventually all these British officers in the Indian regiments by Indians; what we are more anxious to know, therefore, is how soon this total of 3,200 officers, or at what reasonable date this total number of 3,200 officers will be capable of being replaced by Indians according to the present process of intake at the Sandhurst College, or the intake and the flow at the Dehra Dun College. That is precisely the position. Now, in order to understand that and in order to find out whether our process of Indianisation by training at Sandhurst is adequate, whether the pace is rapid or slow, we must know how many cadets have been turned out, how many have passed out of the Sandhurst College during recent years. Now, I do not know whether it would be perfectly relevant to go into the figures before the year 1919. But I believe for the purpose of comparison it is germane and pertinent to know how many cadets are being turned out from the Sandhurst College and whether the flow is adequate enough to replace the 3,200 officers in a reasonably short period of time. Now, the number who passed out of the Sandhurst College in 1919 were 2 in the spring term and 4 in the autumn term, in all 6. Those who passed out in 1920 were only 2. Those who passed out in 1921 *nil*. And I believe in the spring of 1922, 2 people were under training there. So that at the present moment only 18, or to take the most up-to-date figures perhaps 23 people are under training in Sandhurst. Now, if my figures are correct, I should like to know whether you can replace 3,200 people, by the process of filling vacancies occurring amongst them; I doubt if this process will Indianise the Army at a reasonably early period. Now, I do not know what the percentage of vacancies per annum is to the total number of officers. I am not aware whether it is taken on the actuarial basis or on some other basis, but, even taking the ordinary actuarial basis of the percentage of vacancies to be say 3 or 4 per cent, the vacancies after all will be very few; I think it is no use attempting to Indianise the Army by filling in only the vacancies as and when they occur. In other words, the process of Indianisation by filling in vacancies is rather a very very slow process indeed. What, therefore, is necessary is to withdraw British officers from the Indian regiments and replace them, irrespective of vacancies, if you really want to Indianise the Army very quick. Now I am glad to hear this morning that a principle like this, namely, to replace, irrespective of vacancies occurring, some British officers by Indian officers, has been accepted and that 8 units will be replaced by this process of entirely withdrawing British officers and putting in Indians in their place. Sir, grateful as I am for these small mercies, even so I think that the process will be a very slow one indeed, taking into consideration the fact that you have to replace sooner or later no less than 3,200 officers. Now, having shown that the percentage of passes and people admitted into Sandhurst College is very small

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and therefore the intake would be very small, I would now like to deal with the second question, namely, whether the regulations which are framed by Government with reference to admission to the Dehra Dun College are likely to satisfy the requirements of the country. Because, the Dehra Dun College is after all a College for preliminary training for the ultimate training to be given to Indians at Sandhurst. Now, I fully recognise, Sir, that the education for a military career ought to be very sound; it ought not only to look to educational attainments of the candidate; a man destined for a military career must have character, an instinct for leadership and other qualities as well, and, if possible, must be trained in the environment of Sandhurst where he can rub shoulders with his British comrades. But, taking all these facts into consideration, there still remains the question whether the present rules are in the circumstances of India fair enough to attract a large number of people. Now, looking into these regulations, I find that the age of the boys who will be admitted under the regulations in the first year class in Dehra Dun College is 12 to 13. Boys over 13 are not to be admitted. Now, I consider, Sir, that, considering the habits and customs of the people of this country, this is rather too tender an age for Government to lay down. I recognise that the military career, if it is to be successful, ought to be begun at a very early age. But to imitate the public school regulations in England and to transplant them here and to lay down that boys in so vast a country as India should be admitted to a place like Dehra Dun at the tender age of 12 or 13 years is I think a very hard condition. Now, I want to say a word about the allotments in the admissions. The total number of people to be admitted into the Dehra Dun College is at present about 40 and eventually, finances permitting, Government hope that it may be raised to 70. I want the House to realise whether the present number 40 is adequate for the needs of the country. If we have to Indianise the Army very quick, the total minimum number of 40 laid down or even 70 for next year or the year after that is, I believe, a very small number to fix, if at all we are to go on with the process of Indianisation fairly quick. Now, even with this number of 40, which is the utmost number allotted for admission at the Dehra Dun College, we have to remember the sources over which this number of 40 is distributed. The sources are three. These 40 students to be admitted into the Dehra Dun College are distributed firstly between the different provinces of British India, (2) the Indian States, and (3) the sons of Indian officers of good service in the Indian Army. Now, my point is that, if 40 is to be distributed over these three sources, the number that will eventually be allotted for the sons of the middle classes or the other classes in the different provinces of British India, the share that will go to them will be very small indeed and, therefore, in order that the 9 different provinces in British India should get an opportunity to send a larger number of boys for a military career, I think the number to be admitted into the Dehra Dun College and to be eventually sent up to Sandhurst ought to be increased, whether the finances at the present moment strictly allow it or not; for the simple reason that we are spending on the military side of our Budget no less than 62 crores of rupees and I think it is but just and fair that, if the country is spending so vast an amount, the Military Department ought to spend for the training of cadets much more than the Dehra Dun College is doing at present.

To sum up, then, Sir, in the first place, I want to know whether Government have arrived at any decision whether Indians will be admitted and

trained for the Air Force, I want to know, secondly, whether the Artillery will be thrown open to the Indians. Thirdly, whether the 8 units in which or course Government are now prepared to replace Indians, whether that bears a reasonable proportion to the total number of officers, 3,200, if that figure of mine is correct, and fourthly, whether the regulations for the admission to the Dehra Dun College are sufficiently elastic as to give the fullest opportunity in the different provinces to Indian boys who are to be educated for a military career.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir,

12 Noon. the subject-matter of the Resolution that we are discussing to-day very closely concerns the future of the community which I have the honour to represent in this House, for as permanent residents of this country and statutory natives of India, or, as I would prefer to call ourselves "Indian citizens" we claim and rightly claim a participation in the Indianization of all the Services in general and the Indianization of the Army in particular. I say Army in particular because from the very inception of my community, it has played an important and unique part in the defence of this country for which, I regret to say, it has received very scant recognition until quite recently when His Excellency Lord Rawlinson was good enough to recognise it publicly. Sir, I submit, that the claims of my community are all the more necessary for I take it that I am right in prognosing that, when the British Army quits this country,—which I hope it never will— at that time will take place the disappearance of the Auxiliary Force, of which force my community, I am proud to say, forms about 3rds. Should this happen, what Military Service and employment, I ask, would be left for the Members of the Domiciled Community. It is because I apprehend the effect on my community so far as the Military defence and employment in this country is concerned that I make this pointed reference to it and to make my point quite clear, I wish to draw the attention of this House as also the Government to the Select Committee that sat on the Esher Report two years ago and whose report was, in the main, accepted by this Honourable House. I was mainly responsible for the framing of Resolution No. 15 which Resolution runs as follows:

"This Assembly recommends to the Governor General in Council that 'Anglo-Indians' should be included in the term 'Indian subjects' or 'Indians' whenever such terms occur in the above Resolution."

That Resolution, Sir, was unanimously adopted by this Honourable House and I here again thank the Indian Members of that Committee for acceding to my request. I was therefore rather surprised and disappointed, when listening to my Honourable friend, Mr. Yamin Khan, to find no mention whatever in the Resolution of the Anglo-Indian and Domiciled European community. Its inclusion, Sir, may be implied. (An Honourable Member: "The word 'Indian' covers it.") That may be, Sir, but the wording of the Resolution and the way he remarked on it leads me to infer—if I am wrong, the Mover can correct me when he replies—that this recruitment was entirely for Indians. Well, Sir, when Resolution No. 15 was accepted by this House, my community seemed at ease as regards its future military safeguards, but I regret to say that events have not proved this to be the case. Let us see what the Government has done in the way of giving practical effect to that Resolution since its passing. The prospectus of the Prince of Wales Dehra Dun Military College was published, I do not think there is even mention of the words "Anglo-Indian" or "Domiciled European" in it.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): Don't you come under the term "Indian"?

Lieut.-Colonel H. A. J. Gidney: After repeated inquiries from the Military Authorities I was told that as it involved a question of policy, the matter had to be deferred and referred to higher authorities, and to-day, *i.e.*, two years after this Honourable House unanimously accepted Resolution No. 15 I am told that I cannot get admission into the Dehra Dun College, that the doors of Sandhurst are open to my community for admission into the Army, and that if I require admission into the Dehra Dun College, I must now give the Government some further guarantee that Resolution No. 15 is accepted by the whole of my community in India, and to satisfy this curiosity of the Government, I am now collecting information, but I can assure the Government that as far as I have been able to ascertain, my community prefers to enter the Indian Army *via* the Dehra Dun Military College. I can assure the Government just now that the community realises that as the Army becomes more and more Indianised, the need for Sandhurst will *pari passu* with that development decrease and it will be closed so far as the Indian Army officers are concerned. Therefore, it is only a fool who will expect to enter the Indian Army through Sandhurst when the Army is completely Indianized. I therefore say on behalf of my community that as far as I have been able to ascertain, we would like to enter the Army *via* the Dehra Dun College. But, Sir, I have something further to say regarding the position of my community, which to-day is not only an extraordinary one but which to me is unintelligible. Let me explain my point. When the domiciled community are employed in the defence of this country, be it internal or external, they are called "European British subjects," but when so employed, and an occasion arises, we are denied in many cases the jury privileges given to Europeans, when not so employed, they are called "Statutory natives of India," *vide* article 37 of the Civil Service Regulations. Sir, what I now want to know from the Government, so far as this Resolution is concerned, is what are they pleased to call the domiciled community—"European British subjects" or "Statutory natives of India"? If the former, then according to the terms of this Resolution my community is distinctly debarred from participating; if the latter, then I would like to know from Government what policy is it that actuates the Government of India in debarring my community from entering the King's Commission Banks of the Indian Army *via* the Dehra Dun Military College, and at the same time I would like to remind the Government that Resolution No. 15 which was accepted by this House gives my community the same privileges as every one else in India. It is therefore for the future guidance of my community that I ask the Government now and here to tell me what is the status of my community so far as Indianisation of the Army and other Services is concerned. How can we be "European British Subjects" when employed on Military Defence and "Statutory Natives of India" when employed in the Civil Services of India? It is obvious we cannot be both Statutory natives of India and European British subjects at one and the same time. It seems to me that the Government cannot make up their minds, and in consequence (so far as the revolutionary change which is taking place in India is concerned, and in which my community must take a part) we as a community are neither flesh, fowl nor Red Sea herring. It is therefore only natural, Sir, that until I receive some positive assurance from the Government of India as also this Honourable House, I must view this far-reaching Resolution with some degree of apprehension in more ways than one.

especially after hearing what His Excellency the Commander-in-Chief said on the 24th instant and the momentous pronouncement he has just made. I wish, however, that His Excellency the Commander-in-Chief's reply on the 24th instant had been more of the decided "Yes" or "No" order, instead of only advice—sound advice no doubt—but which, unfortunately, I am sorry to say, this House does not always seem in a mood to accept. Let me now more closely examine the Resolution that we have before us. But before doing so, I wish to make it perfectly clear that I take a second place to no one in this House in its desire to obtain Self-Government within the British Empire nor do I ignore the fact that Indianization of the Services including the Army is a "*sine qua non*" to this goal. This claim is only the natural sequel and as a citizen of this Empire I desire to wholeheartedly associate myself with this aspiration. But where I find myself at variance with the Mover of this Resolution is whether it is necessary for the Indian Army to be Indianized at the same speed at which the other services are to-day being Indianized. This is the question which agitates my mind and compels me to issue a note of warning so far as the Indian Army is concerned. Is it the proper time—Is it safe to Indianize the Indian Army at the speed which the Mover of this Resolution demands? I take it, Sir, that this Resolution is the outcome of Mr. Jammadas's Resolution moved last year on the Indianization of the services. (*Some Honourable Member*: "No, no.") If it is not, Sir, then the word "Indianization" as viewed by my Indian friends is possessed of two interpretations one by Mr. Jammadas Dwarkadas and one by the Mover of this Resolution, Mr. Yamin Khan. My Honourable friend, Mr. Jammadas Dwarkadas, when he moved his Resolution regarding Indianization of the services, distinctly laid it down that this meant participation, in the entrance to every Service, by everyone in India. That would include those who were permanently domiciled in this country. I now realise that Mr. Jammadas said about two weeks ago that it includes any one so long as recruitment is in this country.

Mr. Jammadas Dwarkadas (Bombay City: Non-Muhammadan Urban): On our terms.

Lieut.-Colonel H. A. J. Gidney: On the terms of pay or whatever it be, and recruitment being in this country, the field should include all communities in this country. (*A Voice*: "Certainly.") I see my Honourable friend, Mr. Yamin Khan's Resolution does not as far as I can see bear a similar interpretation of the word "Indianization" because the wording of it is such that it implies that no one else but Indians will come within the scope of his Resolution. I hope I am wrong in my interpretation. If I am wrong I shall be very glad to be corrected. But, Sir, however much I am in agreement with the Indianizations of the Services, it is in the acceleration of speed that I see the first danger signal of this Resolution. I will ask this House to remember that it was barely two years ago since the Select Committee report on the Fisher Committee Report was brought before this House and it made a modest proposal of 25 per cent. of King's Commissions to Indians. That was accepted, and here we have His Excellency the Commander-in-Chief to-day, our expert adviser, telling us what the Government of India has done, what the Government of India is doing, and what the Government of India will do. He has told us very clearly that there are 371 Honorary King's Commissioned Officers, 60 Indians holding full King's Commission in the Indian Army, 23 Indians under training at Sandhurst and 38 Indians in the Dehra Dun College,

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and to-day he has made the announcement which has evidently not satisfied the House, that eight separate and complete Indian units will be officered entirely by Indians. This gives you a total of about 500 Indians who are to-day or will in a very short time be holding King's Commissions and after these eight units are officered by Indians the total will be over 600 giving a rough proportion of one Indian to fourteen British officers. Does not this satisfy the House for the present? His Excellency the Commander-in-Chief told us that there are certain peculiar qualities that a British officer or any officer requires before he can take up command in any army or in any regiment, especially in the Indian Army. He also advised us to learn to walk before we attempted to run. I wish he had told us to learn to crawl. He has also explained to the House how violent and sudden would be the change and how strained would be the efficiency of the Indian army if we carried the scheme into effect at the speed advocated by this Resolution. He pointed out that India is still in a disturbed condition and that there are signs of danger both outside and inside, and he told us that the time is not opportune for so sudden and drastic a change. He told us also that the Government of India is desirous of satisfying the aspirations of this country, and, to-day he has given us the news that eight units are to be officered entirely by Indians and Indians alone. And here we are, in the face of all this, sitting down here in comfortable chairs—as far as we are individually concerned we are “babes” considering our ignorance of the Army—sitting down here and discussing and trying to make an army within 10 or 25 years, imagining that an Army like a mushroom is the product of a night or even a period of 10 or 25 years. No, Sir! Much as I am an advocate of Indianization of the Services and of Self-Government yet I am not an advocate of (what I consider this Resolution if passed would create) wrecking the Indian Army, an army that has taken England over 100 years to build up and an army which to-day even is not perfect. I submit with all respect that it is not the Indian army officer or Sepoy who is asking for this change. It is the Indian politician who demands this extraordinary speed of Indianization of the Army,—the Indian politician who in his race for Swaraj has evidently become myopic and nyoopic regarding the defence and safety of his own country. Sir, it is not my desire to deery or belittle the ability and the courage of the Indian officer for he has proved his worth in the battlefields of the world, but let me ask the Honourable Mover of this Resolution, has he asked the Indian officer what he thinks of this Resolution? Would he welcome it? Would Jack Sepoy welcome it? No, Sir, the *bon camaraderie* and good feeling between the British officer and his men in the Indian Army is the secret of its success, the cementing influence which, if taken away, I think will within a short time sow the seeds of disintegration. It will surely be necessary for the Honourable Mover of this Resolution to take into consideration how he is to obtain officers for the King's Commissions. It will certainly be by open competition. You cannot on that occasion exclude any class. You will there have the learned communities of India, if I may say, the Pandits of India topping the list and securing appointments as officers in the Indian Army,—I see my Honourable friend, Mr. Rangachariar as a Member of the learned Brahmin Community appreciates this fact. You will have army officers recruited from classes who unfortunately have not got martial traditions and martial instincts while the rank and file will be recruited mainly from the martial races in India. Can you visualise an army, if we go at the rate that we are asked to do, say of Sikhs commanded by a scribe

from Bengal,—he may be an excellent civilian officer, but he may not be any good as a commanding officer in the Army,—of an army of Gurkhas commanded by a Bania who would make a most excellent man at the stock exchange, but would not be much good in an army. It is this, Sir, that makes me think that the speed of this Resolution is much too great. It is not practical, at least not just now for India. That *Nirvana* which my friend, Mr. Jamnadas Dwarkadas, so spectacularly talks of is not of our life time or within the visual perimeter of the present century, and till that *Nirvana* is reached, we should be satisfied with taking over what His Excellency the Commander-in-Chief has given us, and let us go slowly especially so far as the Indian Army is concerned. If this Resolution were carried I predict that within 25 years there will not be one united Indian army as we have to-day but different Territorial armies, such as the Sikh Army with its own Sikh officers, the Gurkha Army with its own officers, the Rajput army with its own officers and so on. I am certainly in favour of allowing more Indians into the King's commissioned ranks of the Indian Army, but it is with regard to the speed that I wish to draw a line. I therefore oppose this Resolution and of all the amendments I am more inclined to favour Dr. Gour's because it asks for a progressive Indianisation compatible with efficiency and the retention of the British officer who, as is well known, is the only man to whom every caste and creed of Sepoy in the Indian Army will willingly go for advice and help knowing that such advice and such help will not be subordinated by the unfortunate prejudices of any caste or creed, which we now find. Sir, it may be of interest to Members to know what our friend, the late Law Member, Sir Tej Bahadur Sapru, has to say on Indianisation of the army. In an interview which he accorded to the "Times of India," in its issue of 18th January, he said:

"To my mind the question of the Indianisation of the commissioned ranks of the Army is even more important than any question of immediate constitutional advance. Without an efficient Indian Army officered by our own nationals self-Government for India must be a very unreal and shadowy thing. It is for this reason that I have always laid the greatest possible stress upon the subject of the Indianisation of the Army being tackled by the Government of India seriously. I realise that we cannot Indianise the Army as quickly as some people could wish. At the same time it cannot be postponed indefinitely or for a very long time. If I were a non-official Member of the Assembly I would concentrate all efforts in bringing pressure to bear upon the Government to bring into existence a proper machinery for the training of Indian officers in this country, and if it involved any heavy expenditure I would willingly submit to it."

These are the sentiments to which I would subscribe and that is the point of view from which I approach this Resolution. I oppose it but I am inclined to support Dr. Gour's amendment as it stands. I think this Honourable House will be well advised if it takes His Excellency Lord Rawlinson's advice and went slowly, in order that it may learn to walk before it attempts to run.

Sardar Gulamjilani Bijli Khan (Bombay Central Division: Muhammadan Rural): Sir, I rise to make a few observations on the motion before the House.

Sir, I submit that any proposition likely to bring about an innovation of such a serious nature without making an experiment will not appeal to this House. The safety of a country depends upon a powerful Army which is well equipped, and well organized, and further it is an established fact that no Government can satisfactorily carry out its functions unless it possesses a strong Army.

[Sardar Gulamjilani Bijli Khan.]

With regard to other Departments of a Government, inefficiency is not such a great factor, compared with the Military Department, considering that the destiny of a nation depends upon the efficiency of that department.

His Excellency the Commander-in-Chief has already assured the House of his sympathy with all reasonable aspirations of this country and the statement made this morning is proof of that sympathy. With regard to the subject matter of this Resolution His Excellency has satisfactorily explained that a beginning has already been made and high hopes are entertained by him regarding the future of the college at Dehra Dun and the present and future admission of cadets to Sandhurst. I submit, Sir, that it is the duty of all interested in this subject, to be grateful to His Excellency for this beginning, however small it may appear, because I feel confident that the ideal aimed at in the Resolution before this House will be gradually realised, consistently with efficiency, which is highly desirable, as the destiny of India and the realization of her aspirations depends upon internal as well as external order which necessitates an up-to-date army.

It might be suggested that an institution similar to Sandhurst be established in India for the convenience of Indian cadets.

That, I submit, is a matter of detail, since we are assured that the doors of the King's Commission are not closed to eligible Indians and it may be safely left to His Excellency the Commander-in-Chief who has, I venture to say, the fullest confidence of this House. In conclusion I cannot associate myself with the Mover of this Resolution and confess that I am fully convinced by the observations so ably addressed to this House by His Excellency the Commander-in-Chief.

Further, Sir, if this Resolution were given effect to, the result would be that after about 22 years the doors of the Indian Army would be closed to British officers, who have, it is universally acknowledged, built up the Indian Army and brought it to the present state of efficiency. I submit, Sir, that this is a wrong principle. To ensure a high standard of Indian officer, it is essential that the criterion of recruitment to the Indian Army would be similar to that of the other services.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban): Sir, the remarks made by the two previous speakers call for some reply. In the first place I must hasten to express the thanks of the whole of the Indian community for the first step which has been taken to-day in the announcement given to us this morning by His Excellency the Commander-in-Chief. In all these matters, as we were told by the Honourable Mr. Innes, it is the first step which counts. When once the first step is taken, I am sure that public opinion will assert itself and those Indian officers who are going to be put in charge of these eight units will give such an excellent account of themselves in their work that at no distant date, probably within my own lifetime I will see all the Indian units officered by Indian officers. Man is the creature who exhibits himself according to the environments in which he is brought up. When I heard the last speaker, a true Indian, bemoan the fate which may happen 22 or 25 years hence when the Indian units will be officered by Indian officers I recalled to my mind the truth of the saying that we are all so brought up in such surroundings that we cannot look beyond them. We cannot soar as high as we ought to do and therefore it is not in anger I listened to his speech. It is more in sympathy and pity that I listened to the

remarks which fell from my distinguished friend. Sir, it requires some imagination and some patriotic sentiment in us to rise above ourselves and our surroundings. I may assure my Honourable friend that it will not be an evil day at all either for India or for England if the Indian Army is officered entirely by Indian officers. On the other hand the Empire will be the better for it. As for my friend, Colonel Gidney, he was blowing hot and cold. I listened very respectfully and attentively to all that he said. Is he an advocate of the Resolution? Is he advocating the Indianisation of the Army or is he not? Or is he only for Anglo-Indianising the Army? It appeared to me the latter is the truth. He asked what about the attitude of the Indian community towards his community. He put that question to the Government and not to the Indian community. So long as he looks to the Government for help, so long as he looks only in that direction, he can guess the answer of the people of India. Let him feel like an Indian. Let him yearn like an Indian. Let him share the aspirations of Indians. Then he need have no fear as to what his place will be in the Swaraj that is bound to come. So long as he does not look to India, so long as he does not look to the place of his birth, so long as he does not look to his own people among whom he lives, so long as he does not ask them what their attitude is going to be, what answer can we give? Well, the truth is out. Let him ask the question 'Am I an Indian or am I an European?' Well, he must answer it himself. It depends upon his community. Sir, we had a most distinguished Anglo-Indian in our province, Mr. White of revered memory. He never bothered himself about this question. He considered himself an Indian first before he considered himself anything else. If your community is composed of Whites, I mean in that sense, if your community would not consider themselves whites, in the other sense, then you need have no fear as to the treatment you will receive at the hands of your fellow countrymen. Remember that you are a fellow countryman of ourselves. Work with us, fight with us, for all the rights, for all the privileges, which a citizen in His Majesty's Empire should enjoy. Fight for equal rights, don't fight for difference of pay, difference of treatment, don't ask for pay as a European and claim privileges as an Indian. Don't claim recruitment as an Indian and ask for European pay. Then, there is no difficulty as to what the attitude of your neighbours will be to your community. Don't look down upon the sepoy, be a fellow sepoy with him. Don't look at his colour, and wherever you go, consider yourself an Indian first. Be a neighbour to your fellow-Indians, then there will be no difficulty, and no anxiety need be felt as to your position.

Mr. President: The Honourable Member must now bring his remarks into order. He may assume, for the purposes of this debate that 'Indian' includes 'Anglo-Indian.'

Rao Bahadur T. Rangachariar: It does, but it is more because of the remarks which fell from my Honourable and gallant friend. Sir, I have said enough. As a Member of that Committee which sat on the Esher Committee's Report, I was at one with him in including in the term 'Indian' the term 'Anglo-Indian' also. Therefore, we do not want to go back upon the understanding which we came to. Sir, what we mean by 'Indianizing the army' is 'Indianizing by the people of India.' Sir, as regards the merits of the Resolution, I quite recognize that it is not proper to hasten the speed in a case like this. As I have stated, I am quite content, speaking for myself—I do not know what my friends think—I am quite content, with the first step which has been taken. But I hope the

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next forward steps will not be delayed. I hope more speed will be put on, that we will be running hereafter,—I do not mean the people here will be running, but I mean, so far as Indianization goes, I hope the Government of India will not merely walk but will run in this process of Indianization. Sir, I support the Resolution and the amendment.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, I have been listening with great interest to the speeches delivered by the different Honourable gentlemen. I have much pleasure in supporting my Honourable friend, Mr. Yamin Khan's Resolution so far as the spirit is concerned, but I must say that I differ from him on more material points. Sir, I would be false to myself, false to my country, if I did not want that the Indian Army should be Indianised. When there is a unity of allegiance, when there is a unity of discipline, when there is a unity of action, when there is a unity of thought, why should there not be a unity of enjoyment of equal rank,—my contention is backed and supported by the war which has proved that Indians deserve that. Now, Sir, I differ from my Honourable friend when he claims that the Indian Army should be entirely Indianized. Before I reply to him, I would ask him one question, whether this Honourable House has settled once for all that we are going to have Swaraj, or Home Rule, within the British Empire or without the British Empire. If this Honourable House has settled this, that we must have that Swaraj under the British rule, then, Sir, I shall be the last person to say that the Army should be entirely Indianized. I should say that it should be mutually Indianized with the British as well as the Indians. I want them to share with us the simple soldier's grave,—having equally with us one heart, one mind and the same dust. Sir, my Honourable friend, I must say, perhaps thinks that as every thing can be gained in due time why should not this Indianization of the Army be brought about by a sudden impulse? I must draw his attention to this, that let us be in right earnest, and let us be true to ourselves, and let us be true to our country. Suppose we want that this Indian Army should really be Indianized: how long will it take? Sir, where will he get men who are expert in science, where will he get efficient men to-day who can be placed in charge of the different Departments which entirely depend on science? Before Honourable Members blame Government for that, I would appeal to them to consider what is the feeling of His Excellency the Commander-in-Chief. I could tell them one thing, Sir, that, although I am not in close touch with His Excellency, those Indian officers who have been immediately under him, have got the highest possible respect for him, and they say that they have always looked upon and found His Excellency as their father, as their friend as well as their Commander-in-Chief, and everything else in this world. He always takes a great interest in the Indian soldiers, and His Excellency was perfectly right when he made a statement, and I think we should be grateful to Government, and we should appreciate his sense of justice when he made the statement. He did not mean to say that only these 8 Divisions would be Indianized; he simply said this, that for the present these 8 Divisions would be Indianized, and that it was an experiment, and let others come forward, and places will be offered to them. I think we should be satisfied with that. Now, Sir, I will come to some remark which fell from my Honourable friend, Mr. Seshagiri Ayyar,—and, of course, I am not concerned with that because it was a business of the Government to reply to that; but still, as a Member of this Honourable House, I think I will just

make some observations on it. I do not think it is desirable, even if the Secretary of State gave permission, that these papers should be laid on the table. We have been already fed up with the Royal Commission business, and I ask, are you going to have another Royal Commission? I think, Sir, that as the Civilian has got his grievances, so if we push on and if we do not exercise our discretion and get another Royal Commission, we will have to face discontent among the British military officers too. I think the one is enough to embarrass us; it will be bad indeed to be saddled with two. Now I would advise my friend, Mr. Yamin Khan, to consider the problem whether he would be true to India, true to the interests of India, if he presses for the whole army being Indianized by Indian officers at this time, when you see all around different sorts of movements, when you see different sorts of military development outside India whether it would be safe that the Indian Army should be officered by Indian officers only. I must say that the Honourable Member is like a girl who is always impatient to have her chaperone removed; and I think it is in the interests of the girl that her chaperone should be round about her; so this British military officer having played the part of her chaperone, her guardian, I think it would be ungrateful on our part if we should be in such a bad temper as to wish to get rid of the chaperone. Let India grow, let India first look after herself,—that will be the proper course, and that will be the sound policy.

Now, Sir, I will say one thing more. I think it was the last time when His Excellency said if I am not mistaken, these were his words, that he could not see how the British soldier should be commanded by an Indian officer. I must say, Sir, that I must strongly protest against that. When we have to look to the true interests of the Empire we must be above these things. I think an Indian officer, if he can be an ideal soldier, he can also in due course be an ideal officer. I hope His Excellency will not stick to his words, and if the Indian officer becomes an ideal officer, he won't mind if British regiments are commanded or officered by the Indian officer. I can say that during this big war,—I do not want to mention personal names, but I know for certain that some Indians had the fortune to command British regiments, and they have justified their selection or nomination by those officers who had given them the command. So I must appeal to the Government as well as to the Members of this Honourable House, let us approach this question in a true spirit and mutual respect and mutual grace. I would advise Government that Government should be rather generous and must be liberal in extending this concession which must come in due course. Government must act in a spirit of true statesmanship. A true statesman is one who realizes his opportunity and takes advantage of it. There must be a policy of give and take on both sides.

I would say one word also to my friend, Mr. Rangachariar. Sitting as I am by his side, my Honourable and gallant friend, Colonel Gidney, said that he particularly wanted to plead the cause of his community only. He simply wished to ascertain from Government what the position and status of his community in this connection would be from the Government point of view. My Honourable and gallant friend said openly that he would prefer to call himself an Indian citizen if he had to call himself anything at all.

Finally, Sir, I would request my Honourable friend, Mr. Yamin Khan, not to go so far as to demand complete Indianization. I am certainly

[Khan Bahadur Abdur Rahim Khan.]

in complete accord with the spirit of his Resolution but I do not sympathise with the impatience which he feels and the entire Indianization of army without the British element, which he pleads.

Mr. K. Muppli Nayar (West Coast and Nilgiris: Non-Muhammadian Rural): Sir, I belong to a class which has been termed reactionary and I shall not mind if I am once again called one for now placing my views before the Honourable Members—a duty I feel I am bound to do. The Resolution deals with a subject closely allied to further reforms, Indianization in general and Swaraj. The importance of ultimate Indianization of the army will be fully admitted by everyone who believes in Swaraj for India. We cannot have Swaraj, give little or no voice to non-Indians in the choice of action in this country and yet at the same time expect them to execute our commands and shoulder the responsibility. If Swaraj ever comes, I believe we will have to find the men to enforce the commands of the central authority in India, whether they be of a civil or military nature. However, there can be little doubt that we make a great mistake when we wish to force the pace. To treat the Indianization of the army as merely a matter resulting from the passing of a few examinations or from a few years' soldiering will be a great mistake. It is no use trying to count too much on our past. It is no use quoting the Mahabharata and Ramayana to show that we led armies and fought battles. The point is, have we got the necessary conditions and the materials that are wanted or at least are we likely to have them in the near future? I do not know what my Honourable friend Mr. Rangachariar's surroundings are, but I must positively say, "no." Then what is the use of tying the hands of the Government as regards the method of recruitment or by serving them with a notice to do it all in ten, twenty or so many years. Without the cohesive force, I mean the British element, what is the Indian army as a whole worth? Is the Punjabi willing to be or capable of being led by a Madras, a Gurkha by a Madras or a Madras by either? What about the Hindus and the Muhammadans? Are we going to have communal representation in the army also, or is it our desire to turn the Indian army into so many loose packs of mere aggressiveness? We must all learn to have something more in common before anything like what is demanded can be safely aimed at, achieved or fully and rightly enjoyed. In an important question of this sort we cannot afford to shut our eyes to hard facts or to make vital experiments. I should therefore entreat patience of my friends and ask them to leave the matter to the British Government who seem to have some idea of Swaraj for India and who have promised it. Keep reminding them of it by all means, but do not kill the goose that lays the golden eggs.

Finally, I thank His Excellency the Commander-in-Chief for the sympathy he has shown in his speech this morning and I suggest that His Excellency's proposals should be gratefully accepted.

Maulvi Abul Kasem (Dacca Division: Muhammadan Rural): Sir, when I came to this House little did I think that I would have an occasion to speak; but the discussion which has taken place makes me feel that I will be shirking my duty and my responsibility if I only give my silent vote. In the first place, Sir, although I do not commit myself exactly to the wording of the Resolution as drafted by my friend I must say that generally that Resolution expresses correctly the opinion of my countrymen at any rate, if not the opinion of this House. It has been asked by one of the

speakers, "Why pin down the Government to a particular course of action?" The Resolutions passed by this House are at best only recommendations, and in making our recommendations we have to express ourselves in terms which represent the feelings of my countrymen. It has been remarked, Sir, that we must learn to walk before we can proceed to run, and that the pace at which we are moving is rather fast. Sir, I beg to submit that in the matter of military acquirement, if we have ceased to walk and if we are still crawling after 150 or 200 years of British rule, it is not our fault but our misfortune, and the mistake I think lies at the door of our administrators. Sir, I do not wish to go into the ancient days, if I might so call the mythical days of the Mahabharata and Ramayana. I will come on to more solid ground and draw the attention of this House and of the Government to more recent history and to more solid facts. I think the British Government can be fairly said to be the successors of the Moghul Empire, and I might remind the House that the Moghul Empire was never so strong and consolidated as when it entrusted its army and its administration to the people of this country. Trust begets trust. I, Sir, share the opinion and the feelings of my learned and distinguished friend, Mr. Rangachariar, in the expression of our gratitude to His Excellency the Commander-in-Chief for his anxiety to Indianize the Indian army and for the sympathy he has shown. But, Sir, we are here discussing not the personalities of the members of the Government but the policy of that Government. I am afraid, Sir, that the halting hesitating policy that has been adopted by this Government and the nervousness shown by them in all matters of concessions and reforms has neither been wise nor equitable, while in some cases it has proved to be dangerous. Somebody remarked sometime back that half measures, political and social, or even in a matter like whisky, are always useless. You must have a full measure. Therefore, Sir, I would appeal to the Government to make the pace at which they move a little more rapid and to take us by the hand and help us to walk and to run. Sir, in this connection I might say that it depends upon our teachers, our mentors, our administrators whether we crawl or walk or run. They can do as they like. If they wish us to run we will be able to run in the course of a very few years. But if they desire that we should crawl we shall crawl till the day of judgment. Sir, I am reminded of the story of the step-mother in Bengal who used to carry the child of her husband's first wife in her arms. She declared that she had so much affection for the child that she must always carry it about in her arms. But the people knew better. They said that she carried it continuously in order that it may not be able to walk and run and develop its faculties. I do not mean to say, Sir, that either the Government of India or the military authorities here follow that policy of the step-mother. But I appeal to them to always follow a policy which will not give the people of this country cause for apprehension or suspicion.

Sir, I find from the agenda paper that a crop of amendments have been tabled on this Resolution. Some of those amendments ask for communal representation and territorial distribution of these officers. I say it is too early to discuss those details. First let us get the principle admitted. Let us secure for Indians what Indians want. Then it will be time to set our domestic differences at rest and not before that.

Sir, a word about my gallant friend, Colonel Gidney, before I sit down. The question of the Anglo-Indians in this country, either for military service or for civil service, is a problem which will have to be tackled both by the Government and by the people of this country. But I can assure my

[Maulvi Abul Kasem.]

friend over there that the only people who can solve this are the Anglo-Indians themselves. If they want to live and flourish in this country, they must become Indians first. They must not only, as my friend, Mr. Rangachariar said, have the same aspirations, the same ideals and the same imagination, but I think they must work and they must live like Indians. They are a people who are recognized at the present moment by none and I hope it is for them to choose one side or the other, and therefore the future will depend on the side they choose. If they make a mistake, they will have to repent for it later on. Sir, there has been an amendment moved that the correspondence between the Secretary of State and the Government of India should be laid on the table of the House. I do not know how far that correspondence is private and confidential, but this much I must say that if this House—and by this House I mean naturally the people of this country—is taken a little more into the confidence of the Government, it will be to the advantage of the Government itself than otherwise. Sir, it has been said that if we want to get Swaraj, we must prepare by Indianizing the officers of the Army. I say that whether we get Swaraj or not, whether we get responsible Government or not, whether the Government is an autocratic Government or a bureaucratic Government, it is essential that many of the officers of the Army in India should be Indianized, because you have found out by experience that there has been great heart-burning among the people of this country and among the subordinate officials because the high offices of the Government were not thrown open to my countrymen and the Government have recognized that and now the highest offices in the State are open to natives of this country and I think they have acquitted themselves fairly well and creditably both from the people's point of view and the Government point of view. If there was discontent in the civil service over this, there is naturally discontent in an aggravated form in the Army if the Indian Army finds that the places of officers are not open to them. Discontent in the Army is more undesirable and might lead to disaster, and, therefore, it will be an act of statesmanship, of diplomacy and of, I think, foresight, if the Government takes upon itself the responsibility of Indianizing the officers of the Army and of training us for those offices. The people of this country can never believe that we have not got the materials for making up good officers of Army, because, even recently we have had an Indian Army led by Indian Generals and Martials. Therefore, Sir, I think that this Resolution which has been moved expresses the voice of the country, and, as such, it should receive that respect, consideration and attention which it deserves. With these words, Sir, I support the spirit of the Resolution as moved by my friend, Mr. Yamin Khan.

Mr. T. E. Moir (Madras: Nominated Official): Sir, I must confess to

1 P.M. having listened with some disappointment to the debate which has taken place on my Honourable friend, Mr. Yamin Khan's Resolution in view of the announcement which has been made by His Excellency the Commander-in-Chief. With the exception of one or two speakers, it seems to me that few who have taken part in the debate have shown due appreciation of the very momentous character of the announcement which His Excellency made to the House, and I could have wished a greater appreciation of its importance had been shown in the course of the discussion. For myself, I listened to that announcement with feelings partly of relief, partly of regret and partly of apprehension: of relief because it seemed to me that the announcement was in part a declaration to the

people of my own country that there was some hope that in future the very heavy burden of responsibility which they have to carry has some chance of being lifted; that that responsibility under which my country is at present labouring is, so far as this country is concerned, in part at least, and as I personally hope in as brief a period as is possible, going to be transferred to this Assembly and to the representatives of India in this Assembly. I listened to the announcement with regret because there is no doubt that it implies that, possibly before very long, that long comradeship in arms between my countrymen and the Indian Army will be brought to a close. Now there has certainly, as far as I know in the course of history, been no comradeship in arms between two races which has lasted so long, and I doubt if future history will ever be able to bear witness to a comradeship which has been more glorious and more perfect. But I also listened to the announcement with apprehension. There is no doubt that to-day we have crossed the Rubicon and that we are at last really face to face with the great issue which underlies this whole question of constitutional reforms in India. It is whether India will be able to recruit and maintain an army which will be capable of defending its frontiers, and also of rendering that loyal obedience to the constitution without which the constitution cannot hope to continue or to be preserved. That is the issue which the announcement made this morning brings prominently before us. Now, Sir, during my leisure hours, since I came up to Delhi, I have been looking into the history of Delhi and of those parts of India with which hitherto I have been insufficiently acquainted. And what do I read? Of invasion after invasion, which has swept across the frontier, uprooted principalities and powers and shifted the whole balance of power in India. And on no single occasion hitherto has India been able to repel those invasions. The question is whether the new Army, that reconstituted Army, with reference to which this morning we have taken the first step, will be able to perform a task which, as far as I can discover from the annals of this country, no Indian Army hitherto has been able to accomplish. (*Rao Bahadur T. Rangachariar*: "But India has lived.") Is the wheel again to come full circle? I sincerely hope not. I can only hope that history will not repeat itself and that what I may call the somewhat facile optimism which seemed to me to characterise the speeches of some of the Members of this House will be justified. But, Sir, I have also in the course of my readings been much impressed by one further fact, and that is, that those constant defeats, to which I have referred, were due not to any lack of gallantry, not to any defect in martial qualities of the armies who went forth to defend the frontiers of India—the ballads of the countryside still recall the gallant deeds of their forefathers—not to any such defects was that failure due but to the fact that it was impossible apparently for them to act under one leader, to accept a common discipline and to look to one central authority. And that is a further issue which the announcement made by His Excellency the Commander-in-Chief this morning has raised, the great constitutional issue,—will this Assembly in the future be able to control an army, such as the Indian Army must be, constituted out of such a variety of tribes and castes and races? Will it be able to control and render it amenable and an efficient executant of its orders and wishes? Sir, surely in view of these questions which I have asked, we might pay more attention to the spirit, to the underlying meaning of His Excellency the Commander-in-Chief's announcement. Surely, on an occasion such as this, it is out of place to raise the question perpetually raised in this House, to tilt at the authority of the Secretary of State, to demand that papers be laid on the table of the House. Surely this is not the occasion to debate a

[Mr. T. E. Moir.]

question of percentages, or display our mutual fears and jealousies. God knows that question is serious enough in this connection but surely on this occasion we might allow communal bickerings and disagreements to be silenced for once. We have, as I said, passed the Rubicon. We are at the turning of the ways; and I should have thought that on this occasion we would have confined our attention to-day to the important, the momentous nature of His Excellency the Commander-in-Chief's announcement, and allowed ourselves time to consider, to reflect on what it means. I would, Sir, press upon my Honourable friend, Mr. Yamin Khan, to withdraw this Resolution. Further opportunities will surely arise for debating all minor points and for discussing or settling our differences. I would, therefore, ask my Honourable friend to withdraw his Resolution and the House to adopt towards the announcement made by His Excellency the Commander-in-Chief an attitude which I would urge upon them will be consonant with the dignity of the House and with the nature of the occasion.

Rai D. C. Barua Bahadur (Assam Valley : Non-Muhammadan): Sir, after having waited nearly two years since the passing of the Resolution on the Esher Commission's Report which the Government accepted by promising to appoint Indians to the extent of 25 per cent. of the commissioned ranks of the Indian Army, we have learnt with a sense of relief from His Excellency the Commander-in-Chief to-day that eight units of Infantry will at once be officered by Indians. I think, Sir, this is a move in the right direction and it is but the beginning of the move. I am not a believer in the principle which obtains in some quarters that the change can be effected at a moment's notice. I for one am not prepared to accuse the Government with anything like apathetic feelings towards the problem, for I find they have taken steps to train Indians in military schools and colleges in the meantime. I understand that many more units will be thrown open to Indians in the near future and my countrymen should not be impatient. At the same time I would humbly advise the Government to expedite the matter. After the momentous announcement of His Excellency this morning we should be satisfied that the promise made by the Government is not quite hollow, and as they have redeemed their promise in part we can safely take it for granted that they will not take long to redeem it in full. At this juncture it will be the proper duty of Indians to show that the appointment is justified. If justification can be established, the task of Government will be easier, and the burden of military expenditure on the tax-payer will be lightened. As, however, effect is being given to the subject of this Resolution, I think it need not be pressed and it may be safely withdrawn with thanks to the Government.

Mr. P. P. Giwala (Burma : Non-European): Sir, the Honourable Member from Madras, (*Mr. Moir*) who spoke a little while ago from that corner has charged us with not showing due appreciation of the announcement that was made by His Excellency the Commander-in-Chief this morning. I may, however, remind the Honourable Member from Madras that according to the conventions of political life as they are understood on this side of the House it is not always necessary to go into raptures over every announcement that is made. We are conscious of the fact, and I am prepared to admit it and I believe Honourable Members on this side of the House who agree with me in my opinion will endorse that view—that a very momentous announcement no doubt has been made by His Excellency the Commander-in-Chief to-day. This step which has been taken, I venture to state, is a step which ought to have been taken long

ago, but we are grateful that the step has been taken eventually and that a Government which we have often described as incorrigible has shown itself capable of improvement in course of time. The Honourable Member from Madras also stated whether, if the policy enunciated by His Excellency the Commander-in-Chief was pursued to its logical conclusion, a time will arrive when India will be able to face aggression from without, and he drew a parallel from the past. It is needless to point out that historical parallels are often untrue, because the circumstances change, while those who draw the parallels do not appear to recognise the change of circumstances. If it was a fact that the Indian army of the future was to be absolutely on the lines of the past—like it was in the days of the Ramayana and the Mahabharata and even of more recent pre-British times,—it may reasonably be argued that the Indian Army of the future may not be equal to the occasion if foreign danger really took the form which it is anticipated by some men on the analogy of the past it would take. But we have been in contact with the British Army for 150 years; we have learnt some of that art or so much of it as has been accessible to us under our peculiar conditions. We have fought along with them; we have built up our own traditions which are entirely different from the traditions of those days in which an Indian Army was not able to face outside aggression. We are prepared yet to learn from the British officer and we have not said that the British officer is to leave this country bag and baggage to-morrow. He will be with us still, and we hope that he will always be with us in some form or other. To say, therefore, that if the Indian Army is Indianised the history of the past will be repeated is to commit an anachronism which has been exploded times out of number in human experience.

There are one or two expressions in the speech of His Excellency the Commander-in-Chief which he made on the 24th January, to which with great respect I would take exception. He said, when giving the reasons for not expediting the pace of reform in the army: "I need hardly remind the House that ever since the end of the Great War India has never wholly been free from some form of external or internal menace." Now, I would like to ask His Excellency the Commander-in-Chief—can he say of any country at the present moment, leave alone India, which has been free from these two dangers? Can he point to any country and say that in any particular decade it was always free from those two things? Can it be said of any country in Europe just now that these dangers do not exist? It is no good, Sir, talking of these dangers; they are permanent dangers as far as human society is constituted and they have to be borne in mind in whatever direction you wish to proceed. Then, with regard to the "internal menace," I do not wish to enter into a discussion on the principle involved in those two words. But I protest against that expression being used in connection with the maintenance of the Indian Army. It is no function, I maintain, of the Army to preserve internal peace and this House will not recognise that principle. The Indian Army cannot be maintained on the principle of maintaining internal defence, unless you are prepared to admit that the basis of the Government of this country is your Army. If that is not your position, then I maintain, Sir, that the sooner the doctrine of preserving internal peace and order by the military forces of the Crown is abandoned the better.

There was another remark made by His Excellency the Commander-in-Chief and it was this, that it was essential, if the Army was to be efficient, that the Indian officer should have the same training and the same

[Mr. P. P. Ginwala.]

education as the British officer. Baldly stated, that proposition is a sound one, no doubt, but what has been our experience in the past in applying this doctrine to other branches of education? Did not we adopt the doctrine in the latter half of the last century, that whatever was good for the British youth was good for the Indian youth in matters of general education, and have we not been trying from the beginning of this century to correct some of the errors which we perpetrated in consequence of the adoption of that doctrine? If you are going to start your new career of Indianising the Army upon that doctrine, I venture to submit that the time will come when you must revise that policy of yours as you are having to do to-day in matters of other branches of education. And, before we start on any very large scale upon this career, in my opinion an examination is necessary as to whether we are going to apply to the Indian officer exactly the same standards of education as are applied to the British officer. I will now turn for a moment to what the Honourable Member for Commerce and Industries had to say on behalf of the Government with reference to its relations with the Secretary of State. As he got up to speak, Sir, he reminded me of a picture of Prometheus Vincetus which I had seen some years ago where Prometheus was chained to the rocks by the thunder of a cruel Jove and while he was doing his best to break his chains he could not do so. I may, however, tell the Honourable Member for Commerce and Industries and his Government that they can snap those chains if they try. If they submit to what they are allowed to receive from the Secretary of State, those chains will never be broken. But, if they insist upon their own rights and if they take this Assembly into their confidence and ask for our support to break those chains, those chains will be broken. If they persist in accepting orders the reasonableness of which they are not satisfied with, if they do not tell us that they have done their best to get other orders and that, unaided by this House, they have not succeeded, it is their own fault. And my advice to them is that, though we differ upon other points, we are in entire agreement with them if they make up their mind to conspire with us and seize every opportunity to remove the shackles which they and we find so tiresome and oppressive. I have no hesitation in saying that in that conspiracy—it will be a very pious conspiracy—they will have every encouragement which it is in the power of this House to give them for when they are free, we shall consider ourselves free. Freedom in this direction must come to us and to them together and if they attach any importance to it, I urge upon them, Sir, to come to this House and join forces with it, to fight and vanquish in the end our common enemy—the Secretary of State for India.

Mr. President: I desire to point out to the House that, while there are still a certain number of amendments on the paper, I cannot call on the Honourable Members in whose names they stand until we have disposed of Mr. Seshagiri Ayyar's amendment. To give them their fair chance I propose to put that amendment now.

The original question was that:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commission for Indians by direct recruitment and by promotion from the rank of Viceroy's Commissioned Officers in such number that all vacancies in the Indian Regiments be in future filled by such Indian Officers only till all Indian Regiments are wholly Indianised."

Since which an amendment has been moved :

" To add to the Resolution the following :

' This Assembly further recommends to the Governor General in Council that he may be pleased to lay on the table of the House the scheme, if any, for the Indianisation of the Indian Army and the correspondence, if any, that has passed between the Government of India and the Secretary of State for India on the subject '."

The question I have to put is that those words be there added.

The Assembly divided :

AYES—28.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ayyar, Mr. T. V. Seshagiri.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Das, Babu B. S.
Ghulam Sarwar Khan, Chaudhuri.
Ginwala, Mr. P. P.
Girdhardas, Mr. N.

Gour, Dr. H. S.
Gulab Singh, Sardar.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Rajan Baksh Shah, Mukhdum S.
Rangachariar, Mr. T.
Shahani, Mr. S. C.
Sohan Lal, Mr. Bakshi
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.
Vishindas, Mr. H.

NOES—54.

Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Abdul Rahman, Munshi.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Asad Ali, Mr.
Bagde, Mr. K. G.
Barua, Mr. D. C.
Bijlikhan, Sardar G.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gajjan Singh Sardar Bahadur.
Gidney, Lieut.-Col. H. A. J.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Luns, the Honourable Mr. C. A.
Jannadas Dwarkadas, Mr.
Ley, Mr. A. H.
Mitter, Mr. K. N.

Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nabi Hadi, Mr. S. M.
Nayar, Mr. K. M.
Percival, Mr. P. E.
Ramayya Pantulu, Mr. J.
Reddi, Mr. M. K.
Rhodes, Sir Campbell.
Samarth, Mr. N. M.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Shahab-ud-Din, Chaudhri.
Singh, Mr. S. N.
Singh, Rana U. B.
Sinha, Babu L. P.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Ujagar Singh, Baba Bedi.
Webb, Sir Montagu.
Willson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. President was in the Chair.

Colonel Sir Sydney Crookshank (Public Works Department Secretary): Sir, it seems to me, if I have the indulgence of the House to say so, that this debate has so far proceeded on what I would term somewhat ragged lines, and the amendments which I see tabled to this Resolution also indicate that the question which we have before us is very likely to become further involved. Now, Sir, there is considerable weight in the valuable remarks which fell from my Honourable friend from Madras. At the same time I think many Members of this Honourable Assembly will probably agree with me in considering that we do not want to approach this question from the melodramatic side. Proceeding to the remarks which have fallen from my Honourable friend from Burma, I can only say I regret I cannot subscribe to those remarks in so far as they apply to the education of Indians to take their place in the ranks of the Indian Army. However, that may be a matter of opinion, but I base my opinion largely on the fact that circumstances from the military point of view have changed very extensively of late, and that the enemies we have on the Frontier are now well trained and organized, and very well armed, and they are no longer just ordinary hordes of invaders. I would also note that it seems to me that he also transgressed what I might call the first canon of military propriety in not respecting that discipline which is expected from all ranks of the Army, a discipline of exact obedience to constituted authority which requires them to carry out the orders which are in force whether they agree with them or whether they do not.

Sir, this question of training Indians for service as officers in the Indian Army is one which depends very largely on social and economic and also climatic conditions. When I refer to climatic conditions what I mean is that the climatic conditions of India, down in the plains during the hot weather months, are not such as to retain the vitality of the ordinary individual after, say, the age of about 35 to the standard which is required of him in military service; and the advantage which the British officer has in this respect is that he takes leave to European climatic conditions and returns in vigour, and possibly thereby retains his physical youth longer than would his brother officer who happens to be an Indian, who stays in India without having those advantages. However, I will not dwell on that particular point. The House will no doubt agree with me that the points I have mentioned have a considerable bearing on the question we have to deal with.

Sir, I venture to speak on this subject because it may be that I am the only member of this Honourable Assembly who has been on service on the Frontier and in France with British units and with Indian units and under fire with them as comrades in arms. I have been with British units and Indian units in action, in advancing, in holding a position, and also in falling back from one, but I am not going to dwell on that fact in order to analyse the qualities of British officers and Indian officers. Both have their merits and probably also in certain respects their demerits, but I have only mentioned the fact in order to put it to the House that I speak from a practical point of view; I do not merely theorise; and as such, it seems to me that the pronouncement which His Excellency the Commander-in-Chief gave to this House this morning should have given an assurance to this Assembly that the Government

proposed to set about the problem of the Indianisation of the Indian Army in regular ordered steps and to base its further Indianisation in the course of time entirely on the results so attained. His Excellency has announced that 8 units will be officered by Indian officers. Well, that itself goes a very great distance. On that basis, he, in his highly responsible position as the military adviser of the Government of India and responsible military expert before this Assembly, would be in a position to judge what further stages of Indianisation of units could be effected and when. I therefore think, Sir, that this House, instead of proceeding to go into the details of all the amendments which now stand tabled on the agenda, which may confuse the issue before us, would perhaps do well to consider the advance which has already been made, and to let these further stages of the development of the Indianisation of the Indian units of the Army be considered in due course, from time to time, according to the results which are seen from this measure of Indianisation of 8 units to make a start with. With that to go on, it seems to me that the field is perfectly clear, and it may be left to the military authorities to advise the Government of India as to what further can be done. I do not think I need detain this House any more in this matter, because we have here an accomplished fact that 8 units are going to be Indianised, and also that an Indian Military College for the training of Indian cadets for the officering of the Army has been established at Dehra Dun. The progress will be watched, and no doubt the House will be advised from time to time. In the meanwhile, it will, perhaps, suffice by the assurance, which His Excellency has given us, and in the future, when the opportunity arises, to consider what are the further stages of Indianisation that the circumstances may permit of.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, in moving my amendment, I should like to make a few formal changes. The House has no doubt received with feelings of gratitude the announcement made this morning by His Excellency the Commander-in-Chief promising the immediate Indianisation of 8 units of the Indian Army. That, I submit, is a distinct step in advance, and for which this House should tender its gratitude and thanks to His Majesty's Government. I wish therefore, Sir, to prelude my amendment with the following words:

"That, while gratefully acknowledging the announcement made for the Indianisation of 8 Indian units, this Assembly recommends to His Excellency the Governor General in Council to be so pleased as to formulate a scheme for the steady increase of Indians in the commissioned ranks of the army with a view to ensure the officering of all Indian regiments by Indian Officers with a minimum of British Officers as may at present be necessary to ensure their efficiency."

Mr. W. M. Hussanally: Sir, I suggest the addition of the words "within a reasonable time".

Dr. H. S. Gour: That is implied. It is more than implied, it is clear. Now, Sir, Honourable Members have referred to the report of the Esher Committee and a subsidiary committee that sat to consider that report. My friend was a member of that committee; so was I. We formulated a series of Resolutions amongst which there was a very important Resolution, Resolution No. 7, which recommended to His Majesty's Government:

"That the King-Emperor's Indian subjects should be freely admitted to all arms of His Majesty's military, naval and air forces, and in regard to ancillary services of the military forces that every encouragement should be given to Indians, including

[Dr. H. S. Gour.]

the educated middle classes, subject to the prescribed standards of fitness, to enter the commissioned ranks of the army, and that in nominating candidates for the entrance examination unofficial Indians should be associated with the nominating authority and that not less than 25 per cent. of the King's Commissions granted every year should be given to His Majesty's Indian subjects to start with."

Two years have since elapsed and we have been pressing upon the Government the desirability of taking a practical step in the direction of Indianizing the military forces of this country. Only the other day when my Honourable friend the Mover of this Resolution spoke on the subject, His Excellency the Commander-in-Chief in his speech did not anticipate the immediate possibility of Indianizing any unit of the Indian Army. His speech was a speech of caution; his speech was a speech in which I am perfectly certain His Excellency the Commander-in-Chief has infused his confidence in the Indian Army with the necessary caution born of a practised British Commander. This morning the situation has completely changed and I am afraid very few of us have realized the great change which that announcement foreshadows. It is the very suddenness of the announcement that has taken this House by surprise. But at the same time, Sir, if the House realises that 8 units of the Indian Army are to be immediately Indianized and on the result of that experiment further progress would be dependent, I am afraid this House will say that that is a contingency which it cannot accept. And so far as this House is concerned, it should ask the Government to formulate a policy for the steady Indianization of the Indian Army, subject only to one condition, namely, that the minimum of British officers as may at present be necessary be laid down to continue to ensure its efficiency. I submit, Sir, the only difference between my amendment and the announcement made by His Excellency the Commander-in-Chief and the explanation given by the Honourable and gallant Colonel Sir Sydney Crookshank is that, while they are prepared to Indianize 8 units, they are not prepared to formulate a scheme or to promise further Indianization in the steady manner which I suggest. That is the only difference

3 P.M. between their pronouncement and our demand; and, I submit, Sir, so far as this part of the House is concerned, it is unanimous in its desire that a policy should be enunciated and a scheme formulated for the steady Indianization of the Indian Army. That will not only satisfy the growing rational aspirations of the people of this country but will be an incentive to the very Indian officers who are to be employed in the first eight units. They will feel that they are not the first and the last to Indianize the Indian units and that upon the success, further steady progress has been promised and will be made; and this, I submit, would be for the greater efficiency of the Indian Army and the contentment of the people of this country.

Now, Sir, I turn for a moment to my friend, Mr. Yamin Khan's Resolution and I shall give my reasons why I am not prepared to endorse it. My friend says:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commission for Indians by direct recruitment and by promotion from the rank of Viceroy's Commissioned Officers in such manner that all vacancies in the Indian Regiments be in future filled by such Indian Officers only till all Indian Regiments are wholly Indianised."

Now, Sir, as patriots and politicians, this Resolution commends itself to us. But as men of practical commonsense, as men who have to face hard facts, I am afraid we are not in a position to say that all future

vacancies in the Indian Army be filled by the employment of Indian Officers. Honourable Members need not be reminded that the first duty—indeed the only duty—for which the Indian, or indeed any Army, is kept is its efficiency. The object of the Army is to secure peace. The object of the Army is to ward off foreign aggression. How can that be ensured if we were to Indianise the Indian Army *per saltum*? Up to now there is no doubt that the Commissions that have been given to the Indian Army have justified themselves, fulfilled the hopes that the Military Officers and Commanders felt in them and in their efficiency. But how can we ask the Government that all future entrants to the commissioned ranks of the Indian Army shall be Indians regardless of other considerations. That is a proposition which I fear I am not in a position to subscribe to, and I do not think my friends on this side of the House are prepared to subscribe to that sweeping doctrine. I therefore suggest, Sir, that we should deal with this question as practical men. We should not forget the primary, and as I have said the only, object of maintaining an army, and that purpose can only be served if we gradually but steadily advance in the direction of Indianisation. Some of my friends have asked for the recognition of communal rights. Amongst them I class my friend the Honourable Colonel Gidney. May I point out to him that he and members of all communities will have their place in the Indian Army subject only to one condition, that its efficiency is not impaired. The Army, Sir, is not a representative institution; it is kept for a definite purpose, and that purpose, I submit, cannot be lost sight of in recruiting people merely because they belong to certain communities and not because they possess the necessary grit, strength, stamina, power of endurance and valour for which, I submit, the Indian Army, as indeed all national armies, exist. But as I have said before, Sir, these are questions of detail which need not detain us. We are at present concerned here with the initiation of a good principle. That principle has been conceded by His Excellency the Commander-in-Chief, and all that we can do now is to thank His Excellency the Commander-in-Chief for his announcement and ask him to accept my amendment in which I want that a scheme for the steady growth of the Indian element in the Indian Army be formulated. With these words, Sir, I move my amendment.

Mr. President: Amendment moved:

“Substitute the following for the Resolution:

“While gratefully acknowledging the announcement made for the Indianization of the Indian units, this Assembly recommends to the Governor General in Council that he may be pleased to formulate a scheme for the steady increase of Indians in the commissioned ranks of the Army with a view to ensure the officering of all Indian regiments by Indian officers with the minimum of British officers as may at present be necessary to ensure their efficiency.”

Mr. E. Burdon (Army Secretary): Sir, the essential purpose of the debate initiated by my friend, Mr. Yamin Khan's Resolution was, if I may be permitted to say so, very well put in the words used by my Honourable friend, Sir Deva Prasad Sarvadhikary. Speaking on the 24th of January in this House, he said, “We are anxious to place before the Government and before the public some substantive and substantial form in which we make our demand for Indianization.” This is the real and the central object of the discussion while the Resolution itself and the amendments on the paper represent different conceptions of what that substantive and substantial form can be, or it might be said attempts to define the claim which this House should now combine in making. Well,

[Mr. E. Burdon.]

Sir, it must be clear to the House that of these conceptions that which has been framed by my Honourable friend, Dr. Gour, must commend itself most to the Government. It obviously approximates most nearly to the course of action in regard to the Indianization of the Army which the Government, for the reasons which have been stated very fully by His Excellency the Commander-in-Chief, consider to be wise, and consider to be in the best interests of India. It therefore appears, I am afraid, a little ungracious if I have to say that Government cannot accept even Dr. Gour's proposal. I think the reason—and it is very largely a formal reason—is one which will appeal to this House. The amendment, apart from the initial words which have been added to-day, was framed in circumstances which, as my Honourable friend has said, have been entirely changed. The situation in which this debate commenced has been altered wholly by the announcement which His Excellency the Commander-in-Chief has made to-day. Indianization of the Indian Army was asked for and Indianisation in some measure has been conceded. Now, in the face of this accomplished fact, it seems to me that the amendment must necessarily fall to the ground. It is, at any rate, impossible for Government to accept the amendment, although what has transpired in the course of the debate shows that the real desire of the House is in harmony more or less with the intentions of Government as now declared. But even so, I feel sure that the House would not expect Government to accept a proposal even of the kind which has been made by my Honourable friend, Dr. Gour, immediately after the Government have announced their decision to adopt a particular programme of Indianisation. To do so would be incongruous and would only render Government liable to misinterpretation. It would be believed that Government intend to take some further step at once, either in advance of, or varying from, the measure which has been adopted, but which has yet to be put into operation and has yet to prove its success.

There is only one other point—I propose to confine myself strictly to the amendment—to which I should like to draw attention; it is another point in which the intentions of Government square very largely with the desire which is inherent in my Honourable friend's proposal. His Excellency the Commander-in-Chief, speaking this morning, said:

“There is one other point which it is necessary for me to explain. It is that simultaneously with the Indianisation of these selected eight units, Indians who qualify for the King's Commission will continue, as at present, to be posted to other units of the Indian Army.”

where, of course, they will, for the time being, serve side by side with the British officers who remain. The point of this fact, to which His Excellency the Commander-in-Chief drew special attention, is that the scheme of Indianisation which has been announced to-day contains in itself the germ of growth, that is to say, there is inherent in it the possibility of increase, because the Indian officers with the King's Commission who join other units of the Indian Army, apart from those which are being specifically Indianised, will be available if and when a further stage is decided upon as a result of success having been achieved in the first stage.

Sir, I hope that my Honourable friend, Dr. Gour, and the rest of the House will appreciate the position of Government in this matter. It is, as I say, largely based on the formal reason that, having announced one scheme, they cannot ten minutes later appear to commit themselves to something else.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, it is with some hesitation that I rise to speak on a subject to deal with which I feel myself very imperfectly equipped. I give way to no one in my desire for the advance of India towards responsible self-government in every branch. India is the land of my birth, and it is the land in which most of my life has been spent; and those conditions produce an attachment to the country which must necessarily guide my opinion with regard to its future. I have a good deal of sympathy for the moderate wording of this amendment or proposal put forward by my friend, Dr. Gour, but I seek to deal with the subject in that detached and open-minded way towards which a certain amount of judicial experience helps me. I think I need hardly assure this House that there is not one scrap of racial prejudice animating the remarks which I am now making. I speak from the point of view of the citizen of India whose interest in the Indian Army lies in having at hand a force which protects him from external aggression and from internal disorder; and the main force which guides my opinion on this point is a desire for efficiency and nothing else that is worth mentioning. An Army is a fighting machine. Dr. Gour has rightly described it as something quite different from a representative body, a political body, a civil or administrative body. It is a machine kept for a particular purpose, and its first requisite is efficiency. Sir, if I were convinced that the Indian Army, wholly officered and led by Indians only, would be more efficient than the Indian Army as constituted to-day, I should vote that to-morrow the whole of the 3,000 odd European officers should be sent away and that Indians should replace them. But I am not to be convinced by optimism or by hopes or even by that great regard and admiration which I have for Indians—sincere, honest, hopeful regard and admiration. We have at present an Indian Army that has justified itself on a hundred fields of honour and glory, and proved absolutely to the conviction of every mind that is not overborne by prejudice that the Indian non-commissioned ranks led by Europeans are as good a fighting machine as can be found in the world. But India is advancing, and I have the greatest sympathy for, and regard as most natural the desire of Indians generally to be allowed to try their hand in this field of leading their own men. Speaking for myself I have every reason to believe that if the right kind of Indians are put in as officers they will lead those men with the same success that their European predecessors and comrades and compatriots have done. But, Sir, when we want to substitute a new machine for an old and well tried machine which is still working effectively, we want something like an experimental test before making the change. By the proposal now before the House Government is asked to formulate a scheme. My understanding is that the Government have formulated a scheme. They have started the process of training Indians to possess those remarkable characteristics, those peculiar characteristics, with which alone they can succeed as officers in Indian regiments. They have introduced by the grant of King's Commissions Indians into regiments where, side by side with British officers, they can learn those habits of life and thought and leadership which are essential to success. And now we have this greatest part of that scheme of gradual Indianisation, namely, an actual trial of no less than 8 regiments under completely Indian control. Sir, let the House think what this means. To begin with you have to find 8 Colonels, 8 Seconds-in-Command and 8 Adjutants. I do not profess to know very much about regimental organisation, though I have had the privilege to command Volunteers for 15 years; but I do know this much that upon the character of the Commandant, and upon—what shall

[Colonel Sir Henry Stanyon.]

I call it?—the tact and adaptability of the Adjutant, a great deal of regimental administrative success must depend. The European officer in an Indian regiment has a much easier position than an Indian officer will have. The difference will be understood by European officers if they will try and imagine what their position would be; suppose in the four double companies constituting a regiment one company—or even half a company—consisted of European Christians. They are at present in a detached position, able to act with complete impartiality among all the different people who go to constitute an Indian regimental unit. The Indian officers' position will be very much more difficult for reasons upon which I need not enlarge, but which, I am sure, will be obvious to every Member of this House. We have two amendments proposed on this paper to-day which themselves point to these difficulties. These are all difficulties that we have to consider. Dr. Gour's proposal is: "Don't wait and see what is the result of the experiment. Let that go on as best it may, but, despite that, without opening your eyes by the experience gained in connection with these 8 units, formulate a scheme—formulate a scheme." I submit that this Resolution is premature for that reason, and that this House must possess its soul in patience. It has achieved a tremendous amount of success in pushing forward this matter—success which perhaps a very short time ago even the most sanguine of the Members of the House would scarcely have hoped to realise. Now let us wait. If these 8 units prove, as I have every hope myself they will prove, to maintain their efficiency under Indian command at the same level which they have attained under European command, then our position will be a very strong one, and we may be able to ask that, in place of 8, we should have 80 units of that kind.

Khan Bahadur Zahiruddin Ahmed (Dacca Division: Muhammadan Rural): Sir, before I move my amendments, and before I go on to speak on the merit or demerit of this Resolution, I respectfully ask the Honourable Non-Official Members of this House, in whose hands the Honourable Mover is, to ask him to withdraw this Resolution. I will give my reasons for this novel request. The reply given to the Resolution by His Excellency the Commander-in-Chief, Lord Rawlinson, is very sympathetic and very very hopeful and I am certain that His Excellency will give us as much indulgence as possible, as he has already commenced to help us, compatible with the efficiency of the army, for the furtherance of the desires of our rising hopes. By forcing this Resolution on His Excellency we will simply convert a friend into a foe, as in the interest of the Army he cannot but oppose it. I say we should know better. I must frankly confess that the Resolution as worded cannot be accepted as it is. When I first read in the Resolution that *all* vacancies (I lay stress on the word "all") in the Indian regiments in future be filled by the Indian officers, etc., I thought my Honourable young friend wanted to be amusing and humorous. A certain Persian saying which I reproduce here came to my mind at once:

"Gorhai miskin gur pur dustai tumkh kunjnk aj jahan bur dustai"

"Had the innocent cat got wings, there would have been no sparrow left on the face of the earth."

But, when I found that His Excellency, a grim soldier and a far-sighted statesman—two very distinct qualities very seldom found in one man—has taken it seriously, I immediately changed my views and came to the conclusion that I was not right.

If this rash and embarrassing Resolution is accepted by this Honourable House as it is (I lay stress on the words "as it is"), it will simply alarm those from whom we expect more help, more reforms and more good. It will meet the same fate as the immediate Swaraj Resolution of Simla. No Military Board worth its name can accept such a drastic change and that too within 24 hours. Hence, when we are certain of failure, why should we do it? We are a responsible body and not a schoolboys' association, why should we do a thing which will damage our cause?

"Agar akeli ek eshara bus ast".

"If you have any sense in you, one nod, one sign, is enough."

Such an impudent Resolution is sure to be rejected by the authorities at Home as they cannot accept a thing which will be so detrimental to the efficiency of the Army and hence to the interests of the country as a whole, and then some of my Honourable friends will commence to whimper and whine that such a well cut, well dried, well groomed and well lobbied motion failed to act. I say it is better to remove the face before the slap has fallen on it. If we get slapped none but we, the Honourable ourselves, shall have to be thanked for it. No use to be wise after the event. No use to advance the face to be slapped. "*Chera Kare Kunad Akel ke baz arad pushemani*" Why should a wise man do a thing which will bring remorse afterwards? I admit we wanted a long sword but we have been given a pen knife. If we make well use of this pen knife, a better and a longer one will follow. It looks to me that we have commenced to use the knife at the throat of the giver thereby creating our own obstacles in our own way. What we did before is already known, now we are demanding to drive away all the British officers in the Indian Regiments immediately. A creeping conviction is coming on me that we are here voicing the feelings of the outside non-co-operators and the extremists. It looks to me as if the outside, the Honourable non-co-operators, and the inside the Honourable non-officials are one and the same or at least they are "Nisbati Brothers", brothers by contracted relationship which, when translated in common Hindustani means "Salas" and "Buhnois."

Sir, we have heard from His Excellency that in the list of the Viceroy's Commissioned Officers there are no fit persons to be given immediately King's Commission. Such officers are not in existence but shall have to be given birth to. My young friends may be up and doing but till then will all the vacancies remain unfilled up? In the meantime they can be filled up by the young non-official Members of this Honourable House. I am giving this piece of advice to His Excellency.

I asked the opinion of one of my constituents who had some military experience in Mesopotamia and he replied as follows: "Kare bojina nist rajjari" meaning surgery is not the business of the monkey. If any of my Honourable friends will argue that the surgeon is simply to hand over his knife to the monkey and the monkey will at once turn out to be a good expert surgeon, I must say that the argument is very forceful and to that I have no reply. There is a vast difference between civil and military matters. A civil officer may commit a mistake which can be easily rectified by his superior without much harm being done. Such is not the case with the military officer. A mistake made by a military officer in the battle-field may end in a great catastrophe, may end even in losing a battle. It has been known in history that the loss of a battle ended the existence of

[Khan Bahadur Zahiruddin Ahmed.]

Empires. This nation is in its infancy and I am not prepared to experiment with its life and death by this unworkable, absurd Resolution.

I say there is no magical force in adopting a Resolution. If my Honourable friends the non-officials do believe that a magical virtue is imparted to a Resolution by its acceptance by this Honourable House, I may point out with hundred and one apologies, that such magic will not appeal to the British nation, the British public, the British rate-payers and the British Parliaments. Then what will appeal to them? I submit, it is logic or logical force. Has my Honourable friend the Mover any logic to his side? If he has, I failed to see any. If any of my Honourable friends here will tell me if he has found any, I shall then be delighted.

In the first part of his speech he spoke volumes in praise about the present British officers. He fully admits that they are doing their duties admirably well. He agrees also that they never failed on any occasion. People want a change when the existing order of things is not working well. The Mover admits that the present system is working excellently well. Still he wants a change. He says the change may be equally suitable. But where is the proof?

" Seeing an eagle soar on the high,

The Baby in the cradle wishes to fly "

Such a baby which is still in the care of wet nurses. That the eagle can fly I can see and I must have proof that the baby will be able to fly equally well before I will hoist up the baby high in the air. A few of my Honourable friends told me if I were to support this Resolution I will get the " Bah ", " Bah " of the revolutionary irreconcilables of my country, my countrymen of that class will say excellent, excellent. Revolution in political matters is very risky. The roads of politics are full of zig-zags, full of ups and downs like hilly roads. No sane man should ride on such roads at break neck speed. The riders will not only break the necks of their horses but will break their own necks in the bargain. I say the revolution in the Army is still more risky, nay, dangerous and I am not prepared to support such a drastic innovation simply to win the applause of the outside extremists and non-co-operators. I have a conscience which I cannot sacrifice. I ask the Honourable non-official friends in this House to let us be true patriots, let us not discard genuine gold for an alloy, though the outside of it may be shining. One must not pretend to know a thing of which one knows nothing. Pretended knowledge is very, very dangerous. I ask again and again from the Honourable non-officials what is their military knowledge. I will answer the question for them. It is not even superficial but abysmal ignorance. My Honourable friends are very confident that they can drive the carriage of the administration of the Army very ably. But, with all humility, I may enquire whether they know that the horse which is to drag the carriage is to be harnessed in the front or behind it. What I believe would happen is, if any Government or any Military Board forces any such Resolution on any Commander-in-Chief, the officer will resign rather than agree to experiment or work on it. A soldier cannot or will not discard his sharp sword for a doubtful one. No statesman will agree to stake the existence of an Empire for an experiment.

My Honourable young friend expresses a pious hope that the newcomers will turn out to be as good as old experienced officers whom he wants to replace. He does not instance a single regiment where it was tried and found successful; on the contrary, he says that a similar thing was tried in Company Bahadur's time and it brought about the Mutiny in 1857, which every one deploras. Here my Honourable friend falsifies his own assertion and again he is impudent enough to suggest the same thing which ended in a great catastrophe. I only wish to say, once cheated, twice shy and no more.

I asked a man belonging to the rank and file of the Indian army about these British officers whom my Honourable young friend wants to hang. The Indian soldier replied that these officers are feared by some, liked by others but respected by all and hated by none. I asked him how it will work if they are replaced at once by Indian officers. He said the Indian officers in their place will lean on their remaining British subordinates which will be detrimental to the discipline of the army. He further said discipline in the army is most essential. This want of discipline or the slackening of it under Indian officers brought about the Mutiny in 1857 about which the less said the better. The Indian soldier furthermore said raw levies can be trusted to an experienced officer but a regiment of war veterans cannot be put under the charge of raw officers as in the latter case it will be suicidal. We should try to carry the whole thing to its logical conclusion. I must say in conclusion that my Honourable young friend should now see his way to withdraw the Resolution as it is not only immature but unworkable. To the Resolution as it is I can offer my sympathetic neutrality but not full support. As to my two amendments, after what I have heard from His Excellency the Commander-in-Chief this morning, I do not desire to move them.

(Cries of "Let the question be now put.")

Mr. President: The question is that the question be now put.

The motion was adopted.

Mr. President: The original Resolution was:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commission for Indians by direct recruitment and by promotion from the rank of Viceroy's Commissioned Officers in such number that all vacancies in the Indian Regiments be in future filled by such Indian Officers only till all Indian Regiments are wholly Indianised."

Since which an amendment has been moved to substitute the following for the Resolution moved:

"That while gratefully acknowledging the announcement made for the Indianisation of 8 Indian units, this Assembly recommends to His Excellency the Governor General in Council to be so pleased as to formulate a scheme for the steady increase of Indians in the commissioned ranks of the Army with a view to ensure the officering of all Indian regiments by Indian officers with the minimum of British officers as may at present be necessary to ensure their efficiency."

The question is that that amendment be made.

The Assembly divided:

AYES—40.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ahmed Baksh, Mr.
Asad Ali, Mr.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Bijlikhan, Sardar G.
Chaudhuri, Mr. J.
Cotelingam, Mr. J. P.
Das, Babu B. S.
Gidney, Lieut.-Col. H. A. J.
Ginwala, Mr. P. P.
Gour, Dr. H. S.

Gulab Singh, Sardar.
Hussanally, Mr. W. M.
Jamnadas Dwarkadas, Mr.
Joshi, Mr. N. M.
Misra, Mr. B. N.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Samarth, Mr. N. M.
Sarvadhikary Sir Deva Prasad.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu L. P.
Sohan Lal, Mr. Bakshi.
Subrahmanayam, Mr. C. S.
Ujagar Singh, Baba Bedi.
Venkatapatiraju, Mr. B.
Yamin Khan, Mr. M.

NOES—42.

Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Abdul Rahman, Munshi.
Aiyar, Mr. A. V. V.
Akram Hussain, Prince A. M. M.
Allen, Mr. B. C.
Barua, Mr. D. C.
Blackett, Sir Basil.
Bradley-Birt, Mr. F. B.
Burdon, Mr. E.
Cabell, Mr. W. H. L.
Chatterjee, Mr. A. C.
Crookshank, Sir Sydney.
Faridoonji, Mr. R.
Gajjan Singh, Sardar Bahadur.
Haigh, Mr. P. B.
Hindley, Mr. C. D. M.
Holme, Mr. H. E.
Hullah, Mr. J.
Innes, the Honourable Mr. C. A.
Ley, Mr. A. H.

Mitter, Mr. K. N.
Moir, Mr. T. E.
Moncrieff Smith, Sir Henry.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nabi Hadi, Mr. S. M.
Nayar, Mr. K. M.
Percival, Mr. P. E.
Rajan Baksh Shah, Mukhdun. S.
Rhodes, Sir Campbell.
Sams, Mr. H. A.
Sarfaraz Hussain Khan, Mr.
Singh, Mr. S. N.
Stanyon, Col. Sir Henry.
Tonkinson, Mr. H.
Townsend, Mr. C. A. H.
Tulshan, Mr. Sheopershad.
Webb, Sir Montagu.
Wilson, Mr. W. S. J.
Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. S. C. Shahani: Sir, it is with mixed feelings of joy and grief that I come forward to propose my amendment. I would have been very glad if the amendment proposed by Dr. Gour had been carried. It would have been a second step forward. The Government had assented, and in spite of Government assenting, we found this reasonable amendment of Dr. Gour lost. I say that it is with mixed feelings that I contemplate the defeat of the amendment moved by Dr. Gour. If I am sorry, I am also in one sense glad that it has been defeated. It will convince Dr. Gour and men of his class that no moderation will find favour with those who are determined to see that we do not achieve for ourselves the growth to which we are entitled. I should be very sorry to see any amendment proposed which should have a tendency to perpetuate exclusiveness or isolation of either Europeans or Indians. I have enjoyed my contact with the Englishmen, and I think I owe my present development and growth to my contact with them. I am deeply conscious of the good

that the contact with the British has done to Indians. On that account I strongly deprecate the exclusiveness of British units in the Indian Army. I have always wished that Indians should be admitted to those units, just as the British are to the Indian. There should be no objection absolutely to Indian officers of the right type and calibre officering the British units. This interchange will tend to serve the ultimate purpose with which Indians and Englishmen have come together. It is not a chance contact so far as I see. I am a believer in divine destiny, and my feeling is that we have come together in order to secure for ourselves and for the countries to which we belong some higher destiny than will be securable singly. But we are fallible men; and we often forget larger consideration for selfish ends. The Britisher would not, I think, consent to be led by an Indian, as indeed was manifest from the speech made by the Commander-in-Chief only this morning. He would not I think hear of the British units being in any manner officered by Indians. Well, in these circumstances isolation is the only course left open to the Indians. If the Indian Army is to be isolated no doubt some of its efficiency will for some time have to be sacrificed. Sir Henry Stanyon was in a measure right when he said that an exclusively Indian Army would not be calculated to prove so efficient as an army, for instance, which is composed of the two races and which has won glory on more than a hundred battlefields. Sir Henry Stanyon, however, seems enamoured of the existing condition of things, where the majority, or rather the whole of the officers of the Indian Army, are British with few exceptions. He seems to contemplate this condition of things with favour and he says, if you change the existing condition of things your efficiency will suffer. That is very much like what His Excellency the Commander-in-Chief said the other day when he eulogized the existing order of things and expressed a regret for the inevitable change that must come upon it. He did say that the change was inevitable, but still he regretted it, and the regret is very much like the regret that has been expressed by Sir Henry Stanyon.

Colonel Sir Henry Stanyon: Sir, may I rise to a point of order? I did not intend to say and to the best of my recollection I did not say that an Indian Army regiment led entirely by Indians would not be as efficient. All I said was that we wanted experience and I expressed the hope that it would be as efficient.

Mr. S. O. Shahani: Well, Sir, I accept the statement, and say that at the present time, according to Sir Henry Stanyon, it is not desirable to go in for any great change in the organization of the officers of the Indian Army; my feeling is that this iniquitous arrangement of having the existing arrangement of having hardly any Indian officers in any Indian regiment should be changed. Britishers should agree, and willingly too, that there should be only a sprinkling of British officers in the Indian Army, and that the bulk of the officers should be Indian.

"The old order changeth yielding place to new,

"And God fulfils himself in many ways,

"Lest one good custom doth corrupt the world".

The existing organisation of the army may have been a very good custom. The British officers leading Indian soldiers have been able to hold their own against foreigners, have been able to ward off foreign aggression, and have won glorious battles. That is perfectly true. But

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the change in our conditions has made a change in this good custom necessary, we should be fitting ourselves by changing this good custom for even better and higher achievements. I was, therefore, eager that the amendment that was proposed by Dr. Gour should find acceptance; but that has not happened. Isolation or exclusiveness does seem necessary. If so, Sir, I beg to move the amendment which is in my charge, namely :

" This Assembly recommends to the Governor General in Council that effective steps should be taken without further delay towards the Indianisation of the Army in India, and if necessary a committee of experts, Members of the Indian Legislature and other Indian representatives, should be appointed to go into the whole question and to submit a report as early as possible."

I would request the Honourable Members of this House to support this amendment. This amendment is in substance the amendment of Dr. Gour with only this difference that a committee consisting of the Members of the Legislature is recommended. Immediate steps are very desirable. No doubt a momentous step has been announced this morning. Eight units are to be completely Indianised. Important as this step may be in itself, it cannot go very far to satisfy the ambitions of the Indians. Eight units out of 141! You have only to recall what was told us a few days ago by His Excellency the Commander-in-Chief. Preliminary institutions are being designed to feed the Dehra Dun Institute and the Dehra Dun Institute to feed Sandhurst. So far so good. But is this enough? The Indian Infantry consists of Indians and provides for Indian officers to a certain extent. But Indians are admitted to a much lesser extent to the Indian Cavalry. The Royal Artillery, the Royal Engineer services, the Ancillary services, practically the Royal Indian Marine, the Royal Air Force, all these are closed against the Indians, although it is recognised the Indians should learn the art of defending themselves. The sooner they learn the art of protecting themselves, the better will it be for India, and ultimately better for the Empire to which we belong. Very large sums of money—70 crores out of our net revenue of 90 crores—are being devoted to the Military. Who can endure this expenditure, however well organised the army may be? A citizen army is an essential thing for the country, and the sooner this citizen army is created, the better will it be for India; and the sooner the Indian Army is Indianised in the proper sense of the word the better would it be for all parties concerned, for India and Empire. You will, Sir, be able to understand my view point in its entirety if you will kindly consider what was said only a few days ago in this connection by His Excellency the Commander-in-Chief. He thought that although he was not in a position to reveal the whole scheme that was being formulated for the Indianisation of the army between the Secretary of State and the Government of India, he felt sure that some measures would be devised at a very early date, and one of these measures was announced to-day. He spoke of specific objections, and he spoke of one very great difficulty. What was that great difficulty? It was this that progress in the direction of Indianisation of the Army had one great impediment, viz., the atmosphere of India and the chances of external and internal disturbance. Now, until, he said, an Indian army had been organised as a separate unit and put to the test in a war that was actually waged, or until the Army had engaged in some service on the frontier, no further step could be taken, and not only that, until an assurance, for instance, was given that there would be no internal disturbance and no external disturbance, no further advance could with

confidence be predicted. I want to point out that if, under any circumstances India could be secure against both internal and external disturbance, if such a millenium were to come, where would be the necessity of the Commander-in-Chief himself? Under such a millenium we need not have an army and we need not have any commanders; but this is an impossible condition. And if these impossible conditions are being contemplated I would move my amendment and request every Member in the House to give his support to me.

Mr. E. Burdon: Sir, the Government found themselves unable, though with regret, to accept the amendment proposed by my Honourable friend Dr. Gour. The House will readily understand that Government cannot accept the very much less attractive proposition, as my Honourable friend has himself described it, which is in my Honourable friend's charge. Sir, I have already stated the position of Government in regard to this debate and I do not think I need say more than a very few words in regard to the amendment which is now before the House. It would obviously be superfluous in the present circumstances to appoint the committee which it is proposed that the House should recommend, since it is now known to the House that steps are being taken towards the Indianization of the Army and that the measures to be adopted for this purpose have been thoroughly considered by the Government. The policy of Government in regard to the matter has already been decided upon with full knowledge of all the factors bearing upon it and in the light of the most expert advice obtainable. Sir, I oppose the amendment.

The amendment was negatived.

Lala Girdharilal Agarwala (Agra Division: Non-Muhammadian Rural): Sir, I must thank His Excellency the Commander-in-Chief and the Government of India for at last making a definite advance. I must say that the announcement which has been made this morning is encouraging, but it was long overdue. It is rather surprising that, after a tutelage of nearly 200 years, we are able to pick out only eight units to be Indianized out of a total of 141. Whose fault is it, Sir, is it our fault or the fault of our tutor?

Mr. President: I must confine the Honourable Member to the terms of his amendment which asks for communal representation.

Lala Girdharilal Agarwala: I am going to say that Sir. The amendment which stands in my name is as follows:

"That the following be added at the end of the Resolution:

Keeping in view the principle of fair representation of suitable candidates of different castes and communities residing in British India."

Sir, it has been said that the Army is a fighting machine. I admit that it is a fighting machine and I do not want that efficiency should be sacrificed in the least. It is for that reason that in my amendment I have used the words "suitable candidates." I never want nor would I desire that unsuitable candidates should be admitted into the Army simply because they belong to a particular caste or community or to a particular race. Now, Sir, according to my definition, all those persons who reside in India, who have made India their hearth and home, should be eligible. I have said candidates of all castes and communities residing in British India, including, of course, Europeans, Anglo-Indians and Indians, properly so called.

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Then, Sir, there are in India several castes which are called the military castes, and there are other persons to whom the doors of the Military Department as also of the Police Department are rather closed. Now, my submission is that suitability and efficiency should be the sole test and not the fact that a particular person belongs to a martial race, that, therefore, he should be given a post as an officer, while a person equally qualified, equally efficient, cannot obtain such a post on account of the fact that he does not belong to the martial races. Now, Sir, if it is not the intention of the Government that there shall be a bar against the appointment of any person as the head of the Army, if there is no such disqualification, simply on account of caste, or creed, or nationality, then I think that it would not be necessary for me to press this amendment of mine. But, so far as I know, there is a bar against the appointment of certain persons belonging to certain castes and communities, simply because they do not happen to belong to what is called the martial races. Now, Sir, I submit that suitable candidates could be found in every caste and community; it depends upon training and not so much upon birth. It is for this reason that I submit that, in case suitable candidates are found in other castes and communities, which are at present not called martial races, they should not be debarred from such appointments. That is the motion which I commend for the acceptance of the House.

Mr. E. Burdon: Sir, the existing system of selection of Indian officers for the Indian Army is as stated in paragraph 5 of the provisional regulations respecting the admission of Indian gentlemen to the Royal Military College at Sandhurst, which reads as follows:

"The general rule in selecting candidates should be that *ceteris paribus*, selection should be made from the communities which furnish recruits in proportion to the numbers in which they furnish such recruits. regard should also be had to the claim to consideration of candidates from the educated middle classes."

This is our present practice. It is a practice adopted in pursuance of a Resolution of this House, and I think the House will agree that we should abide by it.

Lala Girdharilal Agarwala: I wish to withdraw my amendment on this assurance.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Muhammad Yamin Khan: Sir, I join along with other Members of this House in thanking His Excellency the Commander-in-Chief for making the momentous announcement which he has made to-day. Nobody is more pleased than I am that my motion has accelerated that announcement regarding which the Government of India and the Secretary of State could not make up their minds for a long time past.

But of course I do not want to take up much time of this Honourable House in paying tributes which have already been paid and which I can not pay properly. Before, Sir, I come to the remarks which were made by His Excellency the Commander-in-Chief, on the 24th of last month and this morning, I would like to deal with a few remarks made by different Honourable Members. Some gentlemen have asked me to withdraw my Resolution, and one of them is Khan Bahadur Zabiruddin Ahmed. His patriotic speech, his grey hairs and his calling me a young man with rashness and all kinds of other complimentary words which he

used, I need not reply to. He is an experienced gentleman, full of fervour, sense of patriotism and what not. All that of course need not be replied to. He does not want the "Wah-Wah" of the country. I do not know whose "Wah-Wah" he wants. The House will judge, Sir, what his motive is in not wanting the "Wah-Wah's" of the country, in not wanting what the country really desires and keenly feels. That is not for me to judge nor for me to criticise. As far as I can make out, he probably does not know what an Army means. He does not like an Army career, and any of his people might not have been in the Army who would like to better their conditions. But coming of people who have served in the past with great glory in military careers, and being shut off now from such a career, I had to voice their feelings in this Resolution.

There is my other friend Khan Bahadur Abdur Rahim Khan. He has agreed with me and he wanted to support my Resolution, but he at the same time did not agree with me and wanted me to withdraw my Resolution. He says I should not make this sweeping change. I cannot see that in my Resolution I am demanding any sweeping change at all. I will reply to that and I will assure this House that I am very far from wanting any kind of revolution or any drastic change in the military. What I want is only steady and slow progress towards Indianising the ranks of King's commissioned officers and my Resolution means that and nothing more.

Again, my friend, Mr. Bijli Khan, probably under a misapprehension or misunderstanding, interpreted this Resolution in a different sense, and I am sure when he comes to know what I really mean, if he had taken the trouble of reading what I said on the 24th of last month, he would have realised what I really wanted. Some of my friends here seem to be labouring under a misapprehension that I want, by moving this Resolution, to sever the connection of British officers from Indian regiments at once. That is not so. Now, Sir, I do not want to repeat what is reported in the debates of the 24th January. I will take one point in the remarks made by His Excellency the Commander-in-Chief on that day. He said "Do not try to go too fast; do not try to run before you can walk; if you do you will assuredly fall down." I quite agree with this maxim which is very true. I do not want to run; I do not want to go too fast; I do not want that the British officers should be eliminated at once from the Indian Army. What I want and what I said on the 24th January—and here I want to remove misapprehensions in the minds of Honourable Members who might have understood me differently—is that we may learn to stand up. I do not want to run. I want that any vacancy which may fall as a second-lieutenant, that may be given to an Indian. That will not be running too fast, because the Colonel, the Major and the Captain, all British officers, will be there and the Indian who goes as second-lieutenant will only learn to walk—he will not even be walking, he will be learning only to walk—when he is under the control of these British officers and by the time he learns to run it will take him 24 years. I am told, Sir, (A Voice: "Amend the Resolution.") I need not. I am told, Sir, that it takes 9 years for a Lieutenant to become a Captain, 9 years for a Captain to become a Major, and it takes 7 years for a Major to become a Colonel. So it means that it will take 24 years before a Lieutenant who has just entered to-day can become a Colonel of that regiment. It means this: in a regiment which is going to be Indianised it will take 24 years. The experiment which His Excellency the Commander-in-Chief is going to make with these eight regiments will take 24 years, and afterwards he will make up his

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mind whether the same experiment is to be tried in other regiments or not. If that is going to be done, it will take 24 by 17 years; that time must be taken before we can have the Indian regiments only Indianised. I do not agree with that, Sir. That is too long a time. I want that the Indianisation of the Indian regiments only should be completed, say within a third of a century at least, because I do not want that all the vacancies occurring to-morrow of higher ranks than those of Lieutenants should be filled up by Indians. The wording of my Resolution is different. It says

Khan Bahadur Abdur Rahim Khan: Stick to your Resolution, please.

Mr. Muhammad Yamin Khan: If my friend just waits and tries to put his head towards it probably he will come to know what I mean. I purposely used the word 'and' to which my friend, Sir Deva Prasad Sarvadhikary had moved an amendment to substitute the word 'or'. We cannot fill the vacancies by direct recruitment at once. What I want is that only those officers who are already serving as Viceroy's Commissioned officers, if they are efficient and capable, may be promoted to the rank of King's Commission at once; and by that time, we may be giving a training to young boys who will ultimately start, after two or three years, taking their place in the regiments as Lieutenants. I do not want to stop the promotion of Viceroy's Commissioned officers, if any suitable candidates can be found amongst them. I know that they have rendered great services and it will be a great hardship if any officer, such as a Subadar or Risaldar Major who is found quite efficient to hold the position of a Lieutenant, should be debarred from being promoted. I know that they have a fairly good number among them who can be promoted, and some of them have been chosen in the past. As far as I have learned—and I stand to be corrected by Mr. Burdon—there is a 35 years' age-limit for these Viceroy's Commissioned officers to be promoted to the King's Commission. Anybody who has exceeded the age of 35 years cannot be promoted, though he may be a very efficient and capable person. And by using the word "and"—"and Viceroy's Commissioned officers", I simply took that point of view. I knew that there had been hardship in certain cases and His Excellency the Commander-in-Chief has used all his powers in doing away in certain cases with this age-limit, a course which his strong personality enabled him to do. But, if there happens to be some people of this kind that have exceeded the age-limit of 35 years, they might be promoted to the King's Commission. But ultimately, I do not aim that they should go on doing this. Of course, there must be direct recruitment. What I propose is this that direct recruitment should be the principle, that all future vacancies should be filled by them. Which means that the training will take at least three years for a man. And this process will start after three years, if we start giving them vacancies. If in 1926 we find that there will be 100 vacancies then from to-day I ask the Government to start training 100 boys who might fill those vacancies after three years, i.e., in 1926. I do not say they should take at once a number of inefficient boys—catch hold of them in the street—and give them King's Commissions. I say, get any kind of examination or any criterion of selecting the boys from India out of these 36 crores of people—up to that number which might be wanted after three years, and I do not think that India has not got efficient boys at present who cannot hold those jobs after three years, if they are properly trained.

Then, Sir, many of the Honourable Members have thought fit to refer to the question of efficiency—and remarks that efficiency will be impaired simply because English officers will be removed and English traditions will not be in the Indian regiments. I disagree with them. It is not this. If these boys are trained from the very beginning, if they receive education under European tutors, if they are brought up under their European Captains, and when they become Captains, they are under their Majors, and then under their Colonels and then under their Generals—then I do not see why their training should not be according to the British officers' training. And they will be quite efficient persons. They will be quite good officers and they will know how to lead their armies. There was one other thing; the question of castes and creeds always creeps in. But I don't agree with that. These are difficulties which can be solved later. This matter comes after we have made our schemes mature. Then we can deal with these questions. But we are not going to deal with these questions to-day. Now, as far as I understand, in every regiment, if there are 6 troops, 2 troops are Sikhs, 2 are Jats or Rajputs, or some other martial race, 2 are Pathans. Then these 6 troops are in one regiment and they are led by their own officers. Out of all these officers there is one Risaldar Major selected and he is to lead all of them. Besides these, there are English officers. These difficulties can be solved later on in a very amicable manner. I need not dilate upon these questions which might crop up later on. The only point now is this. Is it the policy of the Government of India to prepare India to be a self-governing country or not? If this principle is accepted by the Government of India, then what is the preparation towards the defending of our shores and our frontiers? There is no other possible way. The statutory period for revising the Reforms Scheme is fixed at 10 years. I want that the Government of India should take some steps to show to the Royal Commission which may sit after 10 years that so much progress has been made towards teaching the Indians in defending their shores or their frontiers. I say if after ten years we have only Captains in the Army, we can put it before the Commission and say, "Look here, all the Indian Regiments have got at least Indian Captains" though the Majors and Colonels may be British officers at that time. If after ten years we have at least Captains their efficiency can be proved by their officers. I am not asking to fly. I am not asking to run. I am not demanding that a man should be appointed Major General or Lieutenant General or take the place of His Excellency the Commander-in-Chief or, as some paper suggested, that the vacancies which may fall vacant in Baluchistan or any other place should be filled by Indians. No, certainly not. I simply want the slow progress of first learning to stand, then learning to walk and then learning to run, and that is the process which I have put down specifically by specific scheme in my Resolution. I have not hinted any sweeping change. I have not demanded anything which can be called rash. Of course, my Honourable friend with his hoary head might be thinking me a rash person. But I never believe in revolution. I have never been a supporter of revolution. I want a steady progress and this is the steady progress which I propose. Then, Sir, in support of this Resolution that Indian Officers can be very good and efficient officers, I put the case of the Hyderabad contingents. I put the Gwalior Armies, I put the Armies of the different Native States who have played a great part in the war in Mesopotamia, in Palestine, in France and in Egypt. The Nizam's Armies went to fight in Palestine and they have rendered great service. They have won a lot of battles. Were they officered by British officers? No. They had Indian Officers, and they have proved

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their worth. If we can find men in such backward territories as the Indian States, why cannot we find better or equally good and efficient persons in the advanced territory of British India? We can find many people. It has hitherto been the policy to recruit for the Viceroy's Commissioned Officers people quite illiterate because there are no prospects. If there are prospects, if an efficient man comes to know that he can rise up to Major General or Lieutenant General, of course, he will come forward to join the army. There will be any number of young men then who would be quite willing to come, and even more efficient people, even graduates will come forward and I can find any number of them to-morrow to join the army as Lieutenants who will be quite willing to join this career. You do not put before them any temptation; you do not give them any opening and then say that nobody can be found, that they are not efficient persons, we cannot trust them, we have to try them and so on. Of course, all these kinds of excuse may be made. But I have been hearing a lot of heart-burning among the Indian officers who got their commissions in 1905. They were superseded by British officers who were appointed in 1912. Five Indian officers who got their King's Commission in 1905 should be superior, in the natural course of things, to those officers who got their commission in 1912. I know the case and I can recite the names of those to-day who were superseded by British officers appointed in 1912. This was simply because they were Indians. If this is the case, you cannot expect efficient persons to come forward. Efficient persons will come forward only when there is the same opening, the same career open to them, and this is what I claim. I do not want to touch the British Army at all. I wanted an opening for Indian officers where there will be no competition between Europeans and Indians, where there will be no question of racial distinction at all. I simply wanted to touch the Indian army. In order to safeguard the British interests I am not touching the artillery, or the British cavalry, or the British infantry or the British Air Force, nothing of the kind. What I am touching is only the Indian infantry, and the Indian cavalry where I want that Indians should by slow degrees be appointed and that within a third of a century they should be fully Indianised. This is very clear and I am sure that my Honourable friends have misunderstood me—I do not claim to be an expert in drafting, but I have made myself clear as to the intentions which have animated this Resolution of mine. I have only one word to say to my Honourable friend, Colonel Gidney. He has dilated a great deal on the question of his community. I need not enter into that question. So far as I am concerned, I will take the members of his community as Indians if they care to abide by all the disadvantages under which the Indians labour. If they agree to accept that position I shall certainly include them among Indians. But if they claim all the advantages of an European, then, of course, they must come among Europeans. I need not enter into that question, but as he has asked me to declare it publicly I thought I must say these few words.

Mr. President: I must ask the Honourable Member to conclude his remarks now.

Mr. Muhammad Yamin Khan: A friend of mine put a question whether we want Swaraj inside the British Empire or outside the Empire. It is a fact that this Assembly never thought of having Swaraj outside the British

Empire. What we are standing for is Swaraj within the British Empire. If we had wanted to remain outside the British Empire, we should have asked even for a portion of officers of the British regiments, but I do not claim that. I do not want Indians should go as officers over the British soldiers, and in the same way I do not want that British officers should go as officers in the Indian regiments. Of course, these two different armies should exist side by side but separately. It is a slur on the Indians that they cannot be efficient. That slur should be removed at once, as Indian officers can lead the army as well as the British officers have done in the past. I have paid a tribute to the British officers on the 24th January and I still pay that tribute for the great services that they have rendered. There is no controversy about that. I was sorry when I heard a martial class man saying that the Indian regiments will not be efficient if they are officered by Indians. I cannot say anything in regard to that and I deplore that statement. I deplore that such people have such poor opinion of the people of this country. There are men in this country who are as efficient as European Officers. As His Excellency the Commander-in-Chief said we want not only combatants, we want staff people. We want technical people. I say that Indians have not shown themselves in any way less deficient in engineering skill. They can be good staff people as well. Where brain is concerned you can find in India quite efficient people. It was only when the question of the combatants come in that it was doubted. But Indians have proved their capacity in the battle-fields of the war. They have shown themselves very efficient even though they do not possess that education which is given to highly educated persons holding the King's Commission. In the war, when the British officers were killed, these illiterate persons led to take the lead. See the records of the war and that will show how efficiently these illiterate Indian officers led the army and won the battlefields. If even illiterate persons proved themselves so efficient, then there is no doubt that a highly trained person will be no less efficient.

Mr. E. Burdon: Sir, the discussion has been long and I am sorry the House will not wish me to make it very much longer. My Honourable friend must be aware from what has already transpired that the Government are unable to accept his Resolution and I think the House appreciates the force of the circumstances which have compelled Government to take this view. Before my part in this debate ends, however, there are a very few observations which with the permission of the House I should like to make. In the first instance, Sir, I think it is clear from recent discussions that the Members of this House and the Government have now come to a much closer mutual understanding in regard to this vital question of Indianisation. The Government have frankly recognised that the demand for Indianisation is a natural and laudable aspiration which the Government are anxious to meet so far as this is compatible with the proper discharge of the grave responsibility that they have for the defence of India. On the other hand Honourable Members of this House have, I think, very frankly recognised the gravity of the issue, the difficulties of the situation and the limitations within which the solution of the problem is to be found. His Excellency the Commander-in-Chief speaking the other day also told the House that while correspondence was proceeding between the Government of India and the Secretary of State on the subject of a concrete scheme of Indianisation, the Government of India had been busily engaged in laying the foundations without which no scheme of Indianisation could hope to be successful. I gather that all those who desire that

[Mr. E. Burdon.]

Indianisation shall be a real success are in whole-hearted agreement with the view which the Government have taken in regard to this matter also. It is recognized, I think, that preliminary education and training according to the standard laid down by Government are essential; and the care and forethought which Government have endeavoured to exercise in laying the foundations have not failed to find appreciation. I think the points to which I have drawn attention very briefly will carry their own significance to the House. I will not labour them, but will merely say that it makes the solution of any problem very much easier when both parties to the discussions come to a fair and frank recognition of the difficulties with which the problem is surrounded and if the problem is attacked fairly on both sides in a practical spirit. Sir, the announcement which His Excellency the Commander-in-Chief made to the House this morning has led in certain quarters to expressions of dissatisfaction. I am glad, however, to be able to say that the feeling does not appear to be universal; on the contrary, I acknowledge that the majority of the House appear to congratulate themselves and to congratulate India upon the very real step forward which has been taken. In the words of my Honourable friend, Mr. Rangachariar, it is the first step that has been taken, but it is the first step that counts. And surely this is the true and just view for the House and for the people of India to take, to regard the scheme, which is now to be introduced, also as adding one more to the many substantial achievements which can be placed to the credit of this the first Legislative Assembly under the reforms, and as representing the capacity which the Assembly has to induce and direct the good will of Government and to make progress towards the ideals of their ambition. I feel sure that at any rate the Indian officers of the Indianised regiments will take this optimistic view; I am sure that they at any rate will say to themselves, not "we want more than we have got," but will say, "here is an opportunity which we will grasp firmly and confidently, and we will endeavour so to shape it as to consolidate a claim to greater things both for ourselves and for those who come after us."

Mr. President: The question is that the following Resolution be adopted:

"This Assembly recommends to His Excellency the Governor General in Council to be pleased to get King's Commissions for Indians by direct recruitment and by promotion from the rank of Viceroy's Commissioned Officers in such number that all vacancies in the Indian Regiments be in future filled by such Indian Officers only till all Indian Regiments are wholly Indianised."

The Assembly divided:

AYES—22.

Abdul Majid, Sheikh.
Abdulla, Mr. S. M.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Ayyar, Mr. T. V. Seehagiri.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Basu, Mr. J. N.
Chaudhuri, Mr. J.
Gajwala, Mr. P. P.

Gulab Singh, Sardar.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Ramayya Pantulu, Mr. J.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Singh, Babu B. P.
Sohan Lal, Mr. Bakshi.
Venkateswairaja, Mr. B.
Yamin Khan, Mr. M.

NOES—43.

Abdul Quadir, Maulvi.	Innes, the Honourable Mr. C. A.
Abdul Rahim Khan, Mr.	Ley, Mr. A. H.
Abdul Rahman, Munshi.	Mitter, Mr. K. N.
Aiyar, Mr. A. V. V.	Moir, Mr. T. E.
Akram Hussain, Prince A. M. M.	Muhammad Hussain, Mr. T.
Allen, Mr. B. C.	Mukherjee, Mr. J. N.
Barua, Mr. D. C.	Mukherjee, Mr. T. P.
Bijlikhan, Sardar G.	Nayar, Mr. K. M.
Blackett, Sir Basil.	Percival, Mr. P. E.
Bradley-Birt, Mr. F. B.	Rajan Baksh Shah, Mukhdum S.
Burdon, Mr. E.	Rhodes, Sir Campbell.
Cabell, Mr. W. H. L.	Sams, Mr. H. A.
Chatterjee, Mr. A. C.	Sarfaraz Hussain Khan, Mr.
Cotelingam, Mr. J. P.	Singh, Mr. S. N.
Crookshank, Sir Sydney.	Stanyon, Col. Sir Henry.
Faridoonji, Mr. R.	Tonkinson, Mr. H.
Gajjan Singh, Sardar Bahadur.	Townsend, Mr. C. A. H.
Gidney, Lieut.-Col. H. A. J.	Tulshan, Mr. Sheopershad.
Haigh, Mr. P. B.	Webb, Sir Montagu.
Hindley, Mr. C. D. M.	Willson, Mr. W. S. J.
Holme, Mr. H. E.	Zahiruddin Ahmed, Mr.
Hullah, Mr. J.	

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Monday, the 10th February, 1923.

LEGISLATIVE ASSEMBLY.

Monday, 19th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

MEMBER SWORN :

Mr. George Sampson Clark, M.L.A. (Burma : European).

STATEMENT LAID ON THE TABLE.

Mr. A. H. Ley (Industries Secretary): I beg to lay on the table a statement furnished by the High Commissioner for India in the United Kingdom of cases in which tenders other than the lowest in respect of stores purchased for India have been accepted by him during the half year ending 31st December, 1922.

HIGH COMMISSIONER FOR INDIA, INDIA STORE DEPARTMENT.

ABSTRACT OF CASES in which Tenders, not the lowest complying with the requirements of the Stores Department and of the Indenting Officer, were accepted on the grounds of superior quality, superior trustworthiness of the firm tendering, greater facility of inspection, quicker delivery, etc.

HALF YEAR ENDING 31st DECEMBER 1922.

PART A.—Cases in which lower foreign tenders, including British tenders for foreign made goods, have been set aside wholly or partially in favour of British tenders.

Stores ordered.	Contract Number.	Name of Contractor.	Amount of Contract.	Lowest Tender not accepted.	Reason for acceptance.
Insulators	B. 2606-1602, 10th July 1922.	Jas. Macintyre & Coy. Ltd.	£ 545 10 0	£ 479 10 0 (German Manufacturer).	Better delivery. The difference in cost would be further reduced by extra cost of inspection in Germany.
Wire Insulated	R. 2640-2262, 12th July 1922.	Hackbridge Cable Coy. Ltd.	485 5 0 (Item 7).	450 15 0 (Item 7). (Belgium Manufacturer).	Quicker delivery. The small difference in cost would probably be absorbed by the extra expense of inspection abroad.
Pero-Silicon.	B. 2606-2683, 2nd August 1922.	J. Hinckley & Son	348 15 0 P. O. B. (Llmingham).	341 5 0 (F. O. B. Forgrund, Norway).	Lowest suitable having regard to shipping facilities.
Cable	B. 3165-3153, 16th August 1922. B. 3164 B. 3165 B. 3166	Western Electric Coy. W. T. Hinley's Telegraph Works. Johnson & Phillips, Ltd. Callender's Cable Coy.	3,574 3 8 3,104 12 8 3,318 6 11 3,112 9 4 13,109 12 7	12,919 6 3 (Austrian manufacturer). Extra cost of inspection payable £110.	The order was shared between the British firms on account of their greater reliability, the conditions prevailing in Austria being uncertain. The additional cost, after allowing for the extra cost of inspection abroad, is inconsiderable.

PART A.—Cases in which lower foreign tenders, including British tenders for German and other goods, have been set aside wholly or partially in favour of British tenders—contd.

Stores ordered.	Contract Number.	Name of Contractor.	Amount of Contract. £ s. d.	Lowest Tender not accepted. £ s. d.	Reason for acceptance.
War, Aerial . . .	B. 3567-332-8, 2nd September 1922.	T. Bolton and Sons, Ltd.	200 14 10	231 0 6 (German Manufacture)	Quicker delivery. The small difference in price would be further reduced by extra cost of inspection in Germany.
Dog Spikes . . .	B. 3997-5377, 28th September 1922.	W. Kelway Hamber . . .	265 2 6	240 2 4 (made in Belgium).	Quicker delivery offered. There was also much delay in shipping from Antwerp.
Iron Wire . . .	B. 4035-5492, 2nd October 1922.	Norman Long & Coy. . .	1,908 15 0	1,939 7 6 (German)	Small difference in cost and the extra expense that would be incurred by inspection in Germany. The British firm also offered much better delivery.
Cement . . .	B. 4774-5954, 4th October 1922.	Ship Canal Portland Cement Manufacturers, Ltd.	8 11 5 0 (11s. 1d. a Cask) (1,500 Casks)	637 10 0 (8s. 6d. a Cask) (Belgian Cement.)	Quicker delivery. It was also not considered advisable to accept the Belgian Cement offered by the lowest ten- derer until a report has been obtained on sup- plies being made on a Contract now running with this firm.
Copper Plates . . .	B. 4000-6204, 8th November 1922.	Linky & Coy.	13,163 16 0	12,128 0 0	Superior trustworthiness. The lowest tender was from an English firm of locomotive makers for foreign plates forged by themselves. This is not considered nearly so satisfactory as obtaining plates forged by the copper makers.
Tyres for Locomotives . . .	B. 5166-6533, 5th December 1922.	Steel Coy. of Scotland, Ltd.	3,887 13 3	2,808 12 6 (German).	The correct supply of Locomotive Tyres is of the utmost importance and it was not considered advisable to place a further order with the German firm until they have established their reliability by completion of two other contracts which they already hold. The delivery offered by the English firm was also much quicker.

PART B.—Cases in which the discrimination is between British or between foreign firms.

Stores ordered.	Contract No.	Name of Contractor.	Amount of Contract.	Lowest Tender not accepted.	Reason for acceptance.
			£ s. d.	£ s. d.	
Wire Copper	B. 2706-3460, 17th July 1922.	London Electric Wire Co. and Smiths.	121 11 3	121 0 10	Quicker delivery.
Pyrex	B. 2767-4130, 19th July 1922.	Pirelli, Limited.	982 10 0	944 5 0	Superior quality.
Milliamperemeters	B. 2781-3239, 20th July 1922.	Crompton & Co., Ltd.	27 10 0	24 16 3	Ditto.
lamp bulbs.	B. 2789-3756, 21st July 1922.	C. A. Vandervell & Co.	45 18 11	38 12 0	Ditto.
brass sheets	B. 2819-3778, 28th July 1922.	G. Macintosh & Co., Ltd.	3,687 10 0 (9s. 10d. each).	The Loco Rubber Co. at 9s. 9d. each. (9s. 10d. each).	The stores were urgently required and the order was accordingly shared between the three lowest suitable firms to secure the best delivery. The Loco Company quoted lowest and were given an order for 15,000 sheets.
	B. 2830, 29th July 1922.	Broadhurst & Co., Ltd.	3,687 10 0 (9s. 10d. each).		
Engines	B. 3056-3085, 9th August 1922.	Pryke and Palmer, Ltd.	121 1 6	116 18 0	The lowest tenderer was less reliable and also not on the King's Roll.
gasol	B. 3065-4453, 9th August 1922.	Eurocyne Barbedyne & Co., Ltd.	553 15 0	531 5 0	Quicker delivery.
laths, hexagon	B. 3160-4129, 15th August 1922.	Charles Richards & Sons, Ltd.	45 10 6	45 5 8	Ditto.
expanders	B. 3236-3013, 22nd August 1922.	Charles Wicksteed & Co., Ltd.	34 17 0	19 0 8	On account of the superior type of expanders offered.
lubes, Maiocchi's	B. 3397-4471, 7th September 1922.	J. Powell & Son, Ltd.	75 8 9	74 8 9	Quicker delivery.
engine turntables	B. 36, B. 4550, 11th September 1922.	Metropolitan Carriage, Wagon & Finance Co., Ltd.	2,388 0 0	2,380 0 0	Ditto.
lubes	B. 3636-4469, 11th September 1922.	A. E. Braid & Co.	154 3 10	136 9 7	Better quality.
laths	B. 3692-3105, 12th September 1922.	The London Varnish and Enamel Co., Ltd.	65 0 0	57 10 0	Ditto.

PART B.—Cases in which the discrimination is between British or between foreign firms—contd.

Stores ordered.	Contract No.	Name of Contractor.	Amount of Contract.	Lowest Tender not accepted.	Reason for acceptance.
Switches	B. 3723-5128, 13th September 1923.	Erskine Hoop & Co.	£ s. d. 15 7 6	£ s. d. 14 0 0	Better quality.
Flannel	B. 3775-5071, 15th September 1923.	J. Schofield & Sons	10,838 6 8 (yds. 100,000 at 2s. 2d.)	9,791 13 4	In view of the urgency the order was shared between the two lowest firms to secure the best delivery. The lowest firm was given 150,000 yards at 1s. 11½d. per yard.
Screws	B. 3820-4084, 18th September 1923.	C. Richards & Sons, Ltd.	75 4 0	71 8 0	The lowest tender did not comply with the conditions of contract.
Theodolites	B. 3838-5308, 22nd September 1922.	T. Cooke & Sons, Ltd.	231 5 0	176 10 0	In view of special urgency and the much quicker delivery offered. A superior type of instrument was also obtained for the higher payment.
Field Glasses	B. 3909-4166, 23rd September 1922.	Ross, Ltd.	35 4 6	26 3 6	Better value.
Oil Belts	B. 3939-5121, 26th September 1922.	W. Kelway Bamber	2,539 6 0	2,491 14 9	In view of urgency and the quicker delivery offered.
Sails	B. 3954-5168, 26th September 1922.	J. & E. Bates & Son., Ltd.	98 5 0	92 10 0	Better value.
Cranes	B. 3970-4083, 27th September 1922.	Grafton & Coy.	1,840 0 0	1,710 0 0	The cranes offered were of better design and considered better value.
Wagons	B. 4029-4801, 2nd October 1923.	Haston & Hornsby, Ltd.	872 0 0	840 0 0	Better value.
Ford Spares	B. 4084-6067, 5th October 1923.	Ford Motor Coy. (England), Ltd.	36 8 9	35 8 5	Quicker delivery.
Saw Blades	B. 4122-5130, 7th October 1923.	Sanderson Bros. & Newbold, Ltd.	3,120 0 0	2,600 0 0	Superior reliability of firm and better quality of stores offered.

PART B.—Cases in which the discrimination is between British or between foreign firms—contd.

Stores ordered.	Contract No.	Name of Contractor.	Amount of Contract.	Lowest Tender not accepted.	Reason for acceptance.
Chalk	B. 4145-4686, 10th October 1922.	Reeves & Sons	£ s. d. 48 2 6	£ s. d. 47 2 6	Better value.
Rubber connections for Pumps.	B. 4155-5425, 10th October 1922.	E. H. Hill, Ltd.	40 0 0	38 18 4	Ditto.
Taps, compression	B. 4156-5436, 10th October 1922.	Beet & Lloyd, Ltd. . . .	54 15 10	41 5 10	Ditto.
Theodolites	B. 4240-6127, 14th October 1922.	T. Cooke & Sons., Ltd. .	93 0 0	90 15 0	Ditto.
Anhydrous Ammonia	B. 4252-877, 17th October 1922.	J. & E. Hall, Ltd. . . .	36 12 0	34 6 0	More convenient as J. & E. Hall held the contract for the Plant. Lower firm was also not on the King's Roll.
Clips, towel	B. 4285-5943, 18th October 1922.	Down Bros., Ltd.	49 19 0	46 11 6	Quicker delivery.
Brigs, copper	B. 4289-6207, 24th October 1922.	Combination Metallic Pkg. Co. (1921), Ltd.	72 10 5	68 15 0	Quicker delivery. The lower firm was also not on the King's Roll.
Tanks, M. S.	M. 4402-6991, 24th October 1922.	F. Braly & Co., Ltd. . . .	382 14 0	355 16 0	Superior quality.
Pipes	B. 4501-1083, 1st November 1922.	Cochrane & Coy., Ltd. . .	1,409 13 2	1,381 13 1	Quicker delivery.
Bearings, ball	B. 4625-6304, 8th November 1922.	The Hoffmann Manufacturing Co., Ltd. .	178 2 2	177 13 0	Better value.
Drill, cotton	B. 4630-7556, 9th November 1922.	F. Spinner & Co.	1,483 19 0	1,017 2 6	Immediate delivery offered. Supply urgently required.
Telephones	B. 4703-6497, 17th November 1922.	Peel-Conner Telephone Works.	220 0 0	191 12 6	Better value.
Magneto parts	B. 50-9-7803, 1st December 1922.	The Haffish Lighting & Ignition Co., Ltd.	72 16 7	68 0 3	Better quality.

Part B.—Cases in which the discrimination is between British or between foreign firms—*continued*.

Stores ordered.	Contract No.	Name of Contractor.	Amount of Contract.	Lowest Tender not accepted.	Reason for acceptance.
			£ s. d.	£ s. d.	
Mantles	B. 5104-6677, 4th December 1922.	Oli Lighting, Ltd.	1,210 18 4	1,180 11 0	Better value.
Drilling Machine	B. 5118-6793, 4th December 1922.	A. Herbert, Ltd.	207 16 0	270 0 0	Ditto.
Cutters	B. 5128-6585, 4th December 1922.	Henry Roscell & Coy., Ltd.	583 4 6	504 4 5	Ditto.
Wheels	B. 5234-7, 92, 8th December 1922.	A. Hall & Coy., Ltd.	1,178 6 1	1,140 4 0	Greater reliability. The lowest tender was also subject to an extra charge for packing.
Wire rope	B. 5241-6467, 8th December 1922.	J. & E. Wright.	170 19 0	165 7 4	On account of the firm's special reliability for the rope required.
Wire rope	B. 5376-6578, 15th December 1922.	Allen Whyte & Co.	24 11 0	22 15 10	Superior reliability. The price quoted by the lowest firm was also not firm.
Netting, Mosquito	B. 5384-7553, 15th December 1922.	Hy. Mallet & Sons	7,218 15 0 (yds. 140,000 at 12½d.)	7,000 0 0 (at 1s. per yd.)	Lowest suitable in view of the urgency of the requirements. The lowest firm also received an order for 350,000 yards at 1s. per yard.
Blower	B. 5410-7992, 18th December 1922.	Farrelson & Coy.	67 0 0	66 0 0	Better value.
Baling Cotton	B. 5449-7025, 18th December 1922.	Lewis & Taylor, Ltd.	20 4 2	18 15 0	Ditto.
Machine Shaping	B. 5485-7935, 21st December 1922.	Selson Engineering Coy., Ltd.	172 15 0	153 15 0	Ditto.
Helmets	B. 5481-7575, 21st December 1922.	Percy Ayres & Coy.	10,908 6 8 (28,000 at 7s 9½d.)	9,900 0 0 (at 7s.)	Lowest suitable having regard to urgency of the requirements. The lowest firm, who are in arrears in delivery on a current contract, were given an order for 7,500 helmets to be taken into stock.
Paper	B. 5598-9499, 28th December 1922.	W. Nash, Ltd.	75 0 0	74 7 6	Better value.

QUESTIONS AND ANSWERS.

IMPORT DUTY ON PAPER.

366. *Sir Montagu Webb: (1) Are Government aware:

- (a) That under the Finance Act, 1922, passed by the Legislature in March last, an import duty of fifteen per cent. *ad valorem* was imposed on paper? (Item 94 in Schedule II, Import Tariff); yet
- (b) That by a Notification "Customs Duties, No. 6705 of 28rd December, 1922, new items have been introduced into Schedule II of the Import Tariff under the heading Paper, namely, news printing paper, printing paper tints, real art, imitation art, etc., to which Tariff Valuations have been given in some cases more than twice the current market values of the papers mentioned, with the result that the present Import Duty on paper instead of being fifteen per cent. as laid down by the Finance Act, 1922, is now twenty to thirty-seven per cent.?

(2) Will Government be pleased to say what steps they propose to take to correct this deviation from the scale of duties authorised by the Legislature, so as to ensure that the duty on paper shall not be suddenly doubled or more by mere executive order?

The Honourable Mr. C. A. Innes: (1) (a) Yes.

(1) (b) and (2). These valuations were based on the prices of the previous years and were fixed in consultation with the principal Chambers of Commerce, and were not criticised at the time as being excessive. The Government of India have, however, further examined the matter in the light of information subsequently supplied and have ascertained that the valuations then fixed are somewhat above actual market prices, partly on account of the considerable fall which has taken place in the prices of paper during the last 4½ months, *i.e.* since the collection of the quotations on which the valuations were based. They have therefore revised the tariff valuations for this article, and a notification to this effect appeared in the Gazette of India of the 17th instant.

Sir Montagu Webb: Having regard to the fact that prices generally are now falling, will Government undertake from time to time to re-examine other tariff valuations so that the scale of duties authorised by the Legislature shall not be greatly exceeded?

The Honourable Mr. C. A. Innes: That, Sir, raises a big question. In exceptional cases we do reduce the valuations but not often. It would be against the whole object of tariff valuation to do so as a matter of course and the Honourable Member will see that if we reduce the valuation when prices fall we must also increase it when prices rise.

ARMS RULES COMMITTEE'S REPORT.

367. *Baba Ujagar Singh Bedi: (a) Will Government be pleased to state if they have accepted the recommendations of the Arms Rules Committee?

(b) What points of the Report they have accepted?

(c) Have the Government given any legal shape to those recommendations yet, if not, when are they going to be enforced as Law?

(d) Have they given any consideration to the Notes of Dissent, on the said Report, and if so, to what points?

The Honourable Sir Malcolm Hailey: We hope very shortly to be in a position to make a statement on the subject.

WORKING OF CHIT ASSOCIATIONS AND NIDHIS IN MADRAS.

368. ***Mr. Narayandas Girdhardas:** Will the Government be pleased to state whether they will call for a report from the Government of Madras as to whether in view of the inapplicability of several of the fundamental provisions of the Indian Companies Act, to Chit Associations and Nidhis, it is desirable to modify the Act to suit the constitution and working of these institutions?

The Honourable Mr. C. A. Innes: A letter on this subject has just been received within the last few days from the Southern Indian Chamber of Commerce and is under examination. This covers also the next question, No. 369.

WITHDRAWALS AND LOANS IN CONNECTION WITH NIDHIS AND CHIT ASSOCIATIONS.

369. ***Mr. Narayandas Girdhardas:** Will the Government be pleased to state whether in the case of Nidhis and Chit Associations, withdrawals from, and loans on share capital are allowed against the provisions of the Indian Companies Act?

AUDITORS IN MADRAS.

370. ***Mr. Narayandas Girdhardas:** Will the Government be pleased to state the number of Auditors certified as qualified to audit accounts for purposes of Income-tax in the Madras Presidency?

The Honourable Sir Basil Blackett: The information is being collected and will be supplied to the Honourable Member. This answer I am afraid I must ask him to accept to all the questions up to No. 375 inclusive.

INCOME-TAX ASSESSEES, MADRAS.

371. ***Mr. Narayandas Girdhardas:** Will the Government be pleased to state the number of assesseees to Income-tax in the Madras Presidency on 31st March, 1922?

INCOME-TAX AUDITORS.

372. ***Mr. Narayandas Girdhardas:** Will the Government be pleased to state whether it is a fact that since the passing of the Indian Income-tax Act of 1922, no additions to the list of qualified Auditors for Income-tax purposes have been made?

* COMMITTEE ON INCOME-TAX AUDITORS.

373. ***Mr. Narayandas Girdhardas:** (a) Will the Government be pleased to state under what provision of the Indian Income-tax Act of 1922, or the

rules thereunder, the Commissioner of Income-tax for the Madras Presidency has constituted a Committee for the selection of Auditors for Income-tax purposes?

(b) Will the Government be pleased to state whether Commissioners of Income-tax in other Presidencies have constituted similar committees for the selection of Auditors for Income-tax purposes?

ENLISTMENT OF INCOME-TAX AUDITORS.

374. ***Mr. Narayandas Girdhardas**: Will the Government be pleased to state whether any rules have been framed by the Commissioner of Income-tax for the Madras Presidency to regulate the enlistment of Auditors for Income-tax purposes? If so, will the Government be pleased to lay a copy on the table?

INCOME-TAX ASSESSEES.

375. ***Mr. Narayandas Girdhardas**: Will the Government be pleased to lay on the table a statement of the number of Income-tax assesses in each of the major Provinces on the last day of the last official year, and also the latest number of qualified Auditors for Income-tax purposes in each of those major Provinces?

RAILWAY ADVISORY COUNCILS

376. ***Mr. B. S. Kamat**: (i) Will Government be pleased to state for which of the Railway Administrations Local Advisory Councils have been established so far in terms of the recommendation of the Railway Committee, 1920-21?

(ii) In this connection, will Government also be pleased to give the constitution, the method of selection of the Members, the scope of duties, remuneration, if any, to Members, and the nature of proceedings of these Advisory Councils as fixed at present?

(iii) If Local Advisory Councils have been appointed for the G. I. P. and the B. B. C. I. Administrations, will Government be pleased to give the names of the Members?

The Honourable Mr. C. A. Innes: (i) and (iii) Apart from the two committees on Eastern Bengal and East Indian Railways which have been for some years in existence no new Local Advisory Committees have yet been established in accordance with the revised principles referred to. Orders have however been issued for the formation of committees on the three State lines, and these will very shortly be constituted. The principles which are being followed on State-worked railways have been recommended to all Companies for adoption, and in most cases preliminary measures are believed to be now well advanced for the formation of similar committees on all the principal lines.

(ii) Government have confined themselves to formulating certain general principles in consultation with the Central Advisory Council, and detailed arrangements such as those referred to will necessarily be settled on each individual line to suit local circumstances. A copy of the memorandum of general principles prescribed is laid on the table.

Memorandum regarding Local Railway Advisory Committees.

I. Title.—The new bodies to be known on each line as "Railway Advisory Committee".

II. Constitution.—A separate main Committee to be constituted for each administration, the number of members being decided by circumstances subject to a maximum of 12. The Agent to be *ex-officio* Chairman. The remaining members to consist of :

two Local Government members nominated by the Local Government in whose jurisdiction the headquarters of the railway in question is situated ;

three representatives of the Legislative Council of the Government in whose jurisdiction the headquarters of the railway in question is situated. These members should be selected to represent rural interests and the travelling public ;

one member from the local municipality or corporation at the railway headquarters ;

five members representing industries, commerce and trade.

The heads of departments of railways may be called in merely to advise on subjects under discussion which may affect their department and on which their technical expert advice would be useful to the committee.

The method of selection of the non-official members to be left largely to local discretion. The representatives of the Legislative Council need not necessarily be members of the Council. Members of the Central Advisory Council are not debarred from membership of Local Advisory Committees. The five members representing industries, commerce and trade would ordinarily be drawn from important local bodies representing predominant trade interests ; the actual selection of such bodies should be made in consultation with the Local Government, and once the selection is made it should be left to them to nominate or elect their representatives. The tenure of office of the members to be left to the electing or nominating bodies to decide.

Agents will consider whether it is desirable to form separate branch local committees at large centres, and in case of doubt they may consult their main committee in this matter.

III. Scope of duties.—The functions of the committee to be purely advisory. The sort of subjects which might suitably be placed before the Committees are :

- (a) alterations in time tables and passenger services ;
- (b) alterations of rates and fares and changes of goods classifications ;
- (c) proposals in regard to new projects and extensions ;
- (d) proposal in regard to new rolling stock ;
- (e) any matters affecting the general public interest or convenience.

Questions of personnel, discipline and appointments will not be brought before the committee ; subject to this condition any member may suggest a subject for discussion, but the Agent may rule out any subject for reasons which should be explained at the first meeting after the ruling has been given.

IV. Remuneration.—Non-railway members may be paid Rs. 32 for each meeting attended.

V. Proceedings.—The committee to meet once a month if there are matters to be discussed. A copy of the minutes of meetings to be furnished to each member and to the Railway Board. If in any case the Agent decides that he is unable to follow the advice given by the majority of the committee, he must bring the matter to the notice of the Railway Board in forwarding the minutes of the meeting for their perusal.

Sir Deva Prasad Sarvadhikary: Would the Honourable Member please state how Members of this House can obtain information regarding the proceedings of these Committees?

The Honourable Mr. G. A. Innes: I am afraid I must ask for notice of that question.

RECOMMENDATIONS OF DECK PASSENGER COMMITTEE.

377. ***Mr. B. S. Kamat:** (i) Will Government be pleased to state what action has been taken in the matter of the recommendations of the Deck Passenger Committee, 1921, so far as any amending legislation to amend the Indian Passenger Ships Act is concerned to improve space allowance?

(ii) Will Government also please state what steps, if any, have been taken to improve existing conditions in general and particularly in respect of the following recommendations of the said Committee, viz.:

- (a) Paragraph 68A, (ir) Shelter accommodation at ports;
- (b) Paragraph 68A, (v) better arrangements for Surf boats;
- (c) Paragraph 68A, (vi) embarking and disembarking;
- (d) Paragraph 68A, (viii) telegraphic communications between ports;
- (e) Paragraph 68A, (ix) night signalling between shore and adjacent villages;
- (f) Paragraph 68A, (xxiii) non-official visitors at important ports.

The Honourable Mr. C. A. Innes: The Government of India informed Maritime Local Governments in November, 1921, of the provisional conclusions they had come to on the more important recommendations contained in the Deck Passengers Committee's Report and asked them to consult Steamship Companies and public bodies on these questions and to furnish the Government of India with their views. A reply is still due from one important Local Government who have been asked to expedite the matter. Until this reply is received, it is impossible for Government to formulate final conclusions.

QUARTERS AT WINDSOR PLACE, RAISINA.

378. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state—(a) How many quarters are still lying unoccupied at Windsor Place?

(b) Whether the rent of those quarters will be charged from the Honourable Members, for the whole Season, to whom they have been allotted or from the date of their occupation?

(c) If from the date of occupation, then who will be liable for rent of those unoccupied quarters, either for the unoccupied period or for the rest of the Session—in case the Members to whom they have been allotted do not owing to certain reasons come to Delhi or occupy them?

Sir Henry Moncrieff Smith: (a) Four quarters at Windsor Place were until a few days ago unoccupied.

(b) and (c) Quarters at Windsor Place have all been allotted on the basis of seasonal rents, and rent will be charged for the whole season whether the quarters are occupied or not unless the quarter is definitely relinquished. Where a Member relinquishes his quarter he is liable for the rent till a new tenant has been found.

ALLOTMENT OF QUARTERS AT RAISINA.

379. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state if it will be possible for them to re-allot the Windsor Place quarters after allowing a certain reasonable period from the date of commencement of the Session for their occupation instead of keeping them vacant?

Sir Henry Moncrieff Smith: Hitherto the practice has been that when a quarter at Windsor Place has been allotted to a member it is kept at that member's disposal even though he may not be occupying it until he definitely relinquishes it. Government will consider the Honourable Member's suggestion that a re-allotment of the vacant quarters should be made after the lapse of a reasonable period.

Rao Bahadur T. Rangachariar: Having regard to the popularity of these quarters, will the Government be pleased to build more such quarters?

Colonel Sir Sydney Crookshank: We have taken out estimates for the construction of 10 additional quarters of this particular design and when the Finance Department are in a position to provide the funds and the Legislative Assembly vote the funds, the construction of these quarters will be put in hand.

WINDSOR PLACE QUARTERS UNOCCUPIED.

380. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state as to how many Windsor Place quarters were unoccupied during the whole of the last Delhi Session?

Sir Henry Moncrieff Smith: None of the quarters at Windsor Place was unoccupied for the whole of the last Delhi Session.

TRAINING OF INDIANS IN ARTILLERY, ENGINEERING, ETC.

381. ***Mr. Ahmad Baksh:** Will the Government be pleased to state what definite steps have been taken in the matter of training of Indians for Commissions in Artillery, Engineering, Air Force and Royal Marine in pursuance of the promise given in His Excellency the Viceroy's speech on the 3rd of September 1921 when opening the second session of the Indian Legislature at Simla printed on page 14, Volume II of the Legislative Assembly Debates?

Mr. E. Burdon: The question of the admission of Indians to the commissioned ranks of the Artillery and Engineer services in India, as well as the Royal Air Force in India, is still under consideration.

As regards the Royal Indian Marine, I invite the attention of the Honourable Member to the reply given on the 16th instant to unstarred question No. 180.

Mr. B. S. Kamat: May I ask the Government to consider the training of Indians for the Air Force?

Mr. E. Burdon: I have stated this in the reply which I gave. The matter is still under consideration.

MAINTENANCE OF STANDING ARMY IN INDIA.

382. ***Mr. P. P. Ginwala:** With reference to the answer to my question No. 3, dated the 15th January 1923 (*re* the Statutory or other authority under which the Governor General in Council maintained a Standing Army in India), will the Government be pleased to state:

- (a) Whether it is not the fact that all the three Statutes therein cited have been repealed by the Government of India Act?
- (b) If the answer to (a) is in the affirmative, whether it is not the fact that there is no express statutory authority for the maintenance of a Standing Army in India?
- (c) If the answer to (b) is in the affirmative, under what other authority is the Standing Army in India maintained?

Mr. E. Burdon: I wish in the first instance to express my regret that the reply which I gave to the question on the same subject asked by my Honourable friend on the 15th January last was incorrect. This was due, I need hardly say, to inadvertence, and the Honourable Member's present question gives me an opportunity of setting the matter right. The answer to his question is as follows:

- (a) Of the three Statutes referred to, the East India Mutiny Act, 1754, was repealed by the Statute Law Revision Act, 1867, while the Government of India Act, 1833, and the Government of India Act, 1858, were repealed by the Government of India Act, 1915.
- (b) Yes.
- (c) Under the inherent power of the Crown.

Mr. P. P. Ginwala: May I ask what is meant by the inherent power of the Crown as applied to the Army in India?

Dr. H. S. Gour: May I also ask whether the inherent power of the Crown is invoked for the purpose of maintaining a Standing Army in Great Britain?

Mr. E. Burdon: The matter in the case of the United Kingdom is affected, I am advised, by the Bill of Rights, that is to say in the absence of the limitations on the power of the Crown imposed by the Bill of Rights those powers would be unlimited; and my Honourable friend is probably aware that the Bill of Rights has no application to India.

Mr. N. M. Samarth: Has the attention of the Auditor General been drawn to the expenditure incurred on the Standing Army in India?

Mr. E. Burdon: I do not think the Auditor General has overlooked it.

Mr. P. P. Ginwala: Do I understand that it is the view of the Government of India that the Governor General or the Governor General in Council exercises all the inherent powers of the Crown as they are understood in Great Britain?

Mr. President: That is a large question to ask the Army Secretary.

Dr. H. S. Gour: If the inherent power of the Crown is to maintain an Army, who pays for it?

Mr. E. Burdon: Surely the Honourable Member knows.

Dr. H. S. Gour: Is the Honourable Member aware of the fact that the revenues are not to be used under the Government of India Act, except to the extent authorised by that Statute?

Mr. E. Burdon: Certainly.

Dr. H. S. Gour: Then it follows that if the Crown has the power of maintaining an Army the Crown has not the inherent right of pledging the revenues of India except to the extent provided by the Statute and that statement makes no provision for the maintenance of an Army in India. Is that not so?

Mr. E. Burdon: Do I understand the Honourable Member is asking a question?

Dr. H. S. Gour: Yes.

Mr. E. Burdon: What is the question?

Dr. H. S. Gour: I will repeat it for the benefit of the Honourable Member. If I understood the Honourable Member aright, the Army in India is maintained in the exercise of the Royal Prerogative which my Honourable friend calls the inherent right of the Crown to maintain the Army of India. It does not extend to paying for the Army of India in view of the Government of India Act which lays down that the revenues of India cannot be hypothecated for any purpose except to the extent provided by the Statute and that Statute does not make any provision for the maintenance of an Army in India.

Mr. President: I did not observe any note of interrogation at the end of that statement.

Mr. T. V. Seshagiri Ayyar: In the self-governing Colonies, has the inherent power of the Crown ever been used for the purpose of maintaining a Standing Army?

Mr. President: The Army Secretary is not responsible for the administration of His Majesty's Overseas Dominions.

REGISTRATION OF NURSES TRAINED IN INDIA.

383. ***Lieut.-Colonel H. A. J. Gidney:** 1. Will Government be pleased to state whether nurses trained in India can obtain registration under any rules made by the Imperial or Local Governments or under a Local or General Act?

2. If the reply is in the affirmative, would such registration be recognised by the General Nursing Council for England and Wales?

3. Are the Government of India aware of the fact that owing to the absence of a Registration Act in India many nurses who have been trained and qualified in India are refused registration in England and are thereby prevented from practising their profession and earning a livelihood?

4. Will Government be pleased to state whether they are:

- (a) prepared to introduce an All-India Nurses Registration Act, or
- (b) willing to recommend each Local Government to do so?

The Honourable Mr. A. C. Chatterjee: (1) There are no rules made by the Government of India under which nurses can obtain registration. Registration is possible in certain provinces under local or private arrangements. In Burma there is the Burma Midwives and Nurses Act, 1922.

(2) The Government of India have no information as to whether registration in Burma is recognised by the General Nursing Council for England and Wales.

(3) The Government of India are aware that nurses trained and qualified in India would be ineligible for registration in England, though the absence of registration would not preclude such nurses from practising their profession and earning a livelihood there.

(4) The Government of India have no such proposal under consideration.

Lieut.-Colonel H. A. J. Gidney: Is the Government aware that the matter has been brought before the Local Councils and in one Council, the Central Provinces, the reply given to a similar question was disallowed under its rule 7 as it is an all-India question? Will the Government under those circumstances see their way to introducing all-India legislation?

The Honourable Mr. A. C. Chatterjee: I could not hear the last few words.

Lieut.-Colonel H. A. J. Gidney: A question of a similar kind was asked in one of the Local Councils and the reply given in the Central Provinces Council was "Disallowed under Rule 7 as it is an all-India question." Under those circumstances I ask whether the Honourable Member for Government will be good enough to tell me whether he would, in the face of that answer, introduce all-India legislation.

The Honourable Mr. A. C. Chatterjee: I have no information of the proceedings in the Provincial Councils. The Honourable Member is aware that medical education is a provincial subject.

Lieut.-Colonel H. A. J. Gidney: I am perfectly aware that it is a provincial subject but the provinces have refused to entertain such legislation. I now ask whether the Central Government will pass a Registration Act.

The Honourable Mr. A. C. Chatterjee: As I have said, we have no request from any Provincial Government.

UNSTARRED QUESTIONS AND ANSWERS.

SECRET SERVICE DEPARTMENT.

189. **Mr. Saiyed Muhammad Abdulla:** (a) What works are done by the Secret Service Department?

(b) How is it administered? Is it through special Agency or through the District officers and Political officers?

(c) What amounts were spent on it for the last 5 years?

The Honourable Sir Malcolm Hailey: There is no Secret Service Department but as in all countries a sum—in India a very small sum—is set apart under the head of Secret Service contingencies for confidential enquiries and other measures in the interest of public security. I may mention that the amount so allotted was Rs. 2,50,000 for the years 1917-1920, in 1921-22, Rs. 2,80,000, and a considerably smaller sum will be required for 1922-23. The Honourable Member will readily understand that details of its administration cannot be given without prejudice to the purposes for which the allotment is made.

WOMEN'S MEDICAL SERVICE.

190. **Lieut.-Colonel H. A. J. Gidney:** (1) Will Government be pleased to state what is the ordinary period for which qualified lady doctors are kept on probation in the Senior Branch of the Women's Medical Service?

(2) Has it been found necessary to extend the period in any case: if so, in how many cases, and on what grounds has the extension of probation been insisted on and for what periods?

(3) What is the number of cases, falling under the category in question No. (2) in which confirmation in the service has entirely been notified?

The Honourable Mr. A. C. Chatterjee: The Women's Medical Service is not a Government service but Government are informed that the answers to the Honourable Member's questions are as follows:

(1) One year.

(2) Yes; in one case, on the ground that the person concerned had been transferred during the period of probation and the reports on the advisability of confirming her in the service were doubtful. Her period of probation was therefore extended in order to give her every opportunity of proving her capacity. The extension was for six months.

(3) If the last word in this question is intended for "refused" the reply is "one."

REVERSION OF MEN SERVING *EX-INDIA* DURING THE WAR.

191. **Lieut.-Colonel H. A. J. Gidney:** (1) Will the Government of India be pleased to state whether Government servants who were serving temporarily under them and were placed on deputation *ex-India* during the war, were permitted to return to the Government of India at the conclusion of such deputation though their substantive posts were under a local Government? If not, why not?

(2) If any Government servants have been so reverted to their substantive posts, were they given any option in the matter before being placed on deputation?

The Honourable Sir Malcolm Hailey: The information asked for by the Honourable Member is being collected and will be supplied to him when ready.

THE REPEALING AND AMENDING BILL.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I beg to move:

"That the Bill to amend certain enactments and to repeal certain other enactments be taken into consideration."

As this Bill involves no principle other than that of removing from time to time obsolete matter and formal defects from the Statute Book, I do not think I need make any further remarks in support of my motion.

Mr. President: The question is:

"That the Bill to amend certain enactments and to repeal certain other enactments be taken into consideration."

The motion was adopted.

Clauses 1, 2, 3 and 4 were added to the Bill.

Mr. President: Schedule I.

Sir Henry Moncrieff Smith: Sir, as I explained the other day in asking for leave to introduce this Bill, we find from time to time and often very frequently that defects are created in our Statute Book by changes of circumstances. Sir, after this Bill was printed off and ready for introduction, it was brought to our notice that amendments had been necessitated in our Statute Book by an Act which was passed in 1922 in Burma in respect of provisions which applied only in Burma; and until we in the Central Legislature amend those provisions in a corresponding manner, they will have to stand in our Statute. Therefore, Sir, the amendments which I am proposing are merely to bring our Statute Book into line with the law of the province of Burma, which has been amended by the Burma Courts Act, 1922. The amendments are of a purely formal nature. Sir, I move—

“ That in the First Schedule—

(a) the entry in the fourth column relating to the Indian Divorce Act, 1869, be renumbered ‘ (1) ’ and after that entry the following be added, namely :

‘ (2) In section 3, clause (2) for the word ‘ Divisional ’ the word ‘ District ’ shall be substituted ;

(b) after the entry relating to the Court Fees Act, 1870, the following entry be inserted, namely :

‘ 1877 1 The Specific Relief Act, In Section 45 for the words ‘ and Bombay ’ the words ‘ Bombay and Langson ’ shall be substituted ’.”

The motion was adopted.

The first Schedule, as amended, was added to the Bill.

Sir Henry Moncrieff Smith: Sir, I move :

“ That in the Second Schedule—

(a) after the entry relating to the Trustees and Mortgagees’ Powers Act, 1866, the following entry be inserted, namely :

‘ 1870 VII The Court Fees Act, in Schedule I, Article 15.’
1870.

(b) in the fourth column of the entry relating to the Code of Civil Procedure, 1908, the following be added, namely :

‘ (3) In section 123, sub-section (2) the words ‘ (in Burma) ’.

(c) for the heading ‘ Regulation by the Governor General in Council ’ the heading ‘ Regulations by the Governor General in Council ’ be substituted and under that heading before the entry relating to the Upper Burma Civil Courts Regulation, 1896, the following entry be inserted, namely :

‘ 1892 V The Upper Burma Criminal Justice Regulation, In the Schedule, section I and sub-sections (1) to (4) of section II and section X ’.”
1892.

The motion was adopted.

The Second Schedule, as amended, was added to the Bill.

The Title and Preamble were added to the Bill.

Sir Henry Moncrieff Smith: Sir, I move that the Bill, as amended, be passed.

Mr. President: The question is that the Bill to amend certain enactments and to repeal certain other enactments, as amended, be passed.

The motion was adopted.

THE GOVERNMENT SAVINGS BANKS (AMENDMENT) BILL.

Colonel Sir Sydney Crookshank (Secretary, Public Works Department): Sir, I beg to move for leave to introduce a Bill further to amend the Government Savings Banks Act, 1873.

The Bill which I have the honour to present to this House—a Bill which Honourable Members will observe is of a very simple character and non-controversial—marks a further step on the road of affording facilities and convenience to the public offered by the Posts and Telegraph Department which is so ably administered by my Honourable friend, Mr. Sams. We desire here to expedite the payment of Cash Certificates and Savings Bank deposits to the heirs of deceased depositors by relieving Post-Masters General of the duty of sanctioning the payment of such deposits where they are small in amount and thus decentralizing this work on to Head Post-Masters. By this Bill Head Post-Masters will be empowered to calculate the interest due and to close accounts without reference to the Post-Master General of the Circle when the amount involved does not exceed Rs. 100. The alteration does not throw any liability on Government and reduces the routine work and, generally speaking, benefits the community, that is to say, the small depositor, and facilitates business generally. We have already made an experiment with this practice since 1919 in the case of Cash Certificates and we have found that there has been no trouble and the procedure has worked very satisfactorily. We are therefore anxious to regularise the procedure. Sir, I commend my Bill to the House.

Mr. President: The question is that leave be given to introduce a Bill further to amend the Government Savings Banks Act, 1873.

The motion was adopted.

Colonel Sir Sydney Crookshank: Sir, I introduce the Bill.

THE INDIAN PAPER CURRENCY BILL.

The Honourable Sir Basil Blackett (Finance Member): Sir, I beg to move:

"That the Bill to consolidate the law relating to the Government Paper Currency be taken into consideration."

The motion was adopted.

Clause 1 was added to the Bill.

Clauses 2 to 30 were added to the Bill.

The Schedule was added to the Bill.

The Title was added to the Bill.

The Preamble was added to the Bill.

The Honourable Sir Basil Blackett: Sir, I move that the Bill be passed.

Mr. President: The question is:

"That the Bill to consolidate the law relating to the Government Paper Currency be passed."

The motion was adopted.

THE CRIMINAL LAW AMENDMENT BILL.

The Honourable Sir Malcolm Hailey (Home Member): I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings, be taken into consideration."

I briefly referred a few days ago, in discussing the programme of business to be laid before the House, to the reasons why I proposed to make this motion. The House will perhaps excuse me if I give those reasons to-day at somewhat greater length. I am sure that I shall be acquitted of any desire to rush this measure through the Legislature. As I said the other day in introducing the measure, it is intended to provide some solution for a controversy which has lasted 40 years; and whatever one's anxiety to see the consummation of our hopes of a solution, whatever the satisfaction of Government at securing the seal of the Legislature on an agreement arrived at between the two communities: yet no one could plead that it is a matter of the highest urgency or that it is of real urgency that we should pass this Act either this week or this month or next. I could not therefore plead that it is necessary to omit the stage of Select Committee and proceed at once to consideration in order to avoid the lapse of time. Anxious therefore as I was to proceed, I thought it well to discuss with many of my friends in the House the procedure which they would prefer in the matter. I found that there were some who thought that we ought to have a Select Committee; but there were others, and these were in the majority, who thought that no Select Committee was necessary, for the reason that they foresaw in any case a considerable number of amendments. Those amendments, they thought, would come forward whether we held a Select Committee or not, because they were amendments of principle; they were amendments not of detail but amendments affecting the whole basis of the compromise on which the Bill was based. So much for the opinions of my friends in the House. Now, a Select Committee is usually called for and justified when a measure is put forward by Government in pursuance of some end of Government policy. But here we have a measure which is based not on the views of Government but on the recommendations of a Committee on which there were only three Government Members, and the drafting of the Bill to give effect to those recommendations has been all the simpler because the Committee contained so preponderating an amount of high legal talent. Then again, a Select Committee is frequently called for—and again I say it is frequently justified—in order that the press and public of the country may have time to digest a complicated measure, and, if necessary, to formulate its criticisms on the proposals. Now, I have carefully watched the press since our Bill was introduced. I have tried as far as possible to follow also other expressions of public opinion, but our only guide has been the press, for I do not think that we have been addressed by a single public association or public body on the subject. I do not think that I have seen notice of a single public meeting. Our only guide therefore has been the press, and I think I may say that I have nowhere seen a demand that further time should be given for assimilation of this measure. Indeed, it appears to me that the press, having made its criticisms and given its directions to the country as the press will do, has been content to leave the matter there, in other words to await the decision of this Legislature. These are the reasons why I thought that we might well proceed directly to the

stage of consideration; I think the public generally will be satisfied that we are justified in doing so; indeed I would not put the motion forward on any other ground.

Now, I come to the Bill itself. If my motion for consideration is carried we shall shortly be discussing amendments which deal both with the principle and the details comprised in the Bill. I have already in introducing the Bill referred to the circumstances in which the Bill was framed, and the light in which we would seek to have it regarded. Important, almost momentous as it is, I said nevertheless that Government did not claim too much for it. We put forward no extravagant estimates of what it achieved. I made it clear that we did not regard it as the sole, or as the final or as a permanent solution of a controversy which had troubled our predecessors so greatly, which indeed they must have felt to be insoluble. We regarded it as an advance, but an advance all the more valuable because it was obtained by way of compromise and of mutual sacrifice. I say all the more valuable, but I feel that the word is inadequate in dealing with an achievement so important, for the fact that those sacrifices have been made by two communities on a matter on which they feel so deeply, is not in itself only a proof that we shall some day find the solution of this difficulty, but it is more; it is a proof that there is in this country that temper of statesmanship which will not only help us to see an end of a difficulty such as this, but affords a guarantee that we can face with confidence even greater difficulties in our political future.

I said, Sir, the solution is not final, and perhaps it may not be satisfactory in all its details, but that it is the very essence of a compromise. You could not expect a compromise on a matter affecting two communities so deeply which would leave either of the two perfectly satisfied. And in practical matters of ordinary life, when some great issue is at stake, whom do we choose as our guide and our counsellor? Do we choose the man who by prudent abatement of part of his demand secures the substance of what he aims at, or do we follow the intransigent, the inflexible, the impracticable man who stands out for every jot and tittle of his demand, until in the end he so frequently loses the whole? We choose the former, but indeed I do not think I need dilate on this aspect of the question, because, as far as I am able to determine, the public at large has accepted the fact that this was an occasion which justified compromise, and that the terms of settlement does actually constitute both an advance and an improvement. If there has been criticism—criticism, I mean of the type of which we need take account here—if there has been criticism it turns in main not on the recommendations of the Committee, but on the fact that in certain respects our Bill has modified those recommendations at the instance of His Majesty's Government; I am choosing my words advisedly, and I say His Majesty's Government and not the Secretary of State. I have seen it stated that it is a matter for disappointment, indeed that it is a matter for resentment, that the terms of the Committee's recommendations have been so modified. I will put the case as clearly and as fairly as possible to the House and I ask the House to judge of what I say with equal fairness. It has been stated—I think I heard a murmur just now which confirms me in saying so—that the instructions we have received on the subject are the instructions of a reactionary Secretary of State, no friend of India. Well, let us have the truth. The instructions which we have received on the matter with which for the moment we are mostly concerned (namely, the position of subjects of the Dominion Governments) are the instructions of His Majesty's Government as a whole, communicated to the Secretary of

[Sir Malcolm Hailey.]

State as the condition on which he could give the approval which is necessary under section 65 of the Government of India Act. I say, with all sincerity, that I believe that those instructions would have been given by the preceding Government, perhaps by any preceding Government. I do not believe—again I speak with all sincerity—I do not believe that these directions involve any change of policy or any new angle of vision in regard to India. They represent simply the result of a calculation of the balance of advantages of two alternatives in respect to a question of great imperial importance. Let me explore that subject, if I may, for a minute. What is the essence of the demand which was made by the Committee, and which has been so largely made in India generally, that the status which the dominion subject now enjoys should be withdrawn? Obviously, the demand cannot be motivated merely by a spirit of reprisal, in view of the disabilities which Indians suffer in many of the dominions or the slight which is felt that those disabilities have caused on the name and fame of India. As I say, the motive cannot be merely that of reprisal, for to legislate as an act of revenge without any consideration of the future advantages or disadvantages of such an act would not be the act of a serious Legislature, and indeed were anybody to put that motive or argue that reason before the Legislature, I should feel that he was depreciating the judgment of the Legislature by doing so. It is of course—I think this is obvious—it is of course the fact that this demand was put forward as providing an instrument of negotiation, in other words to help to secure the speedy execution of the reciprocity Resolution on the part of those dominions which had agreed to it, and further to help to secure agreement to the Resolutions by those dominions who have not already so engaged themselves. It was, I say, put forward as an instrument of negotiation. The only question which His Majesty's Government had to ask themselves—and indeed which the Assembly will now have to ask itself—is whether that was an effective instrument? What we want to secure is fair immigration laws as applied to Indians and due extension of franchise as regards Indian settlers in the Dominions. The Dominions are independent. You can only secure measures of that kind by two methods, first, by enforcing compliance by a threat of consequences so grave as to cause serious apprehensions to the Dominions affected, or in the second alternative, by persuading the Dominions that it is to their advantage to give way, because your friendship and your good-will may be of value to them, either on grounds peculiar to them or on Imperial grounds. There is no other way. Yet take the facts. The number of Colonials in this country is so infinitesimal, that if you withdraw their existing rights from them, the only result will be to impose some disability on them; it will certainly not involve consequences so serious to the Dominions that they will on that account feel bound to give way to you in regard to questions on which they feel strongly, namely, immigration and franchise. It is unlikely, then, that this act of legislation would secure any result as a threat, the first alternative is therefore gone. Then, as for the second alternative, namely, persuasion, would it succeed there? Obviously not because it would create an estranged and not an improved atmosphere, and an improved atmosphere is obviously what you require to effect your immediate purpose. Indeed, one might perhaps go further and say not only that the proposed legislation would fail either as a threat or a means of persuasion, but it might have actually another consequence, harmful in itself. It might harden the Dominions in any action they are taking or proposing to take in regard to Indians already settled in their country. In that case, the

weapon would have turned in your own hands. Now, I do not ask you to accept the whole of these arguments or conclusions; it is unnecessary for my purpose that I should do so. I only put them forward to demonstrate to the House that such arguments and such conclusions can be held without implying prejudice against India or over-affection for the Colonies or callousness in regard to the claims of Indians settled in the Colonies. If it is held that the arguments or the conclusions are not in themselves evidence of such prejudice, then my case is complete. Obviously the decision of His Majesty's Government is not prompted by any undue desire to support the cause of the Colonies or Dominions as against India, or by any lack of feeling for India itself. It merely involved a decision that, on the whole, present legislation of this type was likely to effect no good and might do harm. And indeed, Sir, I should not be astonished if there were not many thinking Indians who are now arriving at something of the same conclusion. Now I have dealt, I fear at some length, with this aspect of the question, not in order to anticipate arguments that may be raised in the course of the discussion on the amendments, but for one purpose only. I am by no means averse to India protesting against decisions of His Majesty's Government with which it does not find itself in accord. I am by no means averse to this Legislature taking a strong stand, if necessary, when it thinks it is being injured by the attitude of the Home Government; but I am anxious that this measure should be treated only on its merits and that its judgment should not be obscured by prejudice derived from a false reading of the attitude of His Majesty's Government. Sir, if I speak further on the Bill, it would, I fear, be trespassing on ground covered by amendments which must be discussed subsequently on the floor of the House. And I shall say nothing more to commend the Bill to the Assembly, for, I feel that if a Bill, the primary object of which is to still a controversy, an old and long-standing controversy between two great communities, and which is based on a compromise involving both concessions and sacrifices by the representatives of those two communities, if such a Bill does not commend itself to the Assembly, no words of mine can help, I will only say this in conclusion. Close now the long chapter of the past, take your account as it will stand if you pass this Bill and see what is the result. What shall we have gained? First, we shall have gained a settlement by compromise, an achievement which in itself transcends its details. Secondly, we shall have gained this, that the extent of the special privileges of the European will have been reduced to a minimum, while Indians themselves will have gained an improvement in trial procedure in many respects, for instance, appeals, *Habreas Corpus*, and the like. Thirdly, that we shall have in our new procedure, the provision for appeals by Government on fact as well as law which we hope will prevent some of those miscarriages of justice in important cases of which Indians have frequently complained. Fourthly, and I attach equal importance to this, the European having no special procedure of his own, will no longer fail to be interested in the general progress of the administration of justice in this country. Indeed he will be vitally interested in it, and that will be all to the advantage of India. Once again, I wish to advance no extravagant claims on behalf of this Bill. I wish to speak in the language of strict moderation. But if India at large does not regard this advance as solid, substantial, and satisfactory, if it does not press you, its representatives, to carry this measure into law, then indeed the historian of the future might charge it with lack of foresight and political prevision. But I myself have too robust a confidence in the political sense of India to fear any such contingency.

Sir Campbell Rhodes (Bengal: European): Sir, I do not think the House will consider me at all irrelevant on the subject matter we are now discussing if in my opening remarks I express the pleasure of the whole House at the re-appearance on the front Bench of Sir Malcolm Hailey. We trust, Sir, that he will soon be restored to his accustomed health, and I think we all pay our tribute to his courage at rising from a sick bed to come here to do his duty. We miss, Sir, from the front Bench to-day two men, Sir William Vincent and Sir Tej Bahadur Sapru, who played a very important part in the negotiations which have led to the introduction of this Bill, and I think we want to remember to-day with some gratitude the important part they played. As one of the representatives of the largest body of the community chiefly affected by this Bill I felt that I could not let it pass with a silent vote. When I spoke on the Honourable Mr. Samarth's Resolution in Simla in September 1921, I said that, though we Europeans desired no change, we were not averse to exploring fresh avenues. Well, Sir, those avenues have been explored at great length and at some considerable delay, and the result is found first in the report and then in the Bill now before us. I should not be true, Sir, to my constituents, nor should I be adopting a frank attitude with this House if I were to say that we are entirely pleased with the resulting Bill that is before us to-day. But as Sir Malcolm Hailey has pointed out, it is impossible to please every one in a compromise and our chief dissatisfaction probably centres round the summons cases. At the same time, if we have had to make sacrifices, I shall be the first to recognise that my Indian friends have also had to make sacrifices, and have done so with cheerfulness and with a determination that somehow or other we should reach a fair compromise. I should like to pay my tribute, Sir, to that Committee which tackled this subject with so much courage, so much determination, with so great a determination to see that some way should be found out of this very great difficulty which, for the last 40 years, has been in our midst. I have put one small amendment on the paper. Others have been suggested to me, but I have the authority of the largest corporate body of my constituents, the European Association, to refrain from putting any amendments on the paper at all which would go outside the compromise reached by the Committee. We had as our representative on the Committee one of our most distinguished Europeans, a gentleman who is in the inner circle of the European Association, and who, I am pleased to say, will succeed me as President of the Bengal Chamber. There is one right from which we have to some extent

12 Noon. been debarred in the past, to which I now hope we shall attain under this Bill, I mean that elementary right of every man to be believed to be innocent even though he has been acquitted. (Laughter.) In the debate to which I referred my Honourable friend, Munshi Iswar Saran, whose absence to-day I regret, paid me the compliment of saying that my remarks on that occasion were a sugar-coated quinine pill. I think he paid me more of a compliment than he really intended. Well, Sir, we have the quinine pill without the sugar coating before us to-day, but I hope it will perform its proper quinine functions and abate those fevered passions which have oppressed us these forty years.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I desire to join my friend, Sir Campbell Rhodes, in the expression of our pleasure in welcoming back in our midst the Honourable the Leader of the House after his illness. A few occasions could be more appropriate for his return to the scene of his labours. He is animated with the desire to do contrary to what was done hundreds of years ago by the great Moghul.

Aurangzeb was no friend of music—concord—and he forbade it. Some people, who wanted to be sarcastic and humorous at the same time, but did not venture to go direct against the Emperor's wishes organised a funeral party. The Emperor when passing by asked whose funeral it was. The reply was "Sire, it is the funeral of concord—music—which the Emperor has destroyed, and we are going to bury it." The Emperor said "Bury it deep, so that it may not raise its head again"; and concord never more raised its head again in the Moghul Empire. To-day the scene has changed. It is discord of forty years' standing and more that we are asked to bury. We hope we shall bury it deep so that it may not raise its head again. I say therefore that I am glad that Sir Malcolm should be in our midst to assist us in this burial and appeal to us and through us to the country to bury discord deep.

I am afraid, Sir, I am one of those who do view the whittling down of the compromise, so far as it has been whittled down, with what Sir Malcolm calls disappointment and resentment. The two communities agree to make sacrifices but that did not please the supreme authorities, it does not matter to us whether it was what has been called the reactionary Secretary of State, the big brother with his big stick, of whom we have so often heard, or whether it was his big brothers, the big four or the big three in the Cabinet, as according to the time the number may be. They tell us what we should do because section 65 of the Government of India Act is there and gives the Secretary of State certain powers. So far as the Dominions and Colonies are concerned section 65 of that Act has to my mind no bearing, although clause (3) of section 65 has an enormous bearing so far as European British subjects in this country are concerned. The only reason why we should be prepared to accept things as they are presented, is, in the Honourable Sir Malcolm Hailey's language, because this is neither final nor permanent, but is a further temporary compromise. I agree that, so far as the Dominions and Colonies are concerned, we should do nothing now that would jeopardise the future settlement on a satisfactory basis of those differences about which we have had frequent occasions of raising protests in this Chamber and elsewhere. I agree with the Right Honourable Mr. Srinivasa Sastri that retuliation or reprisal of a rank type should be the last arrow to leave our quiver, and, whether that arrow will have to be taken out or not, the near future will show. I do believe that, when the time comes for us to take that arrow out, section 65 of the Government of India Act will not stand in our way.

Sir, I shall not anticipate the motion of which we have notice that the matter should be referred to a Select Committee. I am afraid, if we are to have another Select Committee, it will be in the language of the Standing Order really asking for a recommitment of the Bill to the Select Committee, and I shall await with interest the reasons for which that demand is to be made. (Mr. N. M. Samarth: "If it is at all made.") If it is at all made, says Mr. Samarth. I do not know if Mr. Samarth is more in the confidence of Dr. Gour than I am, because I see it tabled on the papers, but I believe, Sir, it will be unnecessarily impeding the burial of that unsightly thing which we have sought to see buried for 40 years. Supposing you do get a Select Committee, how will the matters be advanced? We had Mr. Abul Kasem, Mr. Samarth, Mr. Rangachariar, Colonel Gidney and, last, though by no means the least, Dr. Gour himself, on the former Committee and, therefore, the recommitment to the Select Committee will have to be more than justified. But, I shall not anticipate that for the

[Sir Deva Prasad Sarvadhikary.]

moment. I believe the whole House, whatever the intensity of feeling on some of the grounds may be, are united that this Bill being the furthest that Government will now possibly go, it will be best for us to accept it and see what the future will yield. There is acute disappointment on both sides and with those feelings, Sir, I should like to give the motion my support. And in passing, I cannot help feeling, if this Bill is passed, that we shall be having a succession of red letter days, in the language of my friend to the left, who was himself responsible for one red letter day by the acceptance of the principle that, so far as fiscal policy is concerned, India shall be master in her own house. I regret the absence of my revered friend and leader, Sir Sivaswamy Aiyer, who made himself responsible for the motion which resulted in the momentous announcement of His Excellency the Commander-in-Chief not many hours ago. And, to-day, at the instance of my friend, Mr. Samarth, we are considering the rectification of a measure which has been galling to the minds, the better minds of India and its statesmen, who want to bring about a state of things that will make the European and the Indian work hand in hand together. Sir, as I said once before in this Assembly, and it will bear repetition, in the Swaraj which we visualise for ourselves, the Hindu and the Muhammadan have a place, as a matter of right, and so has the European. The Muhammadan has been with us a few hundred years more than the European; but the European is here on his own title as the Muhammadan. Therefore, in anything you may do, be as circumspect as you can be to see that the friendly relations now growing up between all these communities is in no way jeopardised; and this Bill, when passed, will be a further step in that direction and, more than that, a good step.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I may be permitted to join in the welcome which has been extended to the Honourable Sir Maceola Hailey. He has come in good time to guide us on this important occasion. Sir, no part of the House felt his absence more than we on this side of the House, and his speech this morning shows how cleverly he can sugar-coat a very bitter pill, and therefore, Sir, his presence is very welcome. Sir, I feel myself in agreement with everything that Sir Campbell Rhodes has said, only from a slightly different standpoint. Sir Campbell Rhodes said that he was not quite satisfied with the Bill because as regards summons cases his community did not get as much as was expected from the compromise. From our side, Sir, we also feel that the Bill is not everything that we desire. If the House will remember aright, when my Honourable friend, Mr. Samarth, brought forward his motion, that which underlay the Resolution was the fear which has long been entertained in this country that justice is not being meted out to those Europeans who are committing offences against Indians. It is on that ground that the agitation became clamant, that some endeavour should be made to see that justice is properly done. Sir, no doubt my friends on this side and the European members have put their heads together, weighed the pros and cons and have come to a decision which they consider is the only proper solution of the problem at present. As was pointed out by the Honourable the Home Member, this is the beginning of the break in the privilege which we hope may continue and may ultimately result in removing all vestiges of difference between subjects and subjects of His Imperial Majesty. At the same time, Sir, we must say that the compromise is not wholly acceptable to the country from the fact that it does not

deal with the crying evil for which the Committee was appointed, namely, the removal of all possibilities of miscarriage of justice. No doubt Indians have acquired certain rights along with their European brethren. That is one step in advance. But that is not the real idea which underlay the agitation against the distinction which is found in the Criminal Procedure Code. However, Sir, there is no doubt that a very honest attempt has been made both by the European Members of the Committee and by the Indian Members of the Committee to reach a compromise which would be regarded as the beginning of the removal of all distinctions between man and man in the Criminal Procedure Code and in securing to the accused a proper right of defence and to the persons who have been offended against speedy and sure justice. Sir, in that spirit, I also welcome the Bill which has been introduced. At the same time I cannot help feeling that there has been undue interference by somebody in higher authority with the principle which has been recognised both by the Government of India and the Committee. The Honourable the Home Member referred to the fact that it is necessary to make concessions in order that Indians may receive proper treatment in the Colonies. Sir, I think that is not the proper attitude or frame of mind with which this question should be tackled. The more you concede, the more you will be regarded as timid, as not self-respecting, and as not able to stand on your rights. If we are satisfied that concessions would bring us magnanimity from the other side, generosity from the other side, we shall be very happy to make concessions. But we, Sir, are afraid that concessions may be regarded as indicating weakness and may induce those gentlemen to say that they would use violence even in securing the ordinary rights of citizenship by our fellow-countrymen in the Colonies. That is our fear. Otherwise, Sir, we shall be most happy to meet them more than half way if it is possible to secure from our countrymen just and equal rights. It is because we are afraid that this is not possible that we regret that the Honourable the Home Member should have said that the recognition of the rights of the colonials would in any way help to settle the rights of Indians in these Colonies. Sir, although that is our belief, we think that the exercise of authority by the Secretary of State should not be regarded as rendering so futile the fundamental principle as to induce us to throw out the whole Bill. We think that it is absolutely necessary that we should make a beginning in regard to this matter and, so far as I know, my friends on this side of the House are prepared to assist the Government Bench in their desire to see that this Bill is passed, and we would assure the Honourable the Home Member that there is no desire to go back upon the compromise which has been come to by our friends and by their European colleagues.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I speak as a member of the European community. I am untrammelled by any rules of official discipline or of subordination to official etiquette. I speak as a non-official European—a member of the community of British India. It would be idle for me to attempt to assume a pose of impartial arbiter between what I may call two parties to this now expiring controversy. I speak on behalf of one of those parties. But none the less, I speak as a friend, *albeit* a European friend, of India; and I address myself, through you, Sir, to a House which I know, even from my short experience, to be full of Indian friends of Europeans. I unhesitatingly join in congratulating the Racial Distinctions Committee on their report. It is a report which is as impartial and straightforward as it is courageous.

[Colonel Sir Henry Stanyon.]

I do not accept or agree with all the recommendations contained in it, but that is a mere matter of detail. That does not take away from the merit of the report. And then, Sir, we come to this Bill. We have had Honourable Members of this House rightly pressing forward on more than one occasion to bring this matter to a head and to a conclusion. If any amendment is moved to refer this Bill back to a Select Committee, I shall strongly oppose that amendment, if I happen to catch your eye, Sir. But, at present, I speak only on the general question whether this Bill should be taken into consideration. The Bill represents the first serious attack upon the virus of race antagonism and racial distrust which has been very largely disseminated recently by poisonous tongues and pens, and which stands in the way of our national advance, and I say, let us by all means use this antidote as soon as possible and without any delay. It is an entirely novel step in legislation, and though it is practicable to theorise to any extent upon the different details of it, we can have nothing but theory at present. Sir, if I want to find out whether a new pair of shoes made for me are comfortable and a good fit, I like to wear them for a bit, till I am in a position to say whether they require alteration. That, I think, is our position with regard to this Bill. It is not the Legislature that will be on trial under it. It will be the Judges and the juries, upon whom responsibility will be cast in a new way, who will be on their trial. If those Judges and those juries acquit themselves well,—if they punish crime because it is crime,—give fair trial because the giving of fair trial is in accordance with the highest ideals of administrative jurisprudence—fearlessly acquit unless they are convinced of guilt irrespective of religion, caste, race or any such considerations—then, I think, this enactment when it becomes law will be justified. It is only by trial and by such encouragement as we give to our judiciary by reposing confidence in them that we can administer this useful antidote, and a removal of distrust between man and man can ever be accomplished. I look forward to the day when we shall not want any mixed juries or any special modes of trial—when the general body of the public, English and Indian, will be satisfied that a decision given by a Court or a finding given by a jury, however wrong, however mistaken, is honest and impartial. When public opinion rises to that standard, then, no doubt, our judiciary will also endeavour to maintain the level of that reputation. But the whole thing is this, that this measure must be tried. My own feeling is in entire accord with that of the constituents who have sent me here. As the Honourable Sir Malcolm Hailey has pointed out, in a compromise the best sign that it is a just compromise is that neither party is wholly satisfied. As a Judge I always thought that I had done my best when both sides denounced me as wrong. Therefore, though there is much here that we Europeans would like to alter,—much that we may regard as calculated to take away privileges, and so on—we prefer, and I am told to do so, to close our eyes and to accept the measure with both hands out as a compromise. Let this House take the Bill as it stands, without any theoretical tinkering with it at this stage, and try it. Let us go to the country with this measure and say, "Here is a measure which all classes and creeds and races are now given as a token of good feeling and justice." Therefore, without elaborating these remarks or entering into any details, my submission to this House is that we should accept this measure wholesale and pass it as soon as possible so that we can see by its trial in the country how this very great experiment works.

Rai Bahadur Bakshi Sohan Lal (Jullundur Division: Non-Muhammadan): Sir, I am most thankful for the very hard labours and the earnest desire on the part of the Members of the Racial Distinctions Committee to remove racial distinctions between Indians and Europeans in the administration of criminal justice in this country. But, Sir, I am extremely sorry that I cannot give them the credit of removing all racial distinctions in the administration of such justice as announced by His Excellency the Viceroy in more than one of his speeches, and as it was resolved upon in the Resolution of the Legislative Assembly on the 15th September 1921 and the instructions contained in the Home Department Resolution No. F-105, dated the 27th December 1921. Rather, if I go into the question from the very earliest time, it appears that the lapse of time has strengthened the differences between the two communities. The despatch of 1833 of the Court of Directors directed the removal of all racial distinctions in the trial of Europeans and Indians. That was the mentality of the British nation and the British Government in 1833. Fifty years later, that is, in 1883, there was no unanimity on the part of the British people, or the British nation or the British Government to remove all those distinctions, but still there were, at that time, a few voices at least of the Englishmen for removing these distinctions, such as we find in the speeches of Mr. Ilbert and some of his colleagues in the Council of 1883. Now, after forty years more, so far as I have been able to see there is not a single European who would concede to the Indian an equal status. So, the things are going from bad to worse as time passes. In 1883 it was said that it was a compromise on which they were acting. The same story is repeated now that we are effecting a compromise, and at the same time it is stated that this is a long-standing exercise of rights on the part of Europeans which cannot be done away with at once but that it will be done away with gradually. I respectfully submit that this was the very view which was taken in 1883 and that view has not changed. The bias, or what we may say, racial hatred continued just as it was in 1883, rather I should say it has grown stronger by lapse of time. If the matter is to be considered as a compromise we already have had a compromise in 1883, and there was no necessity of a second compromise after 40 years in 1923. We ought to have boldly decided whether the Indians and Europeans are to be treated on an equal footing and on equal considerations before courts of justice or not. It is not a matter of compromise. It is a matter of our national self-respect. In admitting the Bill as presented, we are admitting that we are inferior to the Europeans, that the Europeans belong to a superior race and we belong to an inferior race, that we are a subject race and that Europeans are victors, that their civilisation is much higher than that of ours. Are we admitting this or are we having any regard for our national respect in admitting the Bill which has been presented? If the Home Member or any other Member can tell me that what has been held in the Bill as good for Indians has also been held as good for Europeans, I would accept it. If the punishment of whipping is suitable for Indians, why is it not also suitable for Europeans? If not, how can it be said that Indians and Europeans have been placed on the same footing. If whipping degenerates the spirit of Englishmen, it also degenerates the spirit and freedom of Indians. There is a Magistrate, call him a District Magistrate or a first class Magistrate specially empowered under section 30. He can pass a sentence of 7 years upon an Indian but he cannot pass a sentence of more than 2 years upon an European. Is the liberty and independence or the life of an European more valuable than that of an Indian? Either sections 30 and 34 of the Criminal Procedure Code are to be repealed

[Rai Bahadur Bakshi Sohan Lal.]

altogether and the same Magistrate should be given power to administer justice against Indians and against Europeans equally or there is no reason why the Magistrate if the accused is an Indian should have the power of imprisoning him for 7 years and if the accused is an European he should not imprison him for more than 2 years. The same is the case in smaller cases. If a second or third class Magistrate can be trusted to pass a sentence of imprisonment on an Indian, there is no reason why he should not try a case punishable with imprisonment in which an European is concerned. There are many other matters, but these are some of the instances in which Englishmen and Indians should be put on the same footing. I am not claiming that the Indians should have a preferential right over Europeans. I am claiming that Indians and Europeans should be placed on the same footing at least before the sacred altar of courts of justice and that is the only way in which we can remove our differences. What will be the effect of this Bill? This Bill will rather perpetuate these differences. It has been stated that the Europeans have exercised these rights for the last hundred years and that they have made a great sacrifice of those rights but after a few years those rights will be still stronger and their sacrifices will be still greater. Are we going to perpetuate these rights for ever and are we going to be told always that it is a matter of compromise between the two communities and not a final settlement? No one ever said that it was a final settlement in 1883 and the same thing is repeated here. Whether this is due to the decision of the Secretary of State in Council or because the European communities cannot possibly give in, we are not to congratulate ourselves or the Committee in bringing about this compromise. I specially submit that this is not a matter of compromise and the matter ought to have been decided according to the principles of law and justice, according to what are the laws in other countries. I have not been able up to this time to know if there is any other civilised country in which the sons of the soil have been put under an inferior position to strangers or persons belonging to foreign countries. I think the question of the condition of the Indians in the Colonies can only be solved by our getting equal status in India. So long as we do not get equal status in India, we cannot possibly ask the Governments of Colonies to give us equal status with them in the Colonies and it is therefore useless sending our best men like the Right Honourable Mr. Sastri and spend so much money until we have been given equal status here in our own motherland. With these few remarks, I respectfully submit, whether I am doing a service or a disservice to the country, I cannot and I am not prepared to accept the Bill as it stands. Whether the old Criminal Procedure Code is worse or not, it is not proper for us to tolerate any further any racial distinctions giving preference to one community over another.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, as a humble Member of the Racial Distinctions Committee, I acknowledge the compliments paid to that body and to the work done by it. In their speeches Honourable Members have however forgotten that the Bill as presented to this House is not the Bill as recommended by the Joint Committee and I think I must advert for a moment to the vital changes made in the Bill not only not in consonance with the tenor of the recommendations of the Joint Committee but directly opposed to their explicit and express recommendation. We decided that, so far as Colonials were concerned, there was no reason to include them in the definition of

European British subject. We further decided that except as regards people who were employed in the Army and Navy, there was no reason why others should be equally exempt or at any rate equally exempt under the Code of Criminal Procedure generally applicable to the people of this country. We further decided certain other matters regarding summons cases and the right of appeal. I do not wish to refer to these last points, because they will conveniently come up under discussion in the course of the amendments of which Honourable Members have given notice. But there is, Sir, one point upon which we feel and feel strongly, and that is the interference of His Majesty's Government with the unanimous recommendations of the Joint Committee. It has been assumed by the Honourable Sir Campbell Rhodes and by my friend, Sir Henry Stanyon, and others speaking on behalf of the European community in this country that the Joint Committee appointed by the Government of India have given their wise and well-considered decision embodied in the Bill presented to this House. Implicitly, they condemn any extraneous interference with the unanimous recommendations of that Committee. I therefore take it, Sir, that I am voicing the general feelings of the Members of this House when I say that we protest respectfully, but nevertheless emphatically, against the interference of His Majesty's Government with the unanimous recommendations of the Racial Distinctions Committee; and if we accept the decision of His Majesty's Government, it is not because we wish to accept it, but because we feel, circumstanced as we are, that we must accept it. Our acceptance, Sir, is not willing acceptance, and I think this House should make it perfectly clear that it accepts it merely as an *ad interim* decision and reserves to itself the right of reconsidering it at a more favourable opportunity, let us hope, in the near future. Sir, the Honourable the Home Member has pointed out that the feeling in this country against the Colonies is intense and strong. I for myself do not, Sir, recommend the exclusion of Colonials upon those narrow lines. I do so upon the broad principle that those who come here as travellers, as sojourners, as temporary residents, whether Europeans born and domiciled in the United Kingdom or in the British Colonies, may justifiably claim that they, being unacquainted with the laws here, are entitled to be judged by the British laws, or at any rate by the spirit of the British laws adapted to the conditions applicable to this country, and, so far as they are concerned, they are entitled to discriminating treatment; but I fail to understand why any European, whether a British subject or not, who has settled down permanently in this country and made this country his home should claim a right of ex-territoriality. I cannot understand, Sir, why he should say, 'I shall possess all the rights of a citizen of India and all the privileges of a foreign settler'. That, I submit, is the question which confronted us in the Joint Committee, and in my note I have laid emphasis upon this point, but when we found that a way was possible for the reconciliation of conflicting views, we came to terms and compromised in the manner indicated in our unanimous Report. This is my reply to my Honourable and learned friend, Mr. Bakshi Sohan Lal, whose speech I have listened to with great respect, but from whom I beg to differ on the main issue. It is perfectly true that the Joint Committee was appointed by His Excellency the Viceroy for the purpose of eliminating racial inequality. But it is at the same time equally true that this is a compromise arrived at by the representatives of both communities after long and arduous conferences and confabulations, and in which not only the Members of the Committee but outsiders were from time to time taken into counsel, and the Report of that Committee

[Dr. H. S. Gour.]

does not embody merely what may be regarded as their individual views, but the considered opinion of the vast community outside whose representatives were examined and consulted upon these questions. My friend says, 'this is no solution of the difficulty, it is merely perpetuating a racial distinction which this Committee sat to eliminate'. But my friend must not look at every detail of the compromise: my friend as a lawyer must know that if you are to tear up a compromise into its individual fragments and examine each part piecemeal, these pieces would not be found satisfactory, but you must look at the compromise as a whole and see whether the compromise on the whole is not satisfactory to both sides. My friend, Sir Campbell Rhodes, has called this compromise a bitter pill to swallow. Well, Sir, whether it is a bitter pill for him to swallow or for us to swallow, I shall not ask my friend or myself to decide. Each party feels that the other party has had the plums of the bargain, but I think, Sir, whatever may be our differences and our views, the fact remains that both parties have entered into a compromise, and we expect Honourable Members in this House to support us. It may be that we might have got more, it may be that we have lost much more than we should have fought for, but now that the compromise has been arrived at, and that compromise is the foundation for this Bill, we expect, Sir, the support of the Members of this Assembly. The Honourable the Home Member has further rightly pointed out that this compromise must not be regarded as sacrosanct: it is a compromise which would be the foundation for future consideration and further advancement of rights, and as Sir Henry Stanyon with his large judicial experience has told this House, let us examine this compromise, give it a trial, a fair trial, and if afterwards it is found to be weak and unworkable, we shall again re-shape it and re-adjust it so as to suit the changed conditions that may be found necessary in future. After all what do we gain and what do we lose by giving this compromise a fair trial? My friend, Mr. Bakshi Sohan Lal, says either we shall have what we want or nothing at all. I think the Honourable the Home Member has very rightly pointed out that this extreme view is not the view which commends itself to men of practical commonsense. It is not what we want but what we can get that you should strive for, and the question that we have not got all we wanted is, I submit, not the question that should detain this House. The main question with which we are confronted here is that this is a compromise; it has been cheerfully accepted by the very community which had been standing upon its privileges and tenaciously fighting for its rights during the last 40 years. That, I submit, is a great gain. That the vast European community in this country, conscious of their privileges and of their power, should have sat with us and through their spokesman consented to the modifications proposed in the manner stated in the Joint Committee's report is a matter, Sir, for congratulation and gratification. That at any rate shows that that community is prepared to surrender its power and privileges for the purpose of meeting the people of this country half way. That, I submit, is a happy augury of the future relations between the two great communities in this country. We know as well as they know that we cannot advance, be it politically or economically, without the co-operation and assistance of the British people. I therefore submit, Sir, that the fact that in a matter of this vital national importance the European community in India have voluntarily offered to co-operate with us is a matter for deep gratification. That is a question which my friends who think otherwise should consider for a moment. It is not a question of abstract principles or abstract

justice. It is a question, as I have said, of how the two communities can maintain and even advance those friendly relations which have been created by the two communities sitting together, the one surrendering its rights in favour of the other. That I submit is a question which should not be lost sight of in considering this question; it is the underlying principle of this Racial Distinctions Bill.

Now, Sir, reference has been made both by the Honourable the Home Member and my friend, Sir Deva Prasad Sarvadhikary, to my motion for the reference of this Bill to a Select Committee. In tabling that motion I was actuated by a desire to shorten the career of this Bill in its passage through this House. I thought that if we were to sit in a Select Committee, formally or informally constituted, and discuss the numerous amendments of which notice has been given by Honourable Members, we might be able to make more rapid progress. My intention never was and it certainly is not even now to delay by a single moment the speedy disposal of this measure. Now that I feel that the sense of this House is against the reference of this Bill to a Select Committee, I shall be very pleased, Sir, to withdraw my motion. I am very glad that the Honourable Members will be here to decide the several amendments for themselves without giving the Select Committee the trouble of going through them. But before I sit down I once more appeal to my Honourable friends to rally to our support in passing this measure without unnecessary and undue reference to the past. I deprecate, Sir, reference to any controversy of 1882 or of 1883. I ask my friends to bury the hatchet, forget the past and think of the future. Let this be the starting point for an amicable arrangement for the working of the Code of Criminal Procedure, and let it be an augury of the future relations between the people of England and this country.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): Sir, I rise to say just a few words on the subject matter of this Bill. In doing so, may I be permitted to congratulate the Honourable Leader of the House not only on his appearance in the House this morning, but on the weighty, felicitous and statesmanlike speech he made in moving the consideration of the Bill.

Honourable Members will remember that when I moved the Resolution of which this Bill has been the outcome, I appealed to European members to bear in mind the feelings, sentiments and prejudices of Indians in this matter; I appealed to my Indian colleagues also to bear in mind the feelings, sentiments and prejudices of Europeans in this matter. I made that appeal then because I was convinced that no solution which was one-sided was going to be an acceptable solution of the matter. A life of action, if it is to be useful, must be a life of compromise. And when people think badly and oddly of that word "compromise," they fail to ask themselves, what after all is life? Life itself is a compromise. You cannot advance a step unless you meet the conflicting forces around you and draw the resultant. The resultant itself is a compromise between two opposing forces and as such I hail with gratification the outcome of the Resolution which,—may I say?—I was made the humble instrument by a higher power to propose before the House. I thought that the day had come when the old spirit of hatred must give way, that with the Reforms a new era had dawned, that Englishmen and Indians who had fought in the trenches side by side as comrades were going under the new era to fight side by side, arm in arm, for the progress of this nation towards the goal of responsible Government; and I thought that in the new Assembly, there was the much

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needed opportunity to appeal to the best feelings and the better mind of England and the best feelings and the better mind of India, in order that we may strive and struggle together on this onward path on a footing of mutual good-will and understanding.

Well, Sir, there are one or two matters which I may be permitted to refer to. Of course, we, the members of the Racial Distinctions Committee, came to a unanimous conclusion so far as the exclusion of colonials from the definition of "European British subjects" was concerned. But I may assure the Leader of the House that so far as I was concerned, no feelings of retaliation animated me. My point was and is that I am not prepared in India to give to any Colonial any better treatment than is accorded him in criminal trials and procedure in a Crown Colony like Ceylon. If a Colonial does not get in Ceylon any better treatment than a Singhalese in this matter, what right has he to get any better treatment in India? That was the ground upon which I urged the exclusion of Colonials, and not because I wanted to retaliate. I do not believe in retaliation, spite and hatred. But I am afraid that that aspect of the question has not been brought to the notice of the British Cabinet.

1 P.M. Well, rightly or wrongly the British Cabinet has decided now against us on this point and introduced this little amendment. I do not quarrel over it. After all, as I said, it is a trifling matter. It has been already pointed out that there are only a few people who will be affected by it, and at the same time surely we need not presume that any of them are going to be offenders. Therefore, as a matter of practical politics, we need not now quarrel over it.

There is another matter upon which also there has been a deviation from the unanimous recommendation of the Committee. But that also is a matter which in practice will not be of much difficulty or will not entail any further disabilities. After all, we have provided that these men shall be triable at their option in warrant cases before Sessions Judges and all that is now proposed to be done is that in a particular case, the Commanding Officer will ask the man to be brought before the Sessions Judge. It has been said by Mr. Seshagiri Ayyar that this Committee has not provided against miscarriage of justice. That was the gravamen of the charge. I am afraid, Sir, he has failed to see that we did everything possible to provide against it by way of providing for appeals both on facts and law against both convictions and acquittals. And that is the only safeguard that was needed and we have provided for it. Sir, I do not wish to detain the House any more. I congratulate the Government on having brought forward this measure ultimately, and I trust that the House will, without any difficulty, pass it as it is.

Lieut.-Colonel H. A. J. Oldney (Nominated: Anglo-Indians): Sir, I rise to take part in this discussion as another humble member of the Racial Distinctions Committee and to make but a few generic remarks. I wholeheartedly associate myself with Sir Campbell Rhodes in the remarks he made deservedly eulogising about the labours of Sir Tej Bahadur Sapru and Sir William Vincent on this Committee whilst adding appreciation of their labours. I must not forget to mention the great part that was played, at a very critical moment, by Mr. Justice Shah, another valued member of the Committee. Sir, when I attended the early sittings of this Committee, the old saying, *possumus non-possumus*, came prominently to my mind. I thought at first it was impossible that there could ever be an

amicable decision on the grave issues at stake, but, after a few days, I could see that it was possible; and the ultimate decision of compromise which we agreed upon was the outcome of a mutual feeling of friendship and a development of trust between both the communities—to such an extent that in a very little while a compromising spirit of give and take pervaded the whole of the atmosphere of our deliberations. Although I subscribed myself to a very minor minute of dissent, yet, Sir, after hearing what other Members, both European and Indian, have said here to-day and the eloquent speech of the Honourable the Leader of the House, Sir Malcolm Hailey, I, for one, representing as I do the domiciled community, am sure, nay, I am convinced, that I have every reason to re-echo what Sir Henry Stanyon has just said, namely, that the time is not far distant when there will be no more need for the existence of a Racial Distinctions Bill,—that both Indians and Europeans and the other communities in this country will work hand in hand as equals,—that justice will be administered and will be accepted in its administration,—as Sir Henry Stanyon put it, irrespective of caste, creed and colour. Sir, the pitfalls and difficulties which confronted us at this Racial Distinctions Committee were multitudinous. At times we found that we had come to an impasse, but it was the skilful leadership of Sir Tej Bahadur Sapru and the tact and strategy of Sir William Vincent that turned this position to one of mutual understanding with the result that we have brought before this House this Bill,—a compromise which I feel sure every community in India will accept with pleasure and satisfaction as a decided advance in equality of status. I compliment the Government on the production of this Bill, I compliment the House on the statesmanlike way in which it is accepting it and I am sure the House will pass it without any dissentient voice whatever. As my Honourable friend, Mr. Rangachariar, said the other day “After all it is the first step that counts” and I am sure we will take this first step with such confidence, that our succeeding steps will guide us towards a better understanding—towards a better and truer realisation of that reciprocal feeling of trust between the various communities which India needs and must possess in her endeavours to develop a nation out of the heterogeneous classes that inhabit this country. With these few remarks, Sir, I associate myself wholeheartedly with all that my friend, Sir Campbell Rhodes, has said.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, I feel to-day that Members of this House have formed themselves into a mutual adulation Society. There are my Indian friends who are congratulating the Europeans for the concessions the latter have made; and there are my European friends who are also thankful for the spirit that the Indians have displayed in approaching this question; and, I think we are in this sense, a very happy family. I congratulate the Government in bringing about this state of things. Sir, to me this question of abolishing distinctions between Europeans and Indians, is a question of practical politics. We, the Indians, should on our part realise our position; how we stand in respect to Europeans; and the Europeans also must realise their present position, and let alone things which happened 150 or 200 years ago. We have now advanced a great deal in their direction and are coming nearer and nearer to them in more matters than one; esteem and confidence should be mutual. The Europeans should be prepared to accept in India the same treatment that we Indians are receiving at the hands of Government. To me, Sir, as Dr. Gour put it, it is not what we wish to get, but what we can get, and it is a source of gratification to us that the Europeans have

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conceded in this matter what they have done, in dragging us up to their level rather than dragging themselves down to our level. As Bakshi Sohan Lal put it, the distinction still remains and will remain for many years to come. But the point is whether we are any better to-day than what we were yesterday and I decidedly think we are better. Although it may be a case of 'small mercies,' still we have to thank Government for them and our European friends also.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, if the interference with the recommendation of the Committee is due to the sincere desire that our relations with those who are in Colonies may become better, then, I, speaking for myself, welcome that idea. This is an epoch-making day in that the racial distinction which has been in existence seems to be buried for ever. But I may offer a suggestion to Colonies that they may not consider that this is our weakness and therefore we welcome it. It is simply on account of our sincere desire that we may prove our loyalty to the desire which has emanated from England. They must remember and bear in mind that we are laying claim to our equality and they will be pleased to appreciate this claim. Sir, I shall be failing in my duty if I do not also offer a suggestion to the Jury and to the Judges and that is this, that their task has become much more responsible by this Bill, and therefore they should see that justice is done and nothing of racial distinction is allowed to remain. With these few remarks, Sir, I heartily support the motion.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): I request, Sir, that the question may now be put.

The motion was adopted.

Mr. President: The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings, be taken into consideration."

The motion was adopted.

The Assembly then adjourned for Lunch till Fifteen Minutes Past Two of the Clock.

The Assembly re-assembled after Lunch at Fifteen Minutes Past Two of the Clock. Mr. President was in the Chair.

Mr. President: I think it may simplify the proceedings this afternoon if I refer to one or two amendments which raise questions of order. Amendment No. 2, standing in the name of Bakshi Sohan Lal, is out of order as it attempts to bring in an Act which is not proposed to be amended by the original Bill, and that ruling carries with it the exclusion of amendment No. 78. Similarly, amendments Nos. 16, 18, 86 and 89, in view of the manner in which the title and preamble of the Bill are drawn, bring in matters which are not in order.

The amendment standing in the name of Mr. Venkatapatiraju will only be in order if he excludes the two words "political or". The word "political" raises wide issues which are not contemplated in the present measure.

Then, as for amendment No. 21 standing in the name of Bakshi Sohan Lal, I am not quite sure what the Honourable Member's intention is. I shall deal with it, when we come to it.

Bakshi Sohan Lal, amendment No. 3.

Rai Bahadur Bakshi Sohan Lal: Sir, my amendment has two effects. The first is that this clause deals with the definition of European British subject, and, I submit, Sir, that Judges or Magistrates ought not to be influenced by the personality of the accused. Thus there is no necessity for keeping the definition of European British subject in the Criminal Procedure Code. We have got no definition of Indian British subjects. We have got no definition of a European or of an Indian, and there is no reason why we should have the definition of a European British subject.

Mr. President: Which amendment is the Honourable Member moving?

Rai Bahadur Bakshi Sohan Lal: Amendment No. 3. I move:

"That in clause 2 (1) substitute the word 'omit' for the word 'for' and omit all the words following the words and figures 'clause (1)'. "

This will place all subjects of His Majesty in India on the same footing. Secondly, why should we influence the mind of the Judge or the Magistrate by the fact that a party is a European British subject or an Indian British subject, or whether he is a foreigner, a Parsi, or anything else? We should do away with this definition altogether and keep the mind of the Magistrate quite clean as if he knew nothing who was before him and treated wealthy and poor, King and subject of the King, on the same footing. That is the object of this amendment and, if it is also the view of the House that the Courts of Justice in this country should be free from any such bias, they ought to remove this definition. There is no reason why a European British subject should be defined in a law relating to the procedure of Courts of Justice in India. So I move that this amendment be passed.

The Honourable Sir Malcolm Hailey: Bakshi Sohan Lal of course harks back to his own Bill, forgetting all that has happened in the interval; but I think that the sense of the House this morning was that we can take no such radical views; the Committee has produced a compromise, and the general sense of the House and I believe of the country is that that compromise should be accepted. I do not, therefore, argue his proposition on its merits. I only remark this. This amendment excludes a definition. If he does so, then the rest of the Bill must fall to the ground. We could not provide for exceptional procedure in cases involving racial considerations without that definition. I am content to leave the matter at that; it is hardly necessary to make the further point that, if this definition goes out, then we shall need a fresh approval of the Secretary of State under section 65 of the Government of India Act.

The motion was negatived.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I move:

"That in clause 2 (1) in the proposed definition of 'European British subject' omit the words 'or any Colony'."

Sir, from the time when this Bill was introduced up to the present moment we have been asked to accept the Bill in its present form on

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the basis of the compromise arrived at between the representatives of the different communities in this country. We now find that this is a clause which goes even beyond that. In this definition, His Majesty's Government have not accepted that very compromise on which we are asked to accept this Bill. This is the definition on which there has been a sort of veiled threat of disallowance of the whole Bill if the Indian Legislature insisted on doing away with the privilege that is being accorded to the Colonials in this Bill. Sir, I do not know how we should act on that veiled threat. I thought that the moment the rights of legislation had been given to us and along with it the rights of vetoing had been reserved for the higher authorities, there was no need of giving approval or disapproval or any sort of veiled threat before the Bill had been passed by us. As Sir Malcolm Hailey has found from the attitude of this House, they are prepared to accept the compromise, and it was a needless fear on the part of His Majesty's Government to have thought that the Legislature would not act on the compromise, or that the whole Bill would be dangerous or capable of mischief without the inclusion of Colonials in this definition. I think the Secretary of State or His Majesty's Government should have left it to the good sense and as is always apparent the sweet reasonableness of the Indian Legislature to accept the compromise and to allow any definition that may have been put in the Bill. If His Majesty's Government or the Secretary of State thought that there was any danger or that any provision in the Bill was capable of mischief, they were perfectly at liberty under the powers vested in them to disallow subsequently that portion which they thought to be improper. Sir, apart from that, let us see what will be the effect of the inclusion of the Colonials in this definition of European British subject. We are giving certain rights and privileges to this special body of persons and which rights and privileges we disallow to other Europeans and other Members of the civilised nations. We are giving certain rights and privileges to a certain class of Colonials while we deprive other Colonials of those rights and privileges which they had enjoyed before. Sir, we are giving certain rights and privileges to Colonials which will be resented not only by the Members of this House but also by the whole of the Indian community at large, because of the treatment that has been accorded to our fellow brethren living in those Colonies. I do concede, Sir, that so far as rights and privileges and concessions in criminal trials in those countries are concerned, we have the same rights and privileges in their country as they have got in ours, and we are prepared to give the same rights and privileges which we have ourselves got to those gentlemen who come from those Colonies to this country. But I am not prepared to give those gentlemen any rights or privileges superior to those which we ourselves enjoy in this country. For instance, the Indians in this country are subject to the jurisdiction of even second and third class Magistrates. Why should the Colonials be taken away from that jurisdiction? Why should they not submit themselves to the same jurisdiction which we Indians submit ourselves to? Here, if they have to submit to the jurisdiction of second and third class Magistrates, they will be on terms of equality with us, but the moment we put ourselves under the jurisdiction of those Magistrates and take out these Colonials out of this jurisdiction, we give them something more which we ourselves do not enjoy. Under these circumstances, Sir, I think it is not proper to give these rights to these gentlemen. It is contended that probably it might be treated as a sort of reprisal and we may have to suffer certain other indignities and certain other bad treatment in their own country.

I do not believe, Sir, that it would be a reprisal if we give them the same rights which we ourselves enjoy. We give them the same rights that the highest in our country enjoys. We are prepared to give them the same rights which Americans and other European nations enjoy, and I do not think why we should give them superior rights. Sir, as for reprisal, I do not believe that any such will be the case; moreover if we are afraid of any reprisals from the Colonies owing to our taking away certain rights which we give to the European British subjects in this country, we should then also be afraid of reprisals from nations or countries other than the Colonials. For instance, America, or any other country. Further, Sir, it was said when the Bill was introduced and was moved for consideration that there were certain privileges which should not be withdrawn. I do not know why this definition of European British subject is to-day being put on the Statute Book. Under the old definition there were certain other people in the Colonies who enjoyed these rights. Why should they not enjoy it now? For instance, we may give a right to a Ceylonese to-day. But if the Ceylonese were to migrate to any other Colony, say South Africa, then two or three generations afterwards, his issue may not have the same rights which we may extend to him under the present definition in this Bill. For instance, his children or his grandsons or great grandsons or people of his descent in the male line will not have the same privilege as the present day European brother Colonials' issues will enjoy. It is quite incomprehensible to me on what ground this differentiation has been made. Moreover, there is another danger by giving this superior right to Colonials. The Colonials who do not like to give us equal rights in their own country will say "in your own country, by your own legislation, you recognise our superiority. How do you then claim equality in our country in other matters?" That will be giving them a weapon, an excuse, for putting us further down and heaping indignities and humiliations on the shoulders of our fellow-brethren. Sir, I could very well understand that those Colonials who have come to this country under the orders of His Majesty's Government or as servants of the Army and Navy may be given the same rights as the European British subjects and I would have conceded so far because they do not come to this country of their own choice. But why should those persons who have submitted themselves to our jurisdiction of their own choice, who have become permanent residents of this country of their own choice, have these privileges extended to them? With these words, Sir, I move that the words "or any Colony" be deleted from the definition of "European British subject."

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I was at first inclined myself to quarrel with the view taken by the Secretary of State in respect of this position, given to the Colonials but on reflection I thought it would be better that this country, uncivilised as it may be considered to be by these barbarians elsewhere might at least teach them a lesson, teach them a lesson in magnanimity, teach them a lesson that we can rise above passions and prejudices and if not thereby correct those people, at least enlist the sympathy and support of our European friends in this country and in Britain in all our legitimate fights which we are putting up in other directions in the colonies. Sir, if it were for the first time that an attempt was being made in this Legislature to include in the definition of European British subject the Colonial, we should have hesitated twice and thrice before we accepted such an inclusion. But we have to remember that the definition as it exists includes the Colonial, and therefore it is a question of taking away what exists in the Statute, not of

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what we are creating for the first time. That is one of the circumstances which weighed with me in this connection.

In the next place, as I have pointed out in my separate minute, if there is any reason at all for maintaining a distinction in favour of any class of people, that reason applies to the case of all people who are aliens in this country. I should advocate a distinction in favour of the Afghan, in favour of the Chinese, in favour of the Japanese, because there is as much justice in maintaining a distinction in favour of these people as there is in favour of European British subjects, because after all the whole thing turns upon whether they get fair justice or not in our courts, and these people are in a strange land and it must be admitted that as regards us, Indians, we do not distinguish an Englishman from a Colonial. I mean they are all alike to us. They do not associate with us as freely as they ought to do, and I do not know that we are able to make out the nationality of many of the members of the Civil Service present in this Hall itself. It is only for the first time I learn that the first Member of Council in Madras is a Colonial. It was for the first time I learnt on reading the report of the Local Government that the Governor in one of the provinces is a Colonial. I mean that that idea never crosses our minds. They are all whites to us: just as we are blacks to them, they are whites to us. But I daresay we are making a move to-day to abolish this colour distinction and I hope this will be a successful move. (Hear, hear) Sir, it is quite true that very many people advocate that these strokes of retaliation should take place, but let us remember that our nature and our religion in this country forbid retaliation. We are always required to forgive, and in fact even in the case of the extremist politician in this country, the non-co-operator—what is his weapon? It is not anger, it is love (Laughter); and I have no doubt they will appreciate magnanimity on our part: the non-co-operators in this country, I am sure will appreciate the magnanimous spirit in which we are doing our work to-day, because, as I stated already, it is our main object to teach these people a lesson. Again, there are Colonies and Colonies. That also we have to remember. It is not all Colonies which misbehave. There are some Colonies like Mauritius, where equal rights are accorded. There is no distinction at all either in the political franchise, or the municipal franchise; no disabilities in acquiring land, no disabilities in owning property. But there are Colonies which impose the poll tax. I was pained to hear the other day that Indian labourers in Fiji have to pay a poll tax. Of course they say they do it to all alike, but the Indians come in for the largest share; and I hope, Sir, that when such treatment is brought to the notice of our European colleagues, our European fellow subjects in this country, they will agitate more strongly than we can do in these matters. Their agitation will be more effective. An appeal from our European fellow-subjects in this land to their brethren in those Colonies will have a greater effect. Sir, in order to attain that end, with great reluctance I oppose this motion made by my friend, Mr. Agnihotri. I think he will on the whole be acting wisely in accepting this suggestion which has been made by Government. Let us not mar the passage of this measure by insisting upon this matter. I appeal to my Honourable friend, Mr. Agnihotri, to follow the example of the great man of this country, Mr. Gandhi, and exercise forbearance for his part.

Dr. H. S. Gour: Sir, my friend, Mr. Rangachariar, has no doubt unwittingly committed two mistakes. The first one is that the present definition of European British subject does not take away anything from the

present Statute Law. (*Rao Bahadur T. Rangachariar*: "I did not say that; I said the Colonial was there already.") He said that the word "Colonials" was there already and that consequently we are not giving them anything more than what exists in the present enactment. That is wrong. Under section 65 of the Government of India Act to which reference was made by the Honourable the Home Member European British subject is defined as any subject of His Majesty born in Europe or the children of such subjects; that is the sole definition which occurs in the Government of India Act. Now, let us turn to the definition in the Indian Code of Criminal Procedure. There we find, not as my friend Mr. Rangachariar has pointed out, a person of European descent or extraction born in any of the colonies. The definition is "any subject of Her Majesty born, naturalised or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American or Australian colonies or possessions of Her Majesty or in the colony of New Zealand or in the colony of the Cape of Good Hope or Natal." The colonies are enumerated and as Honourable Members will see these are all self-governing colonies where people of the English race have settled down permanently. The definition now proposed by Government is a wide extension over the definitions contained in the Government of India Act and also in the Code of Criminal Procedure. I shall presently illustrate my meaning. The definition says, "domiciled in the British islands or in any colony." Honourable Members know there is such a thing as a Crown Colony, Ceylon and Kenya for instance. Under the present definition any person of British descent being a subject of His Majesty, born in Ceylon or Kenya would become *ipso facto* a European British subject which he would not have been under the definition in the Code of Criminal Procedure and the Government of India Act. In that sense and to that extent the definition is not a reproduction of the old definition contained in the two Statutes I have mentioned; and as my friend, Mr. Samarth pointed out the law at present is that a person of European descent or of British descent born in Ceylon is amenable to the general law applicable in Ceylon. In passing I may point out that the criminal law of Ceylon is almost a verbatim reproduction of the Indian Penal Code, and the Criminal Procedure Code there more or less follows the lines of the Criminal Procedure Code here. In the trial of cases in that country no distinction is made between a native-born subject of Ceylon and a person of British extraction born in Ceylon. Consequently, we introduce this anomaly, that if a person of British origin is born or domiciled in Ceylon he will be tried under the general law in Ceylon itself, whereas if he crosses the Straits and is tried anywhere on the Continent of India he will immediately claim exemption under the proposed definition on the ground that he was born in a colony of England. That is the distinction. As I have said the distinction is a vital one. We are extending the definition of a European British subject. Let us make no mistake about it.

The second point is this: my friend, Mr. Rangachariar, said: "Let us be magnanimous and out of a sheer spirit of magnanimity let us give to the colonial-born the same rights and privileges as are enjoyed by a natural-born British subject." I am not so sentimental as my friend sitting opposite to me. I am prepared to accept the definition drafted, not on the ground of any real, assumed or pretended magnanimity, but out of sheer helplessness. I have protested at the commencement; I protest again that this extension of the definition is not in consonance with our national sentiment, and if it was within our power we would tear it up. But the Honourable the Home Member has given us an ultimatum. This is the irreducible

[Dr. H. S. Gour.]

minimum which the British Cabinet or the Home Government insists and upon which the Government are prepared to proceed with this measure of legislation. If we whittle it down, if we alter it or suggest any alterations upon this vital principle, the progress of the Bill will be delayed and possibly the Bill itself defeated. Honourable Members know that we are now almost at the end of our term. Any further delay in the progress of this measure might jeopardise its final enactment during our life. Therefore I suggest that although we do not accept the principle and protest as have protested before against a decision which we consider to be an undue and unnecessary enlargement of the definition which exists at present on the Statute Book. But we have no alternative. We have to bow to the inevitable and say— "If this is all you can give us, we are prepared to take it, but I wish you will recognise that we are doing so under an emphatic protest. We are doing so because we fear that owing to some misapprehension on your part or those who have given you instructions, you have unduly and unnecessarily enlarged the definition of European British subject and brought within its compass people who never could have been brought under the existing definition." This is the position, Sir, and in view of what I have said I think the House must now decide whether it is in favour of threshing out this question upon its merits or accept what has been offered to us and say "let us hope at least that in the near future wisdom will dawn upon those who are responsible for the introduction of this measure and that they will rectify the errors into which we are being led by force of circumstances."

It is upon these grounds, Sir, that I have decided not to move the amendment worded in the same terms as those of the Honourable Mover of this amendment, and I request him to do what I have decided to do, namely, to withdraw the amendment.

Sir Deva Prasad Sarvadhiary: Sir, there is no counter arguing with a downright *sine qua non* argument. At the same time, one must be quite clear with regard to what one is doing and can do in future. Dr. Gour has referred to section 65 (3) as containing a definition of European British subject. Well, my reading of that sub-section is not Dr. Gour's reading. Let us see what section 65 (3) of the Government of India says:

"The Indian Legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any Court, other than a High Court, to sentence to the punishment of death any of His Majesty's subjects born in Europe or the children of such subjects, of abolishing any High Court."

I would not have taken up the time of the Assembly by reading that clause merely to combat Dr. Gour's point of view if I had not another object in view. In the Statement of Objects and Reasons, we have this sentence:

"His Majesty's Government are particularly interested in the Imperial aspect of the proposal, and they consider that the proposal of the Committee would raise an invidious and controversial question throughout the Empire. The Secretary of State for India in Council whose specific approval was required under section 65 (3) of the Government of India Act for certain provisions of the Bill has accordingly only accorded his sanction on the understanding that the definition proposed in the Bill will be accepted. On the other hand, it is recognised that the Committee have indicated clear grounds"

And so on. What I was not at all clear about when the Honourable Sir Malcolm Hailey was speaking this morning and I am still less clear now, was with regard to how far section 65(3) of the Government of India Act

comes in so far as the question of Colonials on its merits goes. Is the position this, that, under section 65(3) of the Act, the Secretary of State has certain powers of withholding sanction because of the question as to whether a Sessions Judge should have the right of sentencing a European British subject to death or not? That is the whip hand; availing himself of that, he imposes other conditions. We ought to clearly understand the situation, and, if the condition he imposes is a *sine qua non*, we are, as Dr. Gour says, helpless and have to submit. If the condition is on any other ground, matters would stand on a different footing altogether. We are pleased and thankful to learn that His Majesty's Government is particularly interested in the Imperial aspect of the proposal and that they consider that the proposal of the Committee would raise an invidious and controversial question throughout the Empire. When we appeal to the Imperial Government in regard to other matters in the colonies in respect of their Imperial aspect and object to invidious distinction, they say: "The colonies have their own laws: how can the Imperial Government interfere with them?" That is the point where the difficulty comes in. I recognise, Sir, that it is absolutely no good now at all events, going into the matter in the way the Mover of the amendment proposes but we want to have the matter quite cleared up when Sir Malcolm Hailey is replying so that we may know how far this Assembly or its successor would be prepared to go in deleting the word in question or corroborating them later on after the colonies show responsiveness. Now is not the time.

Colonel Sir Henry Stanyon: Sir, I have a very few words to say on this matter, but I should be glad indeed if I could take away from the House any impression that we are being dragged as it were at the wheel of the Secretary of State. I agree with the dignified pronouncement of my friend, Mr. Rangachariar, on this point; and I venture to differ with great respect from the interpretation put upon the proposed definition of an European British subject by my learned friend, Dr. Gour. It seems to me that he has missed the most essential words in that definition. He tells us that a Sinhalese will be an European British subject under this definition. The important words here are "any subject of His Majesty of European descent." That for which the consideration of this House is asked by way of this definition, and other parts of this Bill, is the continuance of a form of privilege: if it be called a privilege—a technical form of trial—is what I prefer to call it—to which His Majesty's subjects of European descent have been accustomed for centuries. It is not a matter so much of *domicile* as a matter of *descent*. This definition does not enlarge unduly the former definition of a "European British subject." It makes it far more correct. Under the existing definition now in the Criminal Procedure Code, a Maori, a Hottentot, or a Red Indian in Canada would be an European British subject. Under the definition now proposed, only a subject of European descent in the male line, born, naturalised, or domiciled in the British Islands or in any Colony would be an European British subject. Dr. Gour referred to certain colonies which are specifically mentioned in the Code of 1898. The alteration now proposed merely moves with the times. We have had a big war since that Code was enacted and the colonies have expanded. If we were to include in a list all the present colonies of Great Britain by name, we should have a very cumbersome section and I do not know that we should gain any advantage. The consideration by way of compromise of this House is asked in favour of British subjects of the European race wherever they are. Let the spirit of compromise be extended towards the race, without reference to

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the place where the subjects of this race may live. I contend that we are not accepting the proposed definition because we have no alternative. Our position is, I think, much more dignified. If we choose to do so, we can throw out the definition. Indeed we can throw out the whole Bill, we have power to do so. We are by no means slavishly dragged into this legislation. But it is put to us that one body whose opinion at all events, we are bound to respect, namely, His Majesty's Government, think that persons of European race wherever they may be, ought to have the same privileges, and to be included in this definition; and I agree with Mr. Rangachariar that it will be the more dignified and more magnanimous course, and set a proper example to those European subjects who take a wrong view of the rights of Indians in other places, for us, to accept this claim—not in a spirit of churlishness, but in a spirit of dignity.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban):

3 P.M.

I am afraid, Sir, that the position both as placed by my Honourable friend, Mr. Rangachariar, and also as placed by my Honourable friend, Dr. Gour, was such as is not acceptable at any rate to me. I look at the question entirely from the practical point of view and I am glad to find that my Honourable friend, Sir Henry Stanyon, has to a certain extent made that position clear. What is the position? The position is this that His Majesty's Government want the inclusion of Colonials in the definition of European British subject. Now, I have not been slow to protest against the continual interference of His Majesty's Secretary of State in matters in which he is ignorant, in matters upon which the Government of India and the Indian Legislature as at present constituted are more competent to decide than the Secretary of State himself, but I do feel on deep reflection, that this is a matter on which His Majesty's Government can legitimately have some say, that the point of view of the colonies can be appreciated more by His Majesty's Government than all those of us, the Government of India as well as ourselves, who feel keenly on the question of the treatment of our own countrymen and countrywomen in the colonies. Now, naturally, the exclusion of colonials from the definition of European British subjects would have caused embarrassment to His Majesty's Government. If His Majesty's Government had acquiesced in accepting that privilege for British subjects which they were not prepared to extend to their subjects in the Colonies, it would have made their position at any rate awkward *vis-a-vis* the colonies. What then should be our position? What then are we called upon to do? Are we prepared or not to draw His Majesty's Government out of that position of embarrassment in which they would be rightly placed if they took that for Britishers which they were not prepared to offer to colonials, and I say speaking as a practical man that we would be doing well in helping His Majesty's Government in being drawn out of that state of embarrassment. For this reason, we shall have an argument in our favour when we shall have to call upon the assistance and the support of His Majesty's Government in putting forward our claims in regard to our own countrymen and countrywomen in the colonies. This is a matter on which if we acted wisely, appreciated the difficulties of His Majesty's Government and not through a position of sheer helplessness which my Honourable friend, Dr. Gour, has depicted, but through a position of the correct understanding of the legitimate and real difficulties of His Majesty's Government if we assisted His Majesty's Government in being drawn out of that awkward situation, we, I think, will have the right to make capital of the support thus given, in insisting upon His

Majesty's Government supporting us in our demand for according better treatment to our own countrymen and countrywomen in the Colonies. As Sir Malcolm Hailey has pointed out, an obstinate attitude on this question might satisfy our pride to a certain extent that we have dealt a blow at the Colonies by retaliating. But it would be a childish and false pride indeed. That blow is bound to be ineffective. The Colonies are not likely to feel that blow, and we might be able perhaps to create more bad blood in the Colonies. If instead of that, if, instead of making an obstinate effort at rendering an ineffective blow on a matter which is not really pertinent to our political position in the Colonies, if we at this moment supported His Majesty's Government, we should then have the right of claiming the support of His Majesty's Government in getting better treatment accorded to our own countrymen and countrywomen in the Colonies. It is because I think our attitude on this question would be a capital, would be an investment for the future, that I support the attitude taken up by His Majesty's Government.

The Honourable Sir Malcolm Hailey: The amendment under discussion involves questions both of detail and of principle; and I may be pardoned if I deal first with the questions of detail that have been raised, for it is necessary to do so, since some of the suggestions made to the House were to my mind misleading. Mr. Agnihotri told us that he saw no reason why when this Legislature had been given its powers, the Secretary of State or the Home Government should not be content to rely on their powers of veto. He suggested that if any clause of the Bill as passed by us was unsatisfactory to the Home Government, they could veto that clause. But as has appeared from the discussions this afternoon, we have to reckon with section 65 of the Government of India Act under which the specific approval of the Secretary of State to certain sections of this Bill would in any case be necessary. It would not therefore have been possible for the Home Government to rely purely on the power of veto. Nor indeed would it have been possible for His Majesty's Government to veto, as Mr. Agnihotri suggested, a single section of the Bill. If the Bill contained sections which they could not accept, they would have been obliged to disallow the whole. Mr. Agnihotri, again, compared his own position in moving this amendment to that of the Committee, which, he said, recommended that the status at present enjoyed by Dominion subjects should be taken away from them. But here he is wrong; his position is not that of the Committee, for it will be realized that while the Committee, both the majority and the minority, considered that some protection should be given to Colonial Members of His Majesty's forces serving in India, Mr. Agnihotri's amendment would withdraw even that amount of protection. Again, he drew a comparison between Colonials and Americans; he suggested that we should give the Colonials the same rights as Americans. Now of course his amendment would not do that. It will be admitted everywhere, I think, that when we have certain Treaties which force us to give to certain nations, six in number, the rights at present enjoyed under section 400, we cannot deny those rights to Americans generally. It would be impossible, for instance, to give rights to citizens of Costa Rica or Venezuela which were denied to citizens of the United States; I am sure I need not argue the point to this Assembly. But, if we have to give rights to Americans equivalent to rights now enjoyed under section 400, then Mr. Agnihotri's amendment would have the effect of giving Colonials far less than those rights. It would give them nothing at all. It would give them less than Indians, for Indians at all events under our

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Bill will be able to claim a majority on a jury, and under Mr. Agnihotri's amendments Colonials would not be able to claim even that much. So that his amendment, so far from giving them, as he thinks, it would, the rights enjoyed by Americans, would give them far less than those rights and would give them far less rights than Indians themselves. Obviously, therefore, there is something wrong, even in the manner in which he proposes to carry out his own proposals. He finished by saying that if Colonials can feel that they have succeeded in extorting this privilege from us, they will use that as an argument for further maltreating the Indians in the Dominions. But would it be correct to say that they have succeeded in extorting this privilege from us? They have had this privilege since 1872. It has been maintained at the express desire of His Majesty's Government. There is no question of extortion by Colonials at all.

Then, Sir, Dr. Gour objected that our definition involved a very considerable extension of rights to Colonial subjects. I do not intend to deal with that point at length, since Dr. Gour (though for reasons other than those which commend themselves to us) has agreed to withdraw his amendment on the subject. But I think it is well to point out again the steps by which we have proceeded to our present amendment; he was corrected on that point both by Sir Deyo Prasad Sarbadhikary and by Sir Henry Stanyon. We of course have merely endeavoured to get one comprehensive expression which will do away with the geographical inexactitude, if nothing else, of the present definition in the Criminal Procedure Code. That, and nothing else, was our intention in adding the words "or any Colony"; this being the phrase used in the General Clauses Act. We wanted one comprehensive term which would carry out the obvious intention of the original section, which was, as Sir Henry Stanyon very rightly said, to give to people of the British race wherever domiciled the privileges we are now discussing. But Dr. Gour has I think forgotten that though the exact effect of our present definition may be to give this protection to residents of Crown Colonies, when they happen to be in India and might therefore appear to involve an extension, since the existing definition refers only to the Dominions yet on the other hand it involves a very considerable restriction. I need not refer to what Mr. Rangachariar himself said in his minute and the Committee has also said in the course of its report, in regard to the exceeding undesirableness of our present definition. It was an absurdity that certain persons entirely of non-British and non-European ancestry living in the Colonies should on visiting India receive these exceptional rights; and we have revised our definition by the addition of the words "of European extraction" for the purpose of excluding those persons. So that, while on the one hand it may seem that we have opened the privileges to persons residing in Crown Colonies as well as the Dominions, yet on the other hand the effect of our definition will in point of practice be a wide and logical exclusion of privileges in regard to persons for whom those privileges were never intended. I can not accept what Dr. Gour says about Ceylon. He says that while a European living in Ceylon is subject to a law which is in every way equivalent to the Criminal Procedure Code, yet when he comes to India he would enjoy the exceptional procedure provided in the Bill. The Ceylon Code is not, I think, in every way equivalent to the Criminal Procedure Code. There are vital differences. You have there the Police Court with small powers, the District Court which could give imprisonment up to two years and all other cases have to go to the Supreme Court. Whatever the outward form

of the law that constitutes a very vital difference between Indian and Ceylon Courts. But in the end, Dr. Gour accepts our position under protest and under a feeling of helplessness. Now, there are many other reasons—and some of them have this afternoon been adduced—why it is on the whole advisable to accept the position of this definition. As was very rightly pointed out, there is no compulsion in the matter. The only compulsion in the matter is—and here I address myself to the arguments of Sir Deva Prasad Sarvadhiary—the only compulsion in the matter is that if you value the other features of the Bill, then it is undoubtedly necessary to accept this feature. There is no “veiled threat” as Mr. Agnihotri said; there is no threat at all. The matter is perfectly open. The Secretary of State under section 65 of the Government of India Act was obliged to give approval to certain features of the Bill. You may speak of it if you like, a bargain or as a condition; but it is certainly not a threat if in giving his assent the Secretary of State states that he does so purely on the condition that the new definition should maintain the privileges of the Dominion subjects. I quite agree with Sir Deva Prasad Sarvadhiary that section 65 does not refer to Colonial subjects unless they are born in Europe. But it is quite competent for the Secretary of State, acting under the orders of His Majesty, to attach that condition to his assent. Further I would not myself advise the House to accept the definition under any feeling of helplessness. I do not even advise it to accept the definition under that peculiar safeguard known to lawyers, I mean “without prejudice”. I discussed the question this morning and I think that Mr. Seshagiri Ayyar in his remarks somewhat misinterpreted what I said. I did not go so far as to pretend that if we waived our right to withdraw from Dominion subjects the status now enjoyed by them, we could put forward a claim to be treated with magnanimity by Dominion subjects. I saw myself that that was a somewhat dangerous argument, and I was afraid I should lay myself open to exactly the argument which Mr. Seshagiri Ayyar actually used, namely, that the Dominion subjects would have no respect for you unless you show your teeth. What I did say, and I hold to it, was that whatever might be the possible result of allowing the definition to stand, yet to legislate now and here for withdrawing from Dominion subjects the status now enjoyed by them would undoubtedly do no good. I am no prophet, I can not pretend to say whether the exhibition of magnanimity on our part will earn its reward or not. But what I could say is this. If you legislate in the sense that was recommended by the Committee, then it is certain that you will do active harm; that at all events seems to me a direct certainty. But, Sir, this fact does remain; you have somehow got to induce a better atmosphere in the Dominions. You can only secure what you want—I say what you want, but it is also what your Government wants,—you can only induce by promoting a better knowledge of yourselves and a better estimation of India. I believe if you were to legislate in the sense in which Mr. Agnihotri desires, you would go far towards destroying all chance of securing that atmosphere with the Dominions. More than that, as Mr. Jammadas pointed out—and I welcome his aid in this respect—you would perhaps lose your own claim on the assistance of the Home Government, for whatever value the Dominions may attach to the feelings and aspirations of India, remember that they will still more be influenced by what is said in England itself. If you can create in England itself an atmosphere favourable to you, you have taken an important step towards securing a better atmosphere in the Dominions also. I have argued the question purely on its merits. It is, as Mr. Jammadas said, a practical question. You have simply to balance the advantages, and I

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believe myself that the advantage lies, and lies clearly and distinctly in recognizing that Colonials, as Members of the British race, should retain the rights which they now enjoy.

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatam: Non-Muhammaddan Rural): Sir, I do not rise here to show magnanimity as my friend, Mr. Rangachariar, or despair as Dr. Gour, or my view as a practical man, as Mr. Jannadas. I want to make an appeal to my friend Mr. Agnihotri not to press this amendment, because when he gives up the substance, why should he fight for the shadow? Is there any country in the world wherein outsiders can come in and say "you must have a special law and a special procedure for us?" Is it possible in any self-governing and self-respecting country to provide for such a thing in any Criminal Procedure Code? When you have accepted that, why should you fight about a few Colonials? "No Colony so far as I am aware has any discriminatory legislation in the Criminal Procedure Code against Indians?" On the other hand, I may tell you, there are some advantageous provisions in some Colonies. Whereas in Fiji the privilege of an European is to drink, while no Indian is allowed to drink, and no Indian is allowed to waste his time out of his house after nine, but only a European can. But these are only trifles and so long as there is that humiliating provision in the Bill discriminatory procedure for Europeans and Americans do not fight against the Colonials only. For these reasons I appeal to my friend not to press his amendment.

(Some Honourable Members: "The question may now be put.")

Mr. K. B. L. Agnihotri: Sir, as advised by my friends, I have no alternative but to ask the permission of the House to withdraw this amendment. Let us have some experience of being practical men, and let us see how that will benefit us.

The amendment was, by leave of the Assembly, withdrawn.

Bhai Man Singh: Sir, the amendment which stands in my name is as follows:

"In clause 2 (1) (i) in the proposed definition of 'European British subject' after the word 'Colony' add the following words: 'The laws of which make no distinction between the status of Indians and Europeans'."

Of course, Sir, the legal phase of the question has been argued a good deal by my friends who have spoken on the previous amendment. I will only add that the definition of European British subject, as it at present stands in the Criminal Procedure Code, does not include many of the Colonies, against whose treatment Indians have to complain. Kenya is not included in the present definition nor is South Africa. For myself I cannot understand why the point should be pressed that we should give superior rights to the inhabitants of those Colonies which do not give us even the status of citizens. Sir, I may be called one who is very revengeful or one who is very retaliatory, but, if that is the fact, I am in very good company. Honourable Members must have read the replies from various bodies supplied to them. I would draw the attention of Honourable Members of this House to page 22 of those replies wherein we have got a letter from the Government of Bombay which runs as follows:

"In continuation of this Government letter No. 430, dated the 4th September 1922, I am directed by the Governor in Council to forward herewith a separate minute of dissent recorded by the Honourable Sir Ibrahim Rahimtoola, Kt., C.I.E., and the

Honourable Dr. Sir Chimanlal Setalvad, Kt., LL.B., LL.D., Members of the Executive Council of the Governor of Bombay, on the proposals to amend the Criminal Procedure Code, 1896, based on the recommendations made by the Racial Distinctions Committee."

"We are of opinion that the subjects of those British Dominions and Colonies in which Indians are denied the rights of British citizens and equality of treatment should not have any privilege accorded to them in India. We desire that our view should be communicated to the Government of India."

Not only that, we have got another opinion of another eminent lawyer, the Additional Judicial Commissioner of Oudh, who says:

"I agree to the proposed change. I note that members of the overseas dominions are deprived of the right of European British subjects. But I consider this is quite fair in view of the attitude assumed towards Indians by these Governments. The question can be settled hereafter by negotiation between the Government of India and the Governments of the dominions."

Sir, it really pained me when I heard my Honourable friend Mr. Rangachariar preach to me this sermon of magnanimity and tells me that it is religion that makes it a duty of mine to be magnanimous. I do know that religion enjoins magnanimity, but at the same time, if Mr. Rangachariar wants to join issue with me, I will tell him from the Scriptures of nearly every religion from his own Gita, from the exact words of Shri Krishna that there are times when we have to retaliate. I really wonder that in the name of magnanimity we should do this. I say in the name of sheer self-respect, we should say "No, my dear Sirs, if the Colonies are not going to give us the status of citizens, for God's sake let us give them a superior status in India." Sir, the great point that has been made about these Colonials is the Imperial question. My Honourable friend Mr. Jammadas Dwarkadas very vehemently and strongly laid stress on the point that if we submit to the wishes of the Imperial Government . . .

Mr. Jammadas Dwarkadas : Not 'submit'; 'support'.

Bhai Man Singh: I think it is 'submit'; you think it is 'support'—if we support the views of the Home Government, we shall have a claim on them to help us in getting equal rights in those Colonies. I would request Mr. Jammadas Dwarkadas to consider whether we have not already got more than enough claims on the Home Government to support our claims in the Colonies. We have been crying out for years together to the Home Government to support us. What more is needed?

Mr. Jammadas Dwarkadas : Why not have one more weapon in our armoury?

Bhai Man Singh: I take the other side of the question. The Colonies have been treating us as they have for a long time but they find the Imperial Government still helping them and trying to give them a higher status in India than what the Indians even are given. Does not that show that the Imperial Government does not care for the maltreatment that has been accorded to the Indians up till now? They would be convinced that the Indians also submit to that. Therefore, we need not pay much attention to this argument. On the other hand, the Colonies would think that we have not got even the self-respect to fight for the honour of our own country. So we can say, "My dear Sir, at least if you are not going to give us equal rights in your country, we are not going to give you superior rights in our own country." Then, Sir, I cannot understand why the Secretary of State should interfere in such a matter on the side of the Colonies. Section 65 of the Government of India only lays down that the Indian Legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering

[Bhai Man Singh.]

any Court other than the High Court to sentence to the punishment of death any of His Majesty's subjects born in Europe

Mr. President: Order, order. I cannot allow a repetition of the discussion on that point. The Honourable Member must confine himself to the terms of his amendment.

Bhai Man Singh: The point to which I wish to draw the attention of this House is that we should not take the position imposed upon us out of sheer helplessness. The utmost that the Secretary of State can do in the matter is to say, "I do not allow this law to be passed to the extent that the Sessions Judge or any other Court below the status of a High Court can pass the sentence (of death)." I personally, Sir, would prefer not to give a superior status to a Colonial gentleman whose country does not give to our countrymen equal status, and I would prefer to have a law in the country that every European British subject should only be tried for offences

Mr. President: Order, order. The Honourable Member is getting a long way from the subject.

Bhai Man Singh: I am submitting, Sir, that even if the Secretary of State uses his powers under section 65 of the Government of India Act, still we should not mind it and we should carry this amendment. There are two alternatives before us. One is that the Secretary of State would disallow the law we pass to the extent that no Sessions Judge or no Court other than a High Court can pass any sentence of death. I would allow that discrimination in favour of the European British subject to remain to that extent, rather than give a Colonial, whose Government does not give equal status to the Indian, a superior status in my own country. That is my very clear position, Sir.

I think I am perfectly in order when I request the House to accept this alternative that is proposed in section 65 rather than accept this position which is highly incompatible with the self-respect of my countrymen. My Honourable friend Mr. Rangachariar in his speech said that there are colonies and colonies

Mr. President: The Honourable Member from Madras has not spoken on this amendment.

Bhai Man Singh: I am speaking on my amendment and I am drawing Mr. Rangachariar's attention to his speech so that he may support this amendment. There are colonies which give Indians equal status. For instance, there is Mauritius where Indians can buy lands and become members of the Legislature. I am saying this in order that my Honourable friend may support my amendment in pursuance of his utterance. I should say in conclusion that the change that has been made in the recommendations of the Racial Distinctions Committee is not really warranted by the opinions of a good many Indians and Local Governments. I know the Punjab Government, the Burma Government and Mr. Justice Stuart all agreed to the definition proposed by the Racial Distinctions Committee. Now, if we are going to accept any change, the change that has been proposed by the Secretary of State, we should only accept that change with the reservation that I have proposed in my amendment.

The amendment was negatived.

Rai Bahadur Bakshi Sohan Lal: The amendment which I propose is :

" In clause 2 for sub-clause (2) substitute the following :

' (2) In paragraph (j) of sub-section (1) of section 4 of the Code, omit the first 43 words '.

I respectfully submit even if this Assembly is powerless to remove all racial distinctions in the administration of criminal justice, why should not every High Court have the same power, why should the definition of a High Court for the purpose of European British subjects be different from that in the case of other subjects? I submit that one uniform definition should be quite enough to serve all the purposes we have in view. So the following definition should be enough :

" ' High Court ' means the highest Court of Criminal appeal or revision for any local area, or where no such Court is established under any law for the time being in force, such Officer as the Governor General in Council may appoint in this behalf."

In this Bill, the definition given in the Code has been retained with a few verbal changes. There is another thing. Why should some judicial Commissioners have been given the powers of a High Court, while others have not been?

I respectfully submit that the Judicial Commissioner of the North-West Frontier Province who exercises the highest powers of criminal appeal should also come within the definition which I propose to be adopted. I respectfully submit that we should not tamper with all the courts from the highest Court to the lowest Court, so far as the trial of European British subjects is concerned.

Mr. President: The question is :

" In clause 2, sub-clause (2) substitute the following :

' (2) In paragraph (j) of sub-section (1) of section 4 of the Code, omit the first 43 words '.

The motion was negatived.

Bhai Man Singh: I simply move : *

" That in clause (2) after the word ' Oudh ' the words ' North-West Frontier Province ' be inserted."

I do not wish to move the words " British Baluchistan " also. I would request the Honourable the Home Member to take into consideration if the Judicial Commissioner of the North-West Frontier Province is a sufficiently advanced court so as to be included in this section or not, and if he is not fit to be included in this list whether he will consider that he is a proper judicial court for the North-West Frontier Province.

The motion was negatived.

Clause 2 was added to the Bill.

Mr. B. Venkatapatiraju: My amendment is only a drafting amendment to clause 8. It runs :

" To clause 3 add the following :

' and in the marginal note to the same section for the words ' Justice of the Peace for the Mufassil ' the words ' Justice of the Peace for British India ' shall be substituted."

I may mention with your permission that there is a mistake in the whole drafting of clause 8. I appeal to the Government draftsman to find out

[Mr. B. Venkatapatiraju.]

the words mentioned therein in the Criminal Procedure Code. They do not really find a place in the Criminal Procedure Code itself, because in section 22 of the said Code the words and brackets ("other than the presidency towns") do not appear in the Code itself.

The Honourable Sir Malcolm Hailey: To terminate this part of the discussion I may point out that the amendment is obviously due to a mistake, as the Mover will see if he refers to the amended copy of the Code. Section 22 has been altered by the amendment of 1920.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"That clause 5 be omitted."

Clause 5 of the Bill provides:

"Notwithstanding anything contained in section 28 or 29, no Magistrate of the second or third class shall inquire into or try any offence which is punishable otherwise than with fine not exceeding Rs. 50 where the accused is a European British subject who claims to be tried as such."

Sir, under sections 28 and 29 of the Criminal Procedure Code the Courts are specified which are to take cognizance of offences for trials and under section 29 a provision has been made that, subject to the provisions of section 447—which will come up later on in the Bill—"any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court. Further, when no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code by which such offence is shown in the eighth column of the Second Schedule to be triable." By this clause 5 we are restricting the jurisdiction of certain Courts, over the trial of European British subjects; and those Courts whose jurisdiction we are restricting in respect of trials of European British subjects are the Courts of the Magistrates of the second class and the Magistrates of the third class. So far as I can judge or understand, the reason that may have influenced the authors of this Bill may have been the incompetency of such class of Magistrates to try an European British subject. I can not think of any other reason that may have been responsible for the taking away of the jurisdiction from such Magistrates. But to what I wish to draw the attention of the House is this, that whenever I spoke about the competency of such Magistrates while certain of the provisions of the Criminal Procedure Code were under discussion and wherein their powers have been increased, it was stated from the Government Benches that the Magistrates of the second class were quite competent to have an extension of jurisdiction over certain cases which were referred to in these sections of the Code. I do not understand how those Magistrates are now disqualified from trying European British subjects when they are qualified to try an Indian British subject of howsoever eminence he be. They would say, 'no, we are not taking away the jurisdiction of the second or third class Magistrates but we are simply restricting the jurisdiction in certain cases'. They say that a second or a third class Magistrate shall be competent to try an European British subject for an offence which is punishable with a fine not exceeding Rs. 50. I admit, Sir, that there are certain offences mentioned in laws other than the Penal Code

which are punishable with a fine of Rs. 50 or less, but so far as I am aware, there is no offence defined in the Indian Penal Code (the chief penal law of India), excepting probably one of drunkenness under section 510 which is punishable with fine of Rs. 50 or less only. So, under this new clause 5 we practically take away the jurisdiction of these Magistrates over European British subjects for offences triable under the Penal Code. Sir, it has been claimed for this Bill and for the compromise which has been so much talked of, that no differentiation has been made between Magistrates with regard to the trial of cases in which European British subjects were involved; that is to say, that under this Bill every Magistrate shall have an equal jurisdiction over European and Indian British subjects. I beg to submit, however, that this clause of the Bill is contrary to this principle. Here you are taking away the rights of an Indian Magistrate of the second class who has been thought competent to try cases against Indians but who has on the other hand been thought to be incompetent to try cases involving Europeans. If they are really incompetent and unfit to try any cases, I do not then understand why they should be authorised to try Indian British subjects and put the liberties of such subjects in jeopardy. It is very incongruous that this differentiation in the jurisdiction of Magistrates should continue even in the present Bill. It is very desirable that this power be also extended to the second or third class Magistrates in the matter of trial of European British subjects and the Indian second and third class Magistrates be not led to believe that they are looked down upon by the Government whose interests they always serve and to whom they are always loyal and faithful may be sometimes even at the sacrifice of their conscience. I therefore submit that this withdrawal of jurisdiction so far as these Magistrates are concerned should not be perpetuated in this Bill and that the clause 5 be omitted.

Probably the Honourable the Home Member may say that there may be some difficulty if we were to do away with the whole clause, because by doing so we retain the words: "the provisions of section 447." But to that I would reply that there are other amendments tabled in the list of amendments which will remedy that defect even if this clause is omitted.

Mr. Muhammad Yamin Khan (Meerut Division: Muhammadan Rural): Undoubtedly, Sir, the Government is inconsistent in proposing this section to the Bill. When we had a discussion on the Police Disaffection Bill a lot of compliments were paid to the second and third class Magistrates. But apart from that, even if the Government is inconsistent, I do not see why this Assembly should be inconsistent. This Assembly in the Police Disaffection Bill passed the provision that these cases should not be tried by second and third class Magistrates but only by first class Magistrates. Adhering to that principle which the Assembly accepted after due consideration, I think Mr. Agnihotri who supported that amendment should now withdraw this amendment.

The Honourable Sir Malcolm Hailey: It is perhaps a little difficult to know where we stand in point of consistency; Mr. Agnihotri himself may find it a little difficult to justify what he says now about second and third class Magistrates in the light of what he said in our late discussions on the Criminal Procedure Code. But if there is any inconsistency to-day, it is not I feel on the part of Government. We have framed the Bill on the lines of a compromise accepted by representatives of both communities. I am not called upon, I consider, to support on its merits the proposal that second and third class Magistrates should not try these cases; it is sufficient that

[Sir Malcolm Hailey.]

I should take my stand on what was accepted, as I have said, by the representatives of these two communities. I can look perhaps into their reasons; I have examined them, and they reflect two somewhat different views. Different reasons obviously appealed to different parties to the compromise. Doubtless Mr. Agnihotri has been thinking of the reasons which appealed to the European side, namely, that second and third class Magistrates as a rule know very little English, and are still more handicapped by their entire lack of knowledge of English ways of life and thought. Yet obviously, there were at the same time other considerations which appealed to the other party to the compromise. Let me read what some of them said. Here is an Indian witness from Nasik, a High Court Vakil. He says:

"I do not wish to disparage the second and third class Magistrates as a class. Nevertheless, I hold the view, which is based on practical experience and which I believe will be supported by many members of the legal profession, that these lower class Magistrates are lacking in that spirit of independence which will save them from being influenced by the consideration of securing the favour of their European superiors, in some cases by the very fact that the European nationality will be offended."

That perhaps, is an argument which might come as a surprise to Mr. Agnihotri, and yet on the other hand, it undoubtedly appealed to some members of the Committee. I have given that quotation as typical; I could multiply it if necessary. That, undoubtedly, is the general consideration which influenced Mr. Justice Shah in supporting the proposal of the Committee. His conclusion was:

"This is an exception to the general scheme of the recommendations, which appears to me unavoidable under the circumstances, and so far as I have been able to ascertain the Indian opinion on this point as reflected in the evidence before us it will not be objected to."

The conclusion come to by Mr. Rangachariar on the subject was:

"I quite recognise it will not be safe, from more points of view than one",

I think we have now seen what those points of view are:

"to entrust the trial of European British subjects for serious offences in the hands of second and third class Magistrates."

I can do nothing better, I think, than leave Mr. Agnihotri in the hands of Mr. Rangachariar, and I have no doubt he will deal with him faithfully.

Rao Bahadur T. Rangachariar: Sir, as a direct appeal has been made to me, I could not resist the temptation of dealing with it. Sir, in my province, we have got second class Magistrates who are very efficient people indeed. But the evidence led before the Committee was that in these provinces,—I was surprised to hear it indeed—that even first class Magistrates do not know a word of English and they render their judgments in the vernacular. There are, I understand, many in the Punjab. But to the credit of my province, almost all the second class Magistrates and some third class Magistrates also are graduates. Another fact which weighed with me in agreeing to this recommendation was this. My Honourable friend, Sir Malcolm Hailey, read one portion of my minute. If he had read the previous sentence also, my meaning would have been plainer. I say there:

"Having regard to the present conditions of recruitment to these Magistracies and to the combination of executive and judicial functions in the District authorities, I quite recognise it will not be safe, from more points of view than one, to entrust the trial of European British subjects for serious offences in their hands."

What passed in my mind I will say plainly. These people are not able to resist the temptation of unduly respecting the European. I mean

4 P.M. it has become a habit with them, and I have seen a Magistrate rise from his seat on the Bench when a European witness appeared before him and offer him a chair. Although the zemindar may appear a great man in the district, he does not do so for him. It was this weakness that I had in mind and it seemed to me a wholesome provision to avoid them. We want justice done, and we must have independence on the Bench. I think my Honourable friend, Mr. Agnihotri, will recognise that shortcoming with these Magistrates.

Khan Bahadur Zahiruddin Ahmed (Dacca Division: Muhammadan Rural): I will say one word and one word only. I feel exactly the same as my Honourable Indian friends do feel. I wish to say that retaliation is not justice, but a sign of narrow-mindedness, which we should not forget. Indians are an old civilized people; the civilization of Europe is of comparatively recent origin. We cannot expect that these youngsters with faces like Japanese dolls

Mr. K. B. L. Agnihotri: May I rise to a point of order. Do these remarks refer to my amendment or any other?

Mr. Muhammad Yamin Khan: May I ask what faces like Japanese dolls have got to do with it?

Khan Bahadur Zahiruddin Ahmed . . . will suddenly be as high minded as we Indians,—the oldest people on the face of the earth,—were, are or can be. A Persian poet says, if you have received a wrong from an equal or a superior party, you can repay him with another wrong; you may return ill for ill. But if you be a really superior party to him you are to return good for ill so that the perpetrator of the wrong may feel ashamed and naturally he will not do you any more wrong. The Indians have always been a magnanimous people. Why should we forget it on such an occasion? Let us rise up to our standard before the whole civilized world and show that we are a fair and broad-minded and superior people and know more how to give than to take. I am certain that in the course of time, which may be a few years, our magnanimity will be fully appreciated and the drawbacks placed on the Indians in the Colonies and elsewhere will soon be removed

Mr. President: The Honourable Member is getting out of order again.

Khan Bahadur Zahiruddin Ahmed: I am certain that the public opinion of the whole outside civilized world will be arrayed on our side, which sooner or later will force the Colonists to give in. I ask my countrymen to be as magnanimous as they have always been.

Mr. Muhammad Yamin Khan: This is a speech on the last amendment; we have nothing to do with the colonies in this one.

Mr. President: The House is well aware of it; I pulled him up before.

Khan Bahadur Zahiruddin Ahmed: Sir, I regret my mistake. I was out of the Assembly Hall and just returned. I was under the impression that the discussion is still going on on the old amendment. Hence I offer you my apology. I ask my countrymen to be magnanimous as they have always been. I now ask my Honourable friend to withdraw his amendment.

The motion that clause 5 be omitted was negatived.

Rai Bahadur Bakshi Sohan Lal: Sir, the amendment I propose refers to the same clause, clause 5. It is as follows:

"For clause 5 substitute the following clause:

'5. In sub-section (i) of section 29 of the said Code, the words and figures 'subject to the provisions of section 44' shall be omitted'."

Mr. President: May I point out to the Honourable Member that two questions arise on this amendment. First of all, we have just decided not to omit clause 5 and we cannot substitute his clause 5 for the existing clause 5. We have further already amended the words which he proposes to amend during the proceedings on the Bill to amend the Code of Criminal Procedure, and the words now read "subject to the other provisions of this Code."

Rai Bahadur Bakshi Sohan Lal: There is one thing I wish to say. The effect of my amendment would be that it does away with section 29A as proposed and, though it has been negatived on the motion of Mr. Agnibotri, I respectfully submit that, if there are any such Magistrates, as has been suggested, who would be influenced by a European party, why not do away with such Magistrates and improve the Magistracy.

Mr. President: To what question is the Honourable Member addressing his remarks?

Rai Bahadur Bakshi Sohan Lal: That clause 5 of the Bill be omitted.

Mr. President: We have already decided not to omit it and therefore we cannot substitute his clause for it. Moreover, even if he were to put it in a different form, we have already decided this Session that the words 'subject to the provisions of section 447' shall not stand part of the Code but other amended words.

Rai Bahadur Bakshi Sohan Lal: Then, I will withdraw this amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. B. Venkatapatiraju: Sir, my amendment would only be necessary if amendment No. 19 is passed; otherwise it is not necessary.

Mr. President: If the Honourable Member intends to move amendment No. 15, we will take it after No. 19.

Dr. H. S. Gour: Sir, I shall very briefly recapitulate the reasons which have induced me to give notice of this amendment.* I would invite the attention of the House to paragraph 22 of the report of the Committee where it is stated that "the majority are of opinion that sections 30 and 34 should be repealed on the ground that a sentence of more than two years' imprisonment should not be passed without the assistance of a jury or of assessors." In a very illuminating note penned by Mr. Justice Shah, appended to the report, he also in paragraph 10 (a), printed at page 24 of the report, points out that he was entirely opposed to the retention of section 30 on the Statute Book. Now, I shall very briefly point out what is the effect of the retention of section 30 and its consequential section 34 in the Code of Criminal Procedure. To my lay friends I may point out that under the present Code of Criminal Procedure all offences not punishable with death may be tried in provinces, where there exist Deputy Commissioners, by Magistrates of the first class empowered to try such cases; the result being

* "Omit clause 6."

that in several provinces, the majority of the Sessions cases not punishable with death are disposed of as mere Magisterial cases, with the result that there are no jury and no assessors and the trial is more or less in the hands of the Magistrate who performs the dual functions of a judicial officer and an executive officer. This question of asking the executive officer to discharge judicial functions in highly complicated cases requiring technical knowledge and skill and a certain amount of knowledge of the law has been the subject of adverse criticism in this country for a long time past and the Committee pointed out that the time had come when, with the advent of the jury system which the present Bill, if passed into law, will introduce, accused in districts and provinces where there exist Deputy Commissioners should not be deprived of the salutary aid which the jurors and the assessors give to the Court. If you will read the ensuing letters you will find that the then representatives of the Government were not unsympathetic towards our recommendations. I am moving this amendment with the first object of obtaining an official public pronouncement on the part of the present Home Member as to what the policy of the Government is regarding the repeal of section 30 of the Code of Criminal Procedure. So far as I understand, and I think those of you who have read the compilation will strengthen my view, that the view of the whole Committee was for an early repeal of sections 30 and 34 of the Code of Criminal Procedure, with the resultant effect that all Sessions cases not punishable with death shall be tried only in Sessions courts with the assessors or the jury as the case may be. Now, the Bill as drafted excludes from the cognizance of the Magistrates empowered under section 30 all European British subjects but does not, and indeed could not, exclude the British Indian subjects tried for the same offence. We were all of opinion, and I am of opinion still, that we do not wish that this obsolete anachronism of a system of asking Magistrates to dispose of cases of this gravity and heinousness should be perpetuated by allowing them to try European British subjects equally with British Indian subjects. So far we are all agreed. But at the same time we want a definite assurance from the Honourable the Home Member that this obsolete system will not be enured and perpetuated longer than it is necessary in the interests of justice. In the compilation which is accessible to us we find that some objection is taken to the change of system on the ground of expense.

Well, Sir, I have no doubt that if we are to revise our Criminal Procedure and if we are to level up, as this Bill proposes to do, our Indian subjects, and bring them alongside of European British subjects, then I submit some measure of reform on the lines indicated by me should be adumbrated by the occupants of the Treasury Benches. If they do so, I am not anxious to press for the deletion of clause 6 which I think, as a temporary measure, is a good one, because I have myself condemned the system of magisterial trials of cases not punishable with death, and having condemned that system, I could not, in consistency, ask that for the time being that that system be equally extended to European British subjects. Indeed, if I were inclined to take a leaf out of the note book of my esteemed friend, the occupant of the Treasury Bench, I would have said, as he has said in his opening remarks, that the unification of Criminal Procedure, where the two systems are assimilated and the same system applies equally to European British subjects and British Indian subjects, would lead to a steady and speedy improvement of our judicial machinery. If I wanted to use that as a lever for hastening up the pace of judicial reform in this direction, I would insist upon the deletion of this clause

[Dr. H. S. Gour.]

so that our fellow sufferers, the European British subjects, may join with me in asking for the early deletion of that clause. But I do not think I require that reinforcement, and I shall therefore rest content if an assurance is given by the Honourable the Home Member that this clause will engage his early attention and that it shall be purged out of the Statute Book at the earliest moment possible.

Mr. President: Amendment moved;

"Omit clause 6."

The Honourable Sir Malcolm Halley: Some part of the assurance for which Dr. Gour asks I can, of course, give him, namely, that we shall at once take action to address the Local Governments in whose provinces this section applies, and ask their views why the recommendations of the Committee should not be carried out, namely, that section 30 should be withdrawn from operation. I cannot, of course, give a promise, for it will be impossible for me to do so, that this section will be withdrawn entirely at an early date. We must first consider the opinions of the Local Governments and the High Courts, and know what they have to say on the subject. The matter is of importance to Local Governments if only on the point of finance. I have here figures of the number of persons sentenced by Magistrates in the Punjab with special powers under section 30. They appear to amount in the years 1919-1921 to an average of some 1,193 cases. If those cases were tried by Sessions Judges, obviously there must be a large increase in the judicial cadre. Some 8 to 10 Sessions Judges would be required, and it is quite obvious that in a matter of this kind we must take into consideration what the Local Governments have to say as regards their ability to find finance for the measure. I hope Dr. Gour will be satisfied with my assurance that we do not intend to let the matter rest, and that we shall immediately address Local Governments on the matter.

Rao Bahadur T. Rangachariar: It is in this matter and one other matter that the co-operation of the European community in this country is needed. In two matters we condemned the question whether it was necessary to create equality between the two races. One is in regard to the sentence of whipping and the other is the extraordinary power vested in certain Magistrates to impose this very heavy sentence without a trial in a Sessions Court. If we were to work up to equality in all matters, we should have insisted upon European British subjects also being amenable to the same jurisdiction as Indian subjects are. So also in the case of whipping. But we felt that we must not work up to equality in injustice. Let us have equality only in justice. This we felt to be an injustice and therefore let us fight our battle by working for justice and not impose this injustice on the European British subjects also. It is in this spirit that we approached this question and we ask for the co-operation of the European Members in removing these blots from the sections of the Criminal Procedure Code. Our European non-official colleagues on the committee supported us very strongly in this matter in making the recommendation both as regards whipping and as regards this particular question. Unfortunately they are not here. I hope those European Members who are present here will not be led away by the specious argument which oftentimes misleads them, namely, the threat of increased cost, the increased number of people whom you will have to employ. I say it is worth paying for. You cannot have this machinery because you find it costly.

This is no argument for having insufficient tribunals trying and sentencing people to long terms of imprisonment. Let the accused people have a fair trial at any cost and I do not think we should be misled by any such argument. I am not satisfied with the way in which the Honourable the Home Member has treated this question. I know the Honourable Sir William Vincent had laid more emphasis on this than the present Home Member does. I hope he will also work himself up into enthusiasm in this matter and see that before the year is out these two disparities do disappear from our Statute Book.

Mr. P. E. Percival (Bombay: Nominated Official): I wish to make one remark with reference to the observation made by Mr. Rangachariar, that the committee were unanimous on the question of sections 30 and 34. The suggestion made by my friend Dr. Gour was also that the Committee were unanimous on this point. But that was not so. The report says:

"The majority of the Committee are of opinion that sections 30 and 34 should be repealed, on the ground that a sentence of more than two years' imprisonment should not be passed without the assistance of a jury or assessors. Dr. Sapru and Sir William Vincent consider that the Government of India must ultimately be guided in a large measure by the opinions of the Local Governments and the High Court on the question whether it is practicable to repeal those sections. Some members of the committee are of opinion that, if, after inquiry, it is decided to retain these sections, they should apply equally to Europeans and Indians."

I wish to point out that some only of the Members of the committee held the above view, though they were unanimous on the point that the matter was a suitable one for inquiry. I submit that Government have acted exactly in accordance with the proposal put forward by the Committee. That was the only point I wished to mention.

Dr. Nand Lal: In the interests of equality of treatment and uniformity of procedure I am in favour of the recommendation which was made by the Honourable Mr. Justice Shah. He has very clearly and in unmistakeable terms made out this case that sections 30 and 34 of the Criminal Procedure Code may be repealed at once and the understanding which has been very kindly given by the Honourable the Home Member is not very satisfactory. This recommendation may be accepted at once and with your permission I will invite the attention of the House to the luminous manner in which that recommendation has been made by the Honourable Judge. He says: "the only other alternative is to repeal it. I think the section deprives an accused person of many important safeguards which he has in cases triable by the Sessions Court." Then he says that "it deprives the accused of a jury or assessors, and it substitutes a District Magistrate or a first-class Magistrate specially empowered by the Government for a Sessions Judge, an Additional Sessions Judge or an Assistant Sessions Judge. A District Magistrate or a first class Magistrate specially empowered may not be, oftentimes would not be, an exclusively judicial officer like the Sessions Judge or the Additional Sessions Judge or the Assistant Sessions Judge and would not ordinarily be an officer of the same rank and judicial training as the latter. By investing the District Magistrate or a first-class Magistrate with such extensive powers under the Code, the accused are deprived of some of the most effective safeguards in a criminal trial in a Sessions Court." Again, that learned Judge says, "I do not see how its retention can be justified except on the grounds of administrative convenience." It has, now, been propounded by the Honourable Home Member,—that there will be a large number of cases and therefore,

[Dr. Nand Lal.]

in the first place, it will be very expensive, in the second place, it will be difficult to have all these cases, which are being in these days decided by the Magistrates empowered under section 34, to be tried and decided by the Sessions Judges

Mr. President: Order, order. I allowed Dr. Gour to pursue that line because, having read the Report of the Committee, I thought it might be desirable, even if a little disorderly, for Government to give a public pronouncement; but I cannot allow the Honourable Member now to go on arguing the merits of the case which I ruled out of order in the case of Mr. Bakshi Sohan Lal.

Dr. Nand Lal: Then I will not go into these details. I do not know how the elimination of new section 6 will really serve the purpose which my Honourable friend, Dr. Gour, wishes to see served, because, if that clause 6 is taken away altogether, it will not, in any way, repeal these two sections. Therefore, though I quite agree with the spirit of his amendment, I am sorry I cannot support it; but I would, however, suggest to the Honourable Home Member that he will kindly see that these two sections 30 and 34 may be repealed at the earliest possible date. (Voices: "I move that the question be now put.")

The motion was adopted.

Mr. President: The question is that clause 6 be omitted.

The motion was negatived.

Mr. B. Venkatapatiraju: Sir, we are told that the Government of India are anxious to carry into effect the recommendations of this Committee on which Europeans and Indians were well represented. In this case, Sir, what was recommended by that Committee? So far as whipping is concerned, the majority of the Committee considered that that punishment should apply to Europeans and Indians if retained alike. Therefore, the question is whether whipping should either be retained for Europeans and Indians alike or should be removed altogether; and to disabuse the minds of my European colleagues, I may say that in this or in any other amendment, I never wanted to suggest any reduction of the privileges which are provided in the Bill introduced by the Government. What I want to do and what I attempt to do in my amendment is to raise the position of Indians to the level of the Europeans in the enjoyment of privileges under this Bill. That is my main object. In order to effect that I submit that the Government of India should not be satisfied with abolishing whipping against Europeans only at this juncture and considering the question further in regard to Indians. I think that is maintaining an invidious distinction. It is to avoid that that I have moved this amendment. And though I move the whole amendment, I request, Sir, that it may be put to the House in parts. My amendment is:

"(a) In clause 6, in proposed section 34A, clause (a), omit the word 'European'"

My object in omitting the word "European" is that I have provided elsewhere that the only privilege allowed to a European in this connection is that he should not be tried by a second or third class Magistrate. Therefore by omitting the word "European" nobody suffers, because then it would apply to all British subjects equally. My amendment goes on:

"and omit the word 'death, penal servitude or'."

It states further:

"(b) In clause 6, in proposed section 34A(b), omit the word 'European', substitute the words 'one year' for the words 'two years' and add the following at the end:

'No Magistrate of the second class shall pass any sentence other than imprisonment which may extend for three months or fine which may extend to two hundred rupees or both; and no Magistrate of the third class shall pass any sentence other than imprisonment which may extend to one month or fine which may extend to fifty rupees or both'."

Now these are the definite suggestions which may be taken up separately but my main object is that if a European is not to be whipped for any offence committed by him, I think the same privilege should be enjoyed by an Indian who commits a similar offence. If you want to consider the matter further, by all means do so. But I appeal to you to keep this section out until the inquiry into the matter has been settled. There is no reason for haste in abolishing whipping for Europeans; and in that event also the Government will not feel the imperative necessity of bringing it against Indians. There must be a certain amount of pressure on the part of Europeans in favour of the abolition of this punishment, because they do not wish such a degradation should be applied to Europeans. Therefore I suggest, Sir, that whipping should be abolished. If the Government wish to move an amendment in this connection somewhere else, that is a different matter. They might say that they are considering the case of juvenile offenders. But I think there are also European juvenile offenders, and why should they not be punished in the same way? Therefore I appeal to my European colleagues that, if they are so very attached to the recommendations of the Joint Committee, they should stick up for the abolishing of whipping altogether in the case of both communities or retain it for both. Otherwise this will be misunderstood by the people. Let us be fair to both sides. I do not wish to say anything further about whipping.

I suggest further that both in the case of Europeans and Indians the death sentence is not at all desirable. Because when once you take life you cannot bring it back, and there may be occasions when there are judicial murders for which there is no hope of rectification. After all, what is the object of having death sentence? It is as a deterrent, and there are reasons urged that persons who commit offences liable with the punishment of death are doing it not being deterred at all by any section provided in the Code. I only invite, Sir, to what was stated by Buckley on Civilization. He states according to the environments of a population, according to the stage of civilization in a particular locality, a certain number of people invariably commit murder; whatever be your law, a certain number of people will commit murder, just like certain number of people commit suicides and certain number of people marry in a certain month. These are natural laws, whatever be your view. (Laughter.) You might laugh because you do not understand the underlying social principle which has been found by scientists. If you examine the cases in any country for a number of years, you will find that at a certain stage a certain number of people will commit a certain number of offences, whatever be the law; a certain proportion of people will marry and a certain number of people will commit suicide; if you examine the statistics, you will see the truth of this assertion. Such being the case what is the necessity for having death sentence? I leave it to you, Sir, to decide whether it is desirable to have death sentence. I state in my proposal that death sentence should be removed from the Sessions

[Mr. B. Venkatapatiraju.]

Courts. It serves double purpose. It removes the necessity of the Secretary of State or the Home Government giving any sanction for any law that we pass. Therefore, if death sentence is removed from Sessions Courts, that right of intrusion into our domestic matters will be removed. Besides, after all, it is not a desirable state of things that, while it was not competent for Sessions Judges to pass death sentence before on Europeans, it should be introduced now. I do not want that Europeans should be subjected to death sentence by a Sessions Judge. If there is such a serious offence, be he an Indian or a European, he should be tried by a High Court. (Dr. H. S. Gour: "The death sentence is always passed by the High Court. It is always subject to confirmation by the High Court.") It is very well known that death sentences are subject to confirmation by the High Court. I am speaking about the trial, because much depends upon the atmosphere in which a person is tried with the jury taken from the mofussil or the metropolis. Therefore, my suggestion is that the death sentence might be removed. The third suggestion is about removal of penal servitude. It has been suggested, that it is going to be abolished, and that there is going to be a Bill about it. Therefore, there can be no difference of opinion, because it was stated long ago that the Government is going to abolish Andamans as a place for penal servitude. I do not know when they propose to pass the law. One strong point is that we do not want this penal servitude as a punishment at all. I would, therefore, suggest that both Europeans and Indians should not be subjected to the death sentence or penal servitude. I do not press for the reduction from six months to three months. That proviso goes. I only confined myself in moving the amendment to these things, namely, that whipping should be abolished, and that death sentence and penal servitude should be abolished. Therefore, I move my amendment, Sir, which is as follows:

"In clause 6, in proposed section 34A, clause (a) omit the word 'European'."

If this is passed, section 34 might be added there, so that no European will subject himself to be tried by second and third class Magistrates. Therefore, whatever privileges he has, he will continue to have, along with Indians. With that object in view, I move my amendment.

The Honourable Sir Malcolm Halley: We are I think dealing (as Mr. Raju desired) with the amendment in two parts. So far you have put to us only that part which refers to the omission of the word "European." I understand Mr. Raju's object in omitting this word is to make the European subject, like the Indian, to whipping. He says if Europeans really feel the attachment they have expressed to the recommendations of the Racial Distinctions Committee's Report they should heartily support him in doing away with whipping. But I would remind him that the Racial Distinctions Committee's report did not propose to do away with whipping. They said public opinion should be invited on the question of whipping, in particular whether the punishment should not be confined to persons mentioned in section 4 of the Whipping Act and also in the way of school discipline to juvenile offenders. The minority of the Committee were in favour of the complete abolition of whipping except in the case of juvenile offenders. The majority recommended that if whipping was retained, Europeans should be equally subject to it. The suggestion was, not that whipping should be immediately abolished by the Legislature, but that inquiry should be made on these lines. Those inquiries we are, Sir, about to make . . .

Dr. H. S. Gour: About to make? In July you promised to make them. May I remind the Honourable Member that in Mr. Tomkinson's

letter of the 20th July 1922, it is said that separate references will be made to Local Governments on the following matters—section 30 and whipping. It is a matter of eight months.

The Honourable Sir Malcolm Hailey : That is perfectly true. These inquiries were to be made as the result of the publication of the Report of the Racial Distinctions Committee. I may remind the Honourable Member that that Report was only very recently published, and the inquiries have not yet been made. He may rest assured they will now be made as soon as the House has passed this Bill. If I am not speaking with enthusiasm on the subject, the absence of which Mr. Rangachariar deprecated in regard to the proposed abolition of the operation of section 30, it is only because I have a natural sense of caution in the matter. I do not like to engage, on the part of Government, definitely to carry out any measure of this kind until the Local Governments, who are vitally concerned, and the High Courts have been consulted on the subject; and I suggest that it is better to wait for the result of the investigations which we are about to make than to deal piecemeal with the proposition as suggested by Mr. Raju.

Mr. Muhammad Yamin Khan : Sir, as far as the question of whipping is concerned, I even deplore that it should be taken away in the case of European criminals. I do not want to enter into long details on this question, but I think from my experience at the Bar that the sentence of whipping is usually given only in those cases where the crime is not only a crime but it is coupled with cruelty. Most judges shirk passing sentences of whipping

Dr. H. S. Gour : Petty thefts are punished with whipping.

Mr. Muhammad Yamin Khan : But thefts of a particular nature. But in cases like those under section 376 of the Indian Penal Code where a person has committed an offence against a girl of tender years, say three, four or five years of age and the man is found guilty, would the House say that a sentence of whipping should not be passed on such a man? I think in these rare cases there should be a sentence of whipping on the man who commits a crime of this nature. I would not like this punishment to be taken away from even an European if he commits that kind of brutal crime. Here by taking away the word "European" my friend wants that where a society is protected by this law only, where only corporal punishment has got more force than imprisonment in jail, this punishment should be taken away. Take the case of a village society, where young girls work in the fields and go about unprotected. Supposing a man of this brutal kind of nature commits a crime to whom the punishment of whipping alone is deterrent. What other punishment could be awarded to a man who is a labourer, an ordinary man, a jail bird, who would much rather be in jail than outside? For him there is no other punishment than corporal punishment. Whipping is the only kind of punishment for this class of people. I do not see how this House can ignore these facts. I totally disagree with my friend, Mr. Venkatapatiraju on this point that whipping or solitary confinement should be taken away. Both these punishments should remain as a sort of deterrent punishment for this special kind of cases.

With these words, I oppose the amendment.

Mr. President: Amendment moved:

"In clause 6, in proposed section 34A, clause (a), omit the word 'European'."

The motion was negatived.

Mr. President: Further amendment moved:

"Omit the words 'death, penal servitude or'."

The motion was negatived.

Mr. President: Further amendment moved:

"In clause 6, in proposed section 34A, (b), omit the word 'European'."

The motion was negatived.

Mr. President: Further amendment moved:

"Substitute the words 'one year' for the words 'two years'."

The motion was negatived.

Mr. President: I do not think the Honourable Member moved the rest, did he?

Mr. B. Venkatapathiraju : No, Sir.

Mr. President: Amendment No. 15 falls as the result of these decisions.

Mr. K. B. L. Agnihotri : Sir, I move:

"That in clause 6 in the proposed section 34A (b) for the words 'two years or fine which may extend to one thousand rupees', substitute the words 'such period or such amount of fine as he be empowered under the said Code'."

Sir, much has already been said by Dr. Gour on this point in the previous amendment which was moved by him and it would not have been necessary for me to move this amendment but I am obliged to do so because of the observations of the Honourable Mr. Percival. Here, Sir, the Committee proposed that the provisions of law under sections 30 and 34 should be repealed and, so long as that provision had not been repealed it should extend equally to both European and Indian British subjects. Government, on the other hand, promise that they are prepared to make inquiries and that they will decide about it after they have received the opinions of the Local Governments and of the High Courts. If the Government are going to make the inquiries, and, if they are not sanguine as to how far they will succeed in repealing that provision, it will be but proper that the recommendation of the Committee and the compromise be adhered to. Sir, when in support of amendments I base my arguments on the compromise then the argument proceeds on other lines. And when I base my arguments on other points, then it is said that the Joint Committee had recommended it on the basis of the compromise, that the Committee was representative of the people, there has been no outcry from the public against that report or the compromise. Sir, we were neither a party to the compromise nor were we a party to the selecting of the representatives on the Committee. No doubt all those gentlemen who were members of that Committee were very eminent lawyers and nobody would belittle their opinion. If the right to elect had been extended to us . . .

Mr. President: Order, order. The Honourable Member is delivering a speech which he ought to have delivered "on consideration" and not on an amendment.

Mr. K. B. L. Agnihotri: No, Sir. I am speaking

Mr. President: I am telling the Honourable Member that he is delivering a speech which he ought to have delivered on the motion that the Bill be now considered.

Mr. K. B. L. Agnihotri: I shall have to bow to your ruling on the point, Sir, but I am simply saying about the compromise, that there may be some people who may not accept that compromise on certain grounds, but still, as some of us have accepted that compromise, it should be strictly adhered to. It was because my amendment was based on it that I referred to the compromise and the constitution of the Committee. But as you have been pleased, Sir, to rule me out of order, on that point, I shall not trouble the House with further arguments on it. What I beg to submit now is that when the Committee had entered into a certain compromise, and when the Committee had made certain conditions on which the compromise was entered into, there is no reason for the Government to deviate from the conditions on which that compromise was based. All these conditions formed the basis of the compromise which retained certain rights and privileges for the European British subjects in the Code. It cannot be said that the compromise was on a particular matter only, but all the sides of the question of racial inequality

Mr. President: I have told the Honourable Member already that he is out of order and if he repeats his arguments, I shall order him to resume his seat.

Mr. K. B. L. Agnihotri: In these circumstances I will now only say that the Committee has recommended that these provisions should extend equally both to Indians and Europeans and I see no reason for removing those provisions until the existing law is repealed. I therefore move this amendment and if my amendment is accepted by the House, the provision will be retained in the Bill in the form in which the Committee had recommended it. With these words, Sir, I commend my amendment for the acceptance of the House.

Mr. President: Amendment moved:

"In clause 6, in the proposed section 34A (b) for the words 'two years or fine which may extend to one thousand rupees', substitute the words 'such period or such amount of fine as he may be empowered under the said Code'."

The question is that that amendment be made.

The motion was negatived.

Rai Bahadur Bakshi Sohan Lal: Sir, the effect of my amendment is to add a new clause 6-A thus:

"6A. In section 188 of the said Code for the words 'Native Indian subject' substitute the words 'British Indian subject'."

Nowhere are the words "Native Indian subject" used and it is ambiguous whether "Native Indian subject" is the same thing as "British Indian subject" or an Indian subject of a Native State. We do not know what the words mean. If the word "Native" be omitted and for it the word "British" is substituted, the meaning will be quite clear. So I recommend that:

"After clause 6, the following clause be added:

"6A. In section 188 of the said Code for the words 'Native Indian subject' the words 'British Indian subject' be substituted."

Clauses 5 and 6 were added to the Bill.

Mr. President: Amendment moved:

"After clause 6 add the following clause:

'6A. In section 188 of the said Code for the words 'Native Indian subject' substitute the words 'British Indian subject'."

The Honourable Sir Malcolm Hailey: I do not raise the point whether this amendment was out of order, but it will be sufficient to say that it is exactly one of the points that can be dealt with in consolidation. It is a matter of verbiage. The same words are used, of course, in the Government of India Act, but if necessary they can be put right when we prepare our consolidating Bill.

The amendment was negatived.

Clauses 7, 8 and 9 were added to the Bill.

Mr. President: Clause 10. The Honourable Member (Mr. Agnihotri) proposes to raise in amendment No. 22, a question which appears to me to be outside the scope of the Bill. That question ought to be raised on some other measure dealing with general legal procedure and not in a measure of this kind where we are dealing with racial distinctions alone.

Clause 10 was added to the Bill.

Clauses 11 and 12 were added to the Bill.

Rai Bahadur Bakshi Sohan Lal: I move:

"For clause 13 substitute the following clause:

'13. Section 275 of the said Code shall be omitted'."

Section 275 is as follows:

"In a trial by jury before the Court of Session of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans."

What I want is that there should be no differentiation in trials as regards British Indian subjects and European British subjects. I submit that we ought to have juries chosen by lot and this section is unnecessary. Clause 13 runs as follows:

"(1) In a trial by jury before the High Court or Court of Session of a person who has been found under the provisions of this Code to be an European or Indian British subject, a majority of the jury shall, if such person before the first juror is called and accepted so requires, consist in the case of an European British subject, of persons who are Europeans or Americans, and in the case of an Indian British subject, of Indians.

(2) In any such trial by jury of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, a majority of the jury shall, if practicable and if such European or American before the first juror is called and accepted so requires, consist of persons who are Europeans or Americans."

I beg to submit that no such distinction ought to be made and I do not think that mixed juries would do any good except perpetuating the racial differences between the two communities. If there is a mixed jury, the Indian jurors will return a verdict in favour of the Indian accused and the European jurors will return a verdict in favour of the European accused. So, the better thing will be to select the jurors or assessors by lot as is provided in other provisions of the Code.

Dr. H. S. Gour: Sir, as I have also given notice of a similar amendment, the House will indulge me for a few moments if I explain the reasons which have prompted me in giving notice of my amendment and which incidentally, though partially supports the amendment of my friend, Bakshi Sohan Lal. Honourable Members will find that the Racial Distinctions Committee limited the privileges to British subjects. It inquired whether we were under any treaty obligations with the nationals of other European and American States which compelled us to discriminate the citizens of those countries as regards the procedure for trials in criminal cases. We were then told that there were no treaty obligations governing other European and American countries, and we therefore decided that so far as the non-British Europeans and Americans were concerned they must stand on the same footing as British Indian subjects and that we could not discriminate in their favour any more than we could discriminate in favour of ourselves or in favour of any other foreigner. That was the position. Now, if Honourable Members will turn to the Statement of Objects and Reasons appended to the Bill, they will find in paragraph 4, the following statement:

"It has since been ascertained that by treaties with Italy, Switzerland, Argentine, Venezuela, Costa Rica and Columbia the same privileges as regards procedure in criminal trials are secured in India to nationals of those countries as are given to Indian subjects of His Majesty."

We have to be very clear as to what these sentences mean because on inquiry from the Home Department I ascertained that the treaties which we may have entered into, or for the matter of that which the British Government may have entered into with these countries are not available, and if I understand it aright they were not available or accessible to anybody in the Government of India here. This is a short statement which reproduces a report received from the India Office. We are not therefore in a position to examine the treaties for ourselves and to see what were the stipulations made by the British Government or the Government of India with the countries concerned but the only information available to us is hearsay or second-hand information contained in a short report which is condensed in this paragraph. Now, let us be very clear as to what it means. Assume for the sake of argument, and I am making an assumption entirely favourable to the countries concerned, that we have entered into an international obligation with the countries named in this clause giving to the nationals of those countries the same rights as are given to Indian subjects of His Majesty. If we have entered into those obligations, surely, Sir, those obligations could not, by any fiction of law or analogy, be extended to the whole continent of Europe and to the whole of America. Treaty obligations with those small States like Switzerland, Argentine, Venezuela, Costa Rica and Columbia, and Italy, of which the nationals in this country probably will number a few hundreds,—a few of them will perhaps be rare specimens, for I do not think that there are any nationals from Columbia or Costa Rica in this country; if there are, my friends on the other side of the House will be able to enlighten the House about them. Now the first question I wish to raise before this House is this: if we have treaty obligations with the nationals of these specified countries, we are bound to respect the treaty obligations and incorporate them in our Bill, but what justification have you for extending the same preferential privileges to people with whom you have no treaty obligations? Under the clause as it is embodied in the Government of India Bill, a Frenchman, a German, a Russian, an Hungarian, a Spaniard

[Dr. H. S. Gour.]

or a Portuguese will claim, if practicable, a jury of his own countrymen and an American (Voices: "No, no,—a European jury.) There is a contradistinction: you have on the one side, as my friends said, the Europeans in contradistinction and perhaps in contrast to the Europeans, you have the British Indian subjects. This distinction, an invidious distinction between an European and an American on the one hand and a British Indian on the other hand has been perpetuated and stereo-typed in this Bill, and therefore I say that we shall not allow you to advance one inch further than what your treaty obligations compel us to do. Surely, Sir, when we were not responsible for the legislation of this country, and when we were in a minority, the Government of India could place upon the Statute Books anything that they wanted; the executive were identified with the legislative machinery; but now, with the majority of the people's representatives in this House, are you prepared to perpetuate those galling and invidious distinctions between class and class, between Europeans and Indians, between Americans and Indians? Surely no high policy need interfere here with the display of your common sense and sense of fairness. My friends have been appealing to us, 'let the Colonials, either out of a spirit of magnanimity on our part or out of a feeling of helplessness, retain their rights,—may, even enlarge their rights,' but what justification have you got for including all Europeans and all Americans in that privileged and charmed circle when we have no longer treaty obligations with any of them, excepting only a few which have been mentioned in paragraph 4? I am quite sure what will be the reply from the Government Benches: have you not heard such a word as 'comprehensive exactness,' 'compendiousness'? For the purpose of avoiding enumeration, for the purpose of not having to describe them by their names, it is much better to drive into one wide net the whole lot of Europeans and the whole lot of Americans. But are we prepared to subscribe to this doctrine that people with whom we have nothing to do, people with whom we have been waging war and for whom our country has shed blood—are we prepared to give them a place of honour and privilege which is claimed by the European British subject and which we have given to him? I say, Sir, that this House must rise against any perpetuation of privilege in favour of non-British Europeans and Americans. Why should they not take their trial as ordinary people? I have pointed out and I repeat it that on first principles, on the ground of international justice, on the ground of equity, on the ground of international law, no man has a right to come here to this country, suck nutrition therefrom and when he commits an offence against the laws of the country, to claim immunity from the ordinary procedure which is laid down by the law of this land, and to say, "I claim a special privilege. I claim a higher right. I stand for the right which I possess of a trial by a jury of European and American colorists." What right I submit has he got? Every lawyer and every school-boy knows that it is one of the elementary principles of law that any person who goes to reside in a country makes himself *prima facie* liable to the *lex loci* or to the general laws of the land. If I or you or anybody went to Spain or to France or to Germany, he would be subject to the laws of Spain, of France and of Germany. No one will hear you there if you claim to be tried by the special procedure which is enacted in India or ask for any special privilege which does not obtain there or is not available to the citizens of those countries. But when those people come to this country should this Assembly, the representatives of the people, place them on a higher pedestal and give them

rights they are not ordinarily entitled to, which are not justified by international law, which are not justified by the comity of nations? That is the question to which you have to address yourself. I say that you should not give away a great principle while you have the chance. This is a principle which you must fight and struggle for, namely, equality of treatment as regards the people with whom you have no treaty rights, as regards the people with whom you have no treaty obligations. I am prepared to except Switzerland, the Argentine and the countries enumerated in paragraph 4. But I submit that there is no reason that I have been able to see and no reason has yet been given, why all the populations of the Continents of Europe and America should be placed on the same footing as the people enumerated in paragraph 4. I submit therefore, Sir, that this is a point upon which the House must unanimously give its opinion that it will not extend the rights and privileges, by analogy or for the sake of convenience or compendiousness of expression, to people with whom we have no treaty rights and who are ordinarily subject to the laws of the land. I entirely support my friend, Mr. Bakshi Sohan Lal's amendment to this extent that I have mentioned: and I particularise it. I hope, Sir, no hypercriticism of Mr. Bakshi Sohan Lal's amendment, no verbal criticism of the inaptitude of the words or expression on the part of the Treasury Benches will make us sacrifice this great and essential principle for which he and I are struggling here. I hope the Honourable the Home Member will assist us. My friend, Mr. Rangachariar, charged him for some lukewarmness on a matter upon which this House felt very strongly. He said the reason why he was lukewarm and did not display any degree of enthusiasm was because it is born of caution necessary in the holder of a high office in the Government of India. I quite understand it, Sir, but let the Home Member remember that he is under no obligation to the people with whom neither the British Government nor the people or the Government of this country is under any treaty obligation. He must assist us and he must, I submit, narrow and restrict the number of exemptions as far as it is possible for the purpose of meeting the national sentiment voiced by the people here. I hope, Sir, that no criticism of the language of my friend, Mr. Bakshi Sohan Lal, or of the other authors of the amendment will stand in the way of the acceptance of the principle, for which he and I and a great many of the Members of this House are contending, and I therefore support Mr. Bakshi Sohan Lal's amendment to the extent I have indicated.

The Honourable Sir Malcolm Hailey: I am not proposing to speak on Mr. Bakshi Sohan Lal's amendment for a simple reason, his proposal, just like his previous amendments and just like his subsequent amendments, goes entirely against the terms of the compromise. Following therefore the procedure adopted by me hitherto in regard to his amendments, when once I had ascertained the feeling of the House on the subject of the compromise, I shall therefore pass by the matter in silence and leave it to the vote of the House. I am, however, in dealing with the support which it found in Dr. Gour, in a somewhat difficult position. Dr. Gour described Mr. Bakshi Sohan Lal and himself as equally fighting for a great principle. Yet, as far as I am able to ascertain, Dr. Gour himself does not like Mr. Sohan Lal propose to do away with a mixed jury for the European British subject. That then cannot be the great principle for which they are both fighting, although that is the great principle which is embodied in Mr. Bakshi Sohan Lal's amendment. So I must look elsewhere for the reason which inspired Dr. Gour. Now, he has taken us to one item only in the clause.

[Sir Malcolm Hailey.]

namely, the position of the American and the European who is not a European British subject. He says that the Racial Distinctions Committee was told there were no treaties existing which would compel it to maintain what I may briefly describe as section 460 Rights. At the time the treaties had not been traced, but it was indicated to the Committee that there might be such treaties, and the Committee accordingly recommended as follows:

"We are of opinion that, unless any of the privileges in regard to such persons are found to be based on treaty, they should be abolished."

We have now ascertained both the number of nations to which treaties of this kind apply, namely, six, and we have just received a copy of one of these treaties. We are attempting to obtain others. It is quite clear from the treaty which I hold in my hand, namely, that with Italy, that we are obliged to maintain the existing section 460 Rights.

I take it that the House will be satisfied that in regard to those six countries at all events, the rights formerly held by Europeans and Americans under section 460 of the Criminal Procedure Code must be maintained. Dr. Gour asks us why and by what right and by what species of justification they should be extended to all Europeans and Americans? He suggests that I may defend this extension by the use of the word "compendiousness." I do not intend to do so. I put it to the House as a matter of reason that if you are to maintain these rights in regard to Italy and Switzerland among the European nations, it would be difficult to defend their withdrawal in regard, say, to France, our late Ally, or any other nation in Europe now enjoying them. There is little doubt in my mind that if other nations, shall we say the French, were to approach us with a view of making a treaty identical with Italy, we should find it very difficult to resist their request. The same with Spain or Portugal, and the like, and we should gradually come back to what we have embodied in our Bill. Perhaps for the moment you might make an exception of Germany; perhaps even we might exclude Russia. That might be the case; I will not prejudice it, but the reason why we have applied to all Europeans the rights which are enjoyed by the Swiss and Italians among the European nations is I think perfectly obvious.

Mr. B. Venkatapatiraju: Does it include Turks?

The Honourable Sir Malcolm Hailey: My Honourable friend will not ask me at the moment to discriminate accurately between European or Asiatic Turks, but as far as Turks are a European nation, they will obviously be included. Obviously other nations have not felt it necessary to apply for a treaty similar to that of Italy.

Dr. H. S. Gour: Germany too?

The Honourable Sir Malcolm Hailey: The Honourable Member need be under no apprehensions in regard to Germany as there are no Germans in India, and they are restricted from entering.

Dr. H. S. Gour: Russians?

The Honourable Sir Malcolm Hailey: Russians would have the rights. I would go so far as to say it is difficult to withdraw from any of the big European nations rights which you give to Italians or to Swiss. That is the sole argument and I give it to the House for exactly what it is

worth. I think it is worth a good deal. You might pick out your undesirable nations, but it would be difficult to withdraw from the European nations as a whole rights which the Swiss and Italians already possess under section 460. If we withdraw those rights, we should obviously have immediate applications for special treaties and it would be difficult to resist those applications. However, those are the grounds.

But, Sir, we have also to consider the case of Americans. Now, with some of the less known States in America, namely, Venezuela, Costa Rica, Columbia, and so forth, we have these treaties. Now, here again, you must therefore maintain section 460 Rights in their favour; and is it at all reasonable that we should exclude the citizens of the United States from a similar privilege? It is not, therefore, merely for the sake of easy drafting as Dr. Gour suggests, but on sound grounds of reason that we have made those rights applicable to Europeans and Americans. (*Dr. H. S. Gour: "Why don't you extend them to China by a parity of reasoning?"*) (*Mr. N. M. Samarth: "They are not Europeans."*) If the House wishes to give those rights to the Chinese, I should have no particular objection, but I do not see that the parity of reasoning applies in this case in any way. Dr. Gour accused us of a great and unnecessary extension of the rights secure to some countries by treaty. He refuses to believe that it is reasonable on our part to give 460 Rights, if I may so describe them, to all European nations and to Americans merely because we have given them to the Swiss or the Italians. I have attempted to justify this—whether I have done so or not, I leave it to the House to judge. What Dr. Gour has not justified, I think, is the definite proposal, contained in his amendment, namely, that, while admitting all Europeans without distinction to these rights, for that is the effect of his amendment, we should withdraw them from the citizens of the United States of America. Incidentally his amendment, I may add, would withdraw them also from the treaty countries in America, though perhaps he does not intend to do so. He cannot guide himself on his consistency for he has all along said specifically that he wishes to maintain treaty rights, but the effect of his amendment, which he supported with such fervour and force, is actually to admit to these 460 Rights all the countries of Europe and to withdraw them from the treaty states of America. And now finally, what are these extension rights, for the abolition of which Dr. Gour has invoked the assistance of the House? What are these very exceptional privileges? Let me take Dr. Gour's own amendment. In the first place, he would withdraw the word "American" from sub-clause (1) of section 275. The effect of this clause is that, if a European British subject is being tried, the jury must consist of Europeans or Americans, and, therefore, so strong are his feelings on the subject, that he would not allow even an American to sit as a jurymen to try a European British subject. Secondly, he would withdraw the rights given to Americans by sub-clause (2). But the single right that they have is this, that, if they do happen to be tried by jury—and, of course they can claim no special jury trial—then, that jury shall consist of Europeans and Americans. That, Sir, is the sole right; that is the right which you wish to take away from them on the ground that we have given an unreasonable extension of treaty rights. It is not, I think, worth while, all the trouble that Dr. Gour has taken in putting his case to the Assembly, and I regret I myself have equally had to take up the time of the Assembly, on so comparatively trivial a matter.

(*Some Honourable Members: "Let the question be now put."*)

The motion was adopted.

Mr. President: The question is:

"That for clause 13 substitute the following clause:

'13. Section 275 of the said Code shall be omitted'."

The motion was negatived.

Bhai Man Singh: I move, Sir:

"That in the proposed new section 275 for the words 'a majority' wherever they occur substitute the words 'In the case of a trial before a Court of Session at least one, and in the case of a trial before a High Court at least three persons.'"

The effect of my amendment, Sir, is instead of a mixed jury wherein the majority of the jurors are of the same nationality as that of the accused. I only substitute that in cases where there appears a lesser number of men of his nationality, he should make it up in the case of a Sessions trial by one and in the case of the High Court by three persons. The only objection that can be raised against the ordinary jury will be that the jurymen in certain cases may not be able to understand the ways and customs of the accused, and may not be able to know the temperament of the accused. Therefore it is necessary that he should have men of his own nationality on the jury. That is one reason why men of the same nationality as the accused should be retained on the jury. Keeping this point in view, I am suggesting this milder amendment to the so-called compromise. Of course it is rather an unpleasant task for me to voice a note of discord on this "all-thanks-giving day" on the compromise, of which we have been talking so much. But, Sir, it is more of a compromise than we had this morning. I compromise in the real sense of the word. A compromise, really speaking, is no compromise if it does not remove the real cause of grievance and perpetuates the very evil against which the public has been agitating. I hope to be excused, Sir, at this stage, if I point out that really speaking, the greatest cause of complaint against the present procedure has been the mixed jury system. I cannot describe its evil in a better way than has been done by my learned and Honourable friend Mr. Rangachariar who of course, I am really sorry to say, has not yet agreed to it. My friend says: "It is perpetuating the racial distinction whether it be for the Indian or for the European. The jurymen would go into the witness box as if he was representing a particular community. The chances of securing even limited justice will be greatly diminished." Further on, on the same page, 18, in the next column he goes on to say: "I doubt if it will afford any satisfaction to responsible public opinion in the country if the privilege of a mixed jury were to be acceded to Indians charged with crime."—I am really sorry to say that after all, he himself being one of the most responsible men has agreed to that,—"for it is difficult to conceive how failure of justice in the case of European accused would be compensated for by an enactment which is not calculated to advance further the ends of justice." I would request Honourable Members just to mark those words very carefully. I will request Honourable Members of this House to mark these words carefully:

"It is not calculated to advance the further ends of justice, but might possibly lead to a miscarriage of it in the case of Indian accused persons. Indians do not want equality in injustice and any attempt or compromise of that sort is likely to undermine all respect for the administration of criminal justice and for criminal courts in this country."

This, really speaking, gives in an epitome the very strong argument against the present proposals of the Bill. If we want equality with the British

European subject, this should be done away with. You say you do away with the discrimination. We said that mixed juries have not been doing justice to the accused. You say, "All right. If you want to do away with discrimination, you also have mixed juries" so that the accused person may also be let off by a majority of the jurymen who are of his own nationality and who go there as men of his own nationality. It is one thing if a jurymen is selected as an ordinary functionary, but when I am selected as an Indian as against an European the position becomes different. I may draw the attention of the House not only to what my Honourable friend, Mr. Rangachariar has said, but to a good many other opinions expressed by very responsible authorities in India. First of all, I would draw the attention of the House to page 43 of this correspondence. This is the opinion of the Judges of the Lower Burma Court:

"The Honourable Judges are strongly of opinion that a provision whereby an accused, whether Indian or European, shall be entitled to claim a mixed jury, will inevitably increase the antagonism between the races. They can see no advantage whatever in the provision and consider that it will tend to create and perpetuate racial feeling. Jurymen, both European and Indian, in the circumstances will come to regard themselves merely as champions of their own race."

Not only that, Sir, but I may draw your attention to page 9 where you find the opinion of Mr. Justice Kumaraswamy:

"My view has always been that racial discrimination as regards criminal trials not only has no justification but has been the cause of a great deal of miscarriage of justice."

If men of eminence, if men of experience, men of light and learning like the Judges of the High Courts definitely hold the opinion that this sort of jury system has been the cause of a great deal of miscarriage of justice, I would ask the Honourable House to see how far they are prepared to stick to the so-called compromise or how far they have or have not a right to accept or refuse to ratify it. In this particular case I would request my Honourable friends not to ratify the compromise *in toto*, but to accept it only partially as I have submitted to the House. There has been a miscarriage of justice by this system up till now. Not only now, but for a long time the whole of the Indian population has been crying with one voice against this evil, and there is absolutely no reason why, when we want to do away with one evil, we should want to extend that evil to the Indians also. Personally, if my opinion were to be asked, I would say, "If you want to keep up the system of a mixed jury for the Europeans, if you say that the agitation would be so strong that Government, would be incapable of handling the situation, give it to them. But for God's sake, do not extend the evil to the case of the Indian accused." (*A Voice*: "They have got it now.") In certain cases we have not got it. We have got it only in the case of trial in Session Courts when the trial is by jury. I think at present a mixed jury in the case of Indians is practically negligible. Then again, Sir, if I were allowed to read other quotations given in this book, Honourable Members would see that times without number Judges of the High Courts, Judicial Commissioners, especially the Judicial Commissioner of Oudh and a good many other responsible persons have declared that the mixed system of juries has caused a good deal of miscarriage of justice and I see no justification absolutely why we should keep up the same evil which has given us so much trouble for such a long time. If a compromise is to be arrived at, it should be a fair compromise to remove the evil. I say if a European gentleman finds that the jury consists of all Indians, he can claim to have one or two Europeans in the jury

[Bhai Man Singh.]

in the Sessions Court, so that he may be able to give proper directions to other colleagues in the jury. The other point about this is that the terms of the Bill are not in accordance with the Committee's report. I do not know if I am right or wrong. My friend, Mr. Chaudhuri, says I am wrong. He says that in the Statement of Objects and Reasons

Mr. President: The Honourable Member had better leave the Statement of Objects and Reasons alone. He must confine his remarks to the substitution for the words "a majority" the words "In the case of a trial before a Court of Session at least one and in the case of a trial before a High Court at least three persons".

Bhai Man Singh: I am pointing out that the Bill as drafted is not on the lines of the report with proper safeguards. The report of the committee was :

"We recommend that in all jury trials in which the jury are not unanimous or in which the jury are unanimous but the Judge does not agree with the verdict of the jury both in the High Court and the Sessions Court an appeal should lie on facts as well as on law."

Further on they wanted a change in sections 418 and 423 but I find that in the Bill no change has been effected.

Mr. President: The Honourable Member is going now much wider than he did before. He is discussing the question of appeals. I asked him to confine his remarks to the terms of his amendment.

Bhai Man Singh: I want to show that the principle of a mixed jury should not be adopted by this House. Therefore the House should adopt the amendment as it stands. I would request Honourable Members to see whether they are going to leave the law of a mixed jury as it stood before and be simply satisfied with the extension of the principle to the Indians as well, or whether, seeing the evil which has resulted from these mixed juries, they are going to adopt my amendment. With these remarks, I commend my amendment.

Mr. President: Amendment moved :

"That in the proposed new section 275, for the words 'a majority' wherever they occur substitute the words 'In the case of a trial before a Court of Session at least one, and in the case of a trial before a High Court at least three persons'".

The motion was negatived.

Mr. President: The question is that clause 13 stand part of the Bill.

Dr. H. S. Gour: Sir, I have to speak on clause 13.

Mr. R. A. Spence (Bombay-European): It has already been talked about.

Dr. H. S. Gour: I am rather surprised that my friend, Mr. Spence, who has been vouchsafed all the privileges which he asked for, should now try to muzzle me and to extend to the non-British Americans the privileges for which I at any rate hope

Mr. R. A. Spence: I ask the House if I tried to muzzle Dr. Gour to-day

Dr. H. S. Gour: I think my friend does not know the meaning of words. When I gave notice of my amendment, Sir, I immediately asked the Home Department to let me see the treaties or copies thereof, so that I might see as to what were the treaty obligations which were entered into with America and the other European States.

Mr. N. M. Samarth: On a point of order, Sir. No. 26 is the amendment on which he is speaking, and in that he only asked for the omission of the words 'or Americans' and 'or an American' wherever they occur, so that he retains Europeans who are not British subjects in the section.

Dr. H. S. Gour: I do not think my friend is the best judge of my intentions; he had better let me speak as to what I intended and then interrupt me if I am out of order. As I have pointed out, I wanted to examine all the treaties for myself and to see how far those treaties justified the preferential treatment accorded to the nationals of those nations mentioned in the Bill. I was equally clear that apart from the treaties entered into with these States, all Europeans and Americans outside the British Islands could not claim preferential treatment which has been given to them in the Bill. I say

Mr. President: I consider that that subject had been exhausted in the Honourable Member's previous speech. I do not quite see how he can bring forward a new argument relating to this subject which he has not already used, but perhaps he is ingenious enough to be able to do so.

Dr. H. S. Gour: I will do so, Sir, if you will give me the indulgence. I was told that these treaties were not available in India and that nobody in India had seen them. Fortunately, one such treaty has been unearthed, and the Honourable Home Member has read portions of it, and, you will remember, Sir, he said that other treaties might also be found. Now in view of the fact that these treaties are still being hunted for and are not available, I move, Sir, that you will allow me to move this motion which stands against my name to-morrow instead of to-day. It is 6 o'clock, and it will give me the time to read the Italian Treaty and the other Treaties which may be available to me. And I also beg to give notice to the Honourable the Home Member that I shall be at liberty to move for the deletion of the whole of clause 2 of the proposed section 275. That will be in consonance with my speech which I have already delivered and with the arguments I then advanced. I do not see why any European not being a European British subject or American with whom we are not under any treaty obligation should have preferential treatment accorded to him.

Mr. President: The Honourable Member is taking a line of argument which I told him he is not entitled to do. The Honourable Member knows that repetition comes under the Standing Order and this case seems to me to be a peculiarly flagrant one.

Dr. H. S. Gour: My object, Sir, is to ask for the adjournment of the House in order to enable me to read the treaties which might be made available to the Members. Not only have I the right to look at the treaties, but I expect there are other Members who would like to see the treaties. I therefore suggest that in view of the lateness of the hour you may be pleased to adjourn the debate till to-morrow. That is my motion. All that I have said was in support of the motion for the adjournment of the House.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I rise to a point of order, Sir. Dr. Gour refers to the Americans only and we understood that when he was speaking on Bakshi Sohan Lal's amendment he spoke on his own amendment and his amendment was practically exhausted . . .

Mr. President: I do not need the Honourable Member's assistance to explain that to the House. The House is well aware of it already. There is no question before the House except that clause 13 stand part of the Bill.

Clause 13 was added to the Bill.

Mr. B. Venkatapatiraju: I suggest, Sir, that it would be better if we adjourned now, because it is very late.

Mr. President: Is the Honourable Member feeling tired?

Mr. B. Venkatapatiraju: Yes, Sir.

Mr. President: If I do adjourn the House, and I have not yet said that I propose to do so, I must draw the attention of the House to the fact that in the last two hours a great deal of time has been wasted on amendments on which no other speeches were made except those by the Movers of the amendments, and on which none of the Movers of the amendments asked that the vote of the House should be taken. I warn Members that if they continue that I shall have to treat that proceeding as obstructive.

Mr. K. B. L. Agnihotri: On the point, Sir, which you have just been pleased to warn us, that is about the amendments which take up much of the time of the House, may I know, Sir, how it is possible for a Member—like myself for instance—who has certain amendments standing in his name, to know before he moves his amendment how the House will treat it.

Mr. President: Unless the Honourable Member is very hard of hearing he will easily learn the sense of the House. As far as the moving of his amendment is concerned I am not going to prevent it, and I shall give even a minority of one its full rights; but I must warn the House that I cannot allow individual Members to continue for long to take up the time of the House on matters in which apparently the House takes no interest.

Mr. B. Venkatapatiraju: Sir, the amendment which I propose to place for your consideration is 'to omit clause 14.'

The original section 264 in the Criminal Procedure Code says:

"When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such."

What the present Bill proposes is to make it compulsory that there should be not less than three assessors and if practicable there should be more. Now, it is not quite easy, Sir, in the mofussal to secure three assessors in every case. That difficulty was pointed out by two European civilians who are Commissioners. Now, you have got 2 assessors or more and this is elastic enough to secure more, when necessary, but to compel in every case that there should be three is unnecessary and undesirable. Perhaps, Sir, if the House thinks otherwise, I am not at fault, because I feel that it is undesirable.

Mr. President: Clause 14. Amendment moved:

"Omit clause 14."

The question is that that amendment be made.

The motion was negatived.

Mr. K. B. L. Agnihotri: Sir, I beg to move:

"In clause 14 omit the words 'not less than three and if practicable.'"

In clause 14, Sir, we provide the number of assessors to be fixed and we provide that they shall not be less than three, and if practicable four. I do not understand, why these two numbers have been given there. Why should it not be that 4 assessors be selected? There is not much difference between 3 and 4. I therefore propose that it is better to drop the clause "not less than three and if practicable" and propose that in all the cases that are to be tried before the Sessions Judges with the aid of assessors, the number should be fixed at 4 definitely.

The amendment was negatived.

Clause 14 was added to the Bill.

Rai Bahadur Bakshi Sohan Lal: Sir, I move the following amendment which stands in my name:

"Omit clause 15."

Clause 15 adds another section after section 284 and the added section is proposed to be numbered as section 284-A. It is as follows:

"(1) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European or Indian British subject, if the European or Indian British subject accused, or, where there are several European British subjects accused or several Indian British subjects accused, all of them jointly, before the first assessor is chosen so require, all the assessors shall, in the case of European British subjects be persons who are Europeans, or Americans or, in the case of Indian British subjects, be Indians.

"(2) In a trial with the aid of assessors of a person who has been found"

Mr. President: I think the Honourable Member may assume that we know the clause.

Rai Bahadur Bakshi Sohan Lal: The object of the amendment is to omit this provision altogether. I have been met in almost all the amendments by a statement on behalf of the Government that all these provisions have been framed in pursuance of the compromise effected, but I want to know who the persons effecting the compromise were. Were this Assembly as a body or persons specially selected by the general public of British India or were persons nominated by Government?

Mr. President: I have already told Members previously that matters of that kind are legitimate on the motion that the Bill be taken into consideration. They are not legitimate matters, excepting incidentally, on amendments of the detail.

Rai Bahadur Bakshi Sohan Lal: My objection is that if this be made the procedure in the administration of criminal justice, justice will be defeated in almost all the cases; possibly in exceptional cases justice may be done. In almost all the cases injustice will be done, and I respectfully submit that these provisions should be omitted and I do not consider myself bound by any compromise arrived at.

Mr. President: Amendment moved:

"Omit clause 15."

The question is that that amendment be made.

The motion was negatived.

Mr. B. Venkatapatiraju: Sir, I move:

"In clause 15 in sub-section (1) of proposed section 284A, for the words 'all the assessors' substitute the words 'one of the assessors' and make the necessary consequential changes."

The object of my amendment is this. It is true that European Members have agreed that the Sessions Court can try with reference to certain offences with the aid of assessors even Europeans who are charged before them. But what they want is that they should have a large number of assessors than usual and all of them shall be of the same persuasion. If our friends want miscarriage of justice, that is the surest way of getting it. But if they want justice, Sir, it will not do. I only appeal to them to refer to the opinions furnished, at pages 19, 22, and 29 of the opinions furnished to us. I may mention, Sir, that the Chief Justice of Allahabad remarked:

"In a very small European community this (that is the number of assessors) will not be obtainable and there will always be a danger of their unintentionally misleading the judge or worse still coming in Court full of local gossip and with unjudicial minds already more or less made up."

The opinion of a European is as follows:

"The opinion of assessors, and that is also very pertinent, except in very rare cases is negligible, and I do not think any advantage is to be obtained by increasing their number. It is enough if the accused is given the right of having one assessor of his nationality."

Now, if you want fair dealing, it means very little whether the accused is an European or an Indian. You must get a good idea of the circumstances of the case. Before this, even with reference to Europeans and Americans, whenever they are tried with the aid of the jury, or of assessors, it is enough

G.M. if half of them are Americans or Europeans. They never said all of them should be of the same persuasion. Why should they in this case say that all of them should be of the same persuasion? It is said "Oh, have you not given the same thing to Indians?" That is no case at all because in India it is impossible in particular cases where accused are tried, to secure Europeans. Almost all of them will be Indians. In the country you will find only Indians who are able to sit in almost all cases as assessors. But if you want to have four, as is suggested by the European gentleman in order to give their opinion, it does not carry any additional weight with the Judge. Therefore I would still recommend that it is enough for a European or an Indian to have one of his persuasion to be on the list of assessors, or as an alternative at least half the number. Therefore I move my amendment, Sir.

The motion was negatived.

Mr. K. B. L. Agnihotri: I beg to move:

"That in clause 15, in the proposed section 284A, for the words 'all the assessors' wherever they occur substitute the words 'two of the assessors.'"

In clause 14 we have already provided the number of assessors to be 3 or 4. In this clause we provide that the accused may ask for all the assessors to be of the same nationality or race to which he belongs. I beg

to propose by my amendment that he may have the right to ask for only half of the number of such assessors to be of the same nationality. The House, by rejecting the amendment of the Honourable Bhai Man Singh, has testified that the mixed trial is not undesirable. It is often necessary that there should be trials by mixed jury or mixed assessors and I therefore propose that only half the number of the assessors should be of the same nationality as the accused. With this object I move that the words "two of the assessors" should be substituted for the words "all the assessors."

The motion was negatived.

Clause 15 was added to the Bill.

Rao Bahadur T. Rangachariar: Having regard to the importance of the Bill and the late hour, I appeal to you, Sir, and I hope the Honourable the Leader of the House will join me in my application, to adjourn the House. Speaking for myself, however anxious I may be to stay here, I feel tired and I cannot bestow sufficient thought to the subject before us.

Mr. President: The adjournment of the House is, as the Honourable Member knows, in the hands of the Chair, but I must necessarily, in the first place, consult Government as to the amount of business still to be considered, and, in the second place, the general convenience of Members. I must keep in view as the first consideration the state of the programme of public business which, I understand, the House desires to despatch. There is a very small margin of time left between now and the end of March, and, unless Honourable Members wish to sit well into April, they will have to pay some attention to the remarks which I made a little while ago about the time that is wasted in the moving of amendments which fail to receive any support. The Honourable Member (Mr. Rangachariar) has much influence in the ranks of his party, though he may not be its titular and official leader. Perhaps he may be able to use it to good effect in this matter.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 20th February, 1923

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